

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.7365 of 2020
and W.M.P.No.9248 of 2020

CMDA Approved Plot Owners and Residents
Welfare Association,
Rep. By Mr.Ganesa Prakash, President,
and Functioning at
Door No.4/98, Krishna Nagar Main Road,
Lydia Matriculation School Campus,
Krishna Nagar, Madambakkam Post,
Chennai 600 126. ..Petitioner

Vs

1. The Member Secretary,
CMDA,
Gandi Irwin Road,
Ansari Estate, Egmore,
Chennai 600 008.
2. The District Collector,
Chengalpattu District,
Chengalpattu 603 101.
3. The Commissioner,
St. Thomas Mount Panchayat Union
@ Chitlapakkam,
Chennai 600 064.
4. L.Sasitha

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 3 to take appropriate action to demolish and recover the said land for common utility within a stipulated time limit.

For Petitioner	..	Mrs.Malarvizhi Udayakumar
For Respondents	..	Mr.Karthik Rajan for R1
		Mr.M.Elumalai,
		for AGP for RR2 and 3
		Mr.R.Sankarasubbu for R4

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner herein to file this writ petition seeking a direction to the respondents 1 to 3 to take appropriate action to demolish and recover the land which is meant to be used for a public purpose over which the 4th respondent is said to have put up constructions.

2. The learned counsel appearing for the petitioner submitted that the land in question is a Panchayat road, over which the 4th respondent has put up constructions.

3. The learned counsel appearing for the 4th respondent submitted that a civil suit in O.S.No.6 of 2018 has been filed by the 4th respondent against the private individuals over his possession and enjoyment and construction.

4. The petitioner herein has filed an application for impleadment which was dismissed and against which a revision has been filed which is pending consideration. Thus, the writ petition will have to be dismissed.

5. The learned Additional Government Pleader appearing for the respondents 2 ad 3 placing reliance upon the counter affidavit filed submitted that the property over which the 4th respondent seeks right and putting up construction is public road. Pursuant to the approved layout granted, preceded by a registered Gift Deed dated 09.06.1986, the property vests with the local body viz., the 3rd respondent. The 4th respondent had purchased the same property in the year 2006 after nearly 20 years thereafter. Despite the action taken, the construction was going on and only pursuant to the order of this court, the construction was stopped.

6. We would like to record the fact as stated in the counter affidavit filed by the 3rd respondent, particularly, in paragraphs 4 and 5.

"4. It is humbly submitted that the averments in para Nos.2 and 3 of the affidavit filed in support of the writ petition are admitted. It is humbly submitted that the land in dispute is situated in an approved layout called Sri Krishna Nagar, Kaspapuram Village, within Agaramthen Panchayat within the jurisdiction of St. Thomas Mount Panchayat Union. Several lands in Krishna Nagar have been plotted out into house site at the instance of a

Real Estate Agency by name Noble Real Estate. During the course of plotting out the lands into house sites, as per the Development Control Rules, the lands comprised in Survey Nos.1/4, 3/1, 3/2, 3/3, 3/14, 3/16, 3/17 and 3/18 (subject matter of the writ petition) measuring a total extent of 22768 was gifted to St. Thomas Mount Panchayat Union through a Registered Gift Deed dated 09.06.1986 registered as document No.4013 of 1986 on the file of Sub-Registrar, Tambaram, Thus, as per the gift deed, the land in question namely Survey No.3/18 exclusively belonged to St. Thomas Mount Panchayat Unit. This land is meant to be utilized for public utility such as formation of road, construction of public health facility, over head tank, school, park, etc. It is within the discretion of the Panchayat Union that this land will be utilized for a public purpose. Thus, the land in question is earmarked for a public purpose, over which no private individual can assert a right, interest or title.

5. It is humbly submitted that the before plotting out the land in Survey No.3/18, it stood in the name of one Mrs.Saraswathi Ammal and 6 others. Since this land was gifted to the Panchayat, their names were deleted from the revenue records and the name of the Panchayat was promptly incorporated. However, it appears that one Mr.A.Murali, as a power agent of Mrs.Ramathilagam and Bharathkumar had sold this land to the fourth respondent herein in and by way of a sale deed registered as document NO.4256 of 1997 and 4963 of 2006 on the file of Sub Registrar, Tambaram. This sale deed itself is forged and fabricated inasmuch as the land in question was gifted to the Panchayat even during the year 1986, as mentioned above. While so, the same land cannot be subjected to alienation in favour of the fourth respondent either in the year 1997 or in the year 2006. Thus, the sale deed in favour of the fourth respondent will not bind the Panchayat in any manner.

7. Similarly, in paragraph 8 the following averments have been made:

"8. I humbly submit that inspite of the communications dated 20.02.2020 and 29.06.2020 sent by this respondent to the fourth respondent, she did not respond. However, it

was noticed that the fourth respondent was swiftly proceeding with the construction in the land in question. Therefore, on 02.07.2020, in the presence of the police officials, Revenue Inspector, Village Administrative Officer and Executive Officer of the Village Panchayat, the Block Development of St. Thomas Mount Panchayat Union had sealed the premises of the fourth respondent for not furnishing the building planning permission besides the construction was made in a land meant for public purpose. The communication intimating the sealing of the premises was pasted in the front side door and in prominent places within the site of construction."

8. In view of the above, we direct the 3rd respondent to proceed further in accordance with law as the pendency of the civil suit has got no bearing. Therefore, the 3rd respondent shall proceed in accordance with law, conclude and take appropriate action against the 4th respondent within a period of eight weeks from the date of receipt of a copy of this order. It is needless to state that till the conclusion of the action, the 4th respondent shall not put up any further construction.

9. This writ petition stands disposed of accordingly. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Member Secretary, CMDA, Gandhi Irwin Road, Ansari Estate, Egmore, Chennai 600 008.
2. The District Collector, Chengalpattu District, Chengalpattu 603 101.
3. The Commissioner, St. Thomas Mount Panchayat Union @ Chitlapakkam, Chennai 600 064.

+1cc to the Government Pleader, S.R.No.31937

+1cc to M/s.Malar Vizhi Udayakumar.*, Advocate, S.R.No.31605

W.P.No.7365 of 2020

PP (CO)
RV (06/11/2020)



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