

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.31147 of 2019

S.Sumathi

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.
2. The District Collector,
Chennai District,
Singaravellannar Buildings,
Chennai.
3. The Tahsildar,
Sozhinganallur Taluk,
Sozhinganallur, Chennai.
4. The Assistant Commissioner,
Corporation of Chennai,
Zone No.XIV, Puzhuthivakkam,
Chennai-91.

5.S.Ravikumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to remove the encroachment in public road at 5th Cross 2nd Street, Rajesh Nagar in Survey No.84/6, Pallikaranai Village, Sholinganallur Taluk, Ward No.188, Zone 14, Corporation of Chennai.

For petitioner : Mr.B.Manoharan
For respondents : Mr.K.Raja Shrinivas for RR-1 and 4
Mr.K.S.Suresh, Govt. Advocate for RR-2 & 3
Mr.L.Chandrakumar for R-5

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to remove the encroachment on the public road at 5th Cross 2nd Street, Rajesh Nagar in Survey No.84/6, Pallikaranai Village, Sholinganallur Taluk, Ward No.188, Zone 14, Corporation of Chennai.

2. In the affidavit filed in support of the Writ Petition, it is stated that the petitioner herein is doing construction business in the name of M/s.SCH Builders. The petitioner entered joint development agreement with M/s.T.K.Vijaya and S.Shalini in respect of the land measuring total extent of 9,475 Sq.Ft. as per document and as per Patta, 8601 Sq.Ft. since about 740 Sq.Ft. (10 feet x 74 feet) was taken for the road. They have also obtained necessary planning approval from the fourth respondent and the construction work is going on. Almost all the plots in that locality were unapproved plots developed as early as 1995-96. In fact, the fifth respondent encroached upon the public road, which is in existence as early as from 1995-96 onwards. On enquiry, it came to light that the fifth respondent made a representation to the first and fourth respondents and approached this Court by filing Writ Petition in W.P.No.4359 of 2019, in which, by order dated 15.02.2019, this Court, without going into the merits of the case, directed the first respondent to consider the representation of the petitioner, dated 10.01.2019, on merits and in accordance with law, and pass appropriate orders, after giving an opportunity of personal hearing to the fifth respondent herein, as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of the order. The said Writ Petition was accordingly disposed of.

3. Similarly, another person Ms.G.Malliga approached this Court in W.P.No.27349 of 2017, which was dismissed on 26.02.2018. The fifth respondent approached the authority with unclean hands. Admittedly, the fifth respondent purchased the property through a registered sale deed, dated 31.07.1996, vide Document No.3685 of 1996 on the file of the Saidapet SRO. The fifth respondent made a representation to the first and fourth respondents on 10.01.2019 and filed the abovesaid W.P.No.4359 of 2019. The petitioner clearly made a statement that he acquired the land through the sale deed registered as Document No.3685 of 1996. As per the same sale deed, he purchased the property mentioned in the schedule in the sale deed, which reads as follows:

"All piece and parcel of land measuring
1500 Sq.Ft. at Plot No.A, Salpan Kuttai
Street, comprised in Survey No.86/3 at

No.119, Pallikaranai Village, Saidapet Taluk, Chengai MGR District, South Chennai Registration District, Joint-I Saidapet Registration District bounded on North-Vacant land, on South-Excess land in Plot A and five feet passage, on East-Kannappan Land and on West-vacant land".

4. It is further stated by the petitioner that the fifth respondent has no right and title whatsoever in the land at Survey No.84/6 at No.119, Pallikaranai Village. Since the lands in Survey No.84 and adjoining land in Survey No.73 at No.119, Pallikaranai Village are developed land, his land is at Survey No.84/6 at No.119, Pallikaranai Village, the fifth respondent, with his muscle and money power, manipulated the records and mislead this Court to get an order to dispose of the representation and armed with the same, was able to remove the road and encroached upon the public property and third party land.

5. The petitioner further submits that they have invested huge money for getting approval for the lay-out and the fourth respondent collected a sum of Rs.64,600/- for scrutiny and improvement charges and sum of Rs.5,25,500/- towards CMDA Development charges and Open Space Reservation Charges, both in favour of the Commissioner of Corporation of Chennai and Rs.62,000/- for vacant land tax in favour of the Revenue Officer, Chennai Corporation to regularise the lay-out. In addition to that, the petitioner had paid a sum of Rs.8,05,850/- for three block construction of residential flats. In total, the first and fourth respondents collected a total sum of Rs.13,95,950/- from the petitioner alone and collected huge money from various persons who approached for planning approval. Assuming the land is private land, it is the duty of the first and fourth respondents to acquire the same and provide pathway to the petitioner, since they collected huge money from the petitioner. While mutating the Revenue Records of the original owner from whom the petitioner entered joint development agreement, the local body/Revenue officials compelled the petitioner to give up 740 Sq.Ft. for the road.

6. It is further stated by the petitioner that in addition to the above payment made to the first respondent, the petitioner spent huge amount and paid advance to the original owners, filing the ground level for construction, advertisement and other miscellaneous expenses by mortgage of the petitioner's properties with various financial agencies and also spent huge amount from the petitioner's savings through business. In view of the encroachment, the approach to the petitioner's project was stopped and due to the same, the petitioner was compelled to

stop the further construction activity. The petitioner being female entrepreneur, is suffering huge loss and mental agony due to the stoppage of construction activity and encroachment on the road.

7. The petitioner further alleges that the encroachment was made on 16.08.2019 and immediately, oral complaint was made to the authorities, but no action was taken. The petitioner was dragged from pillar to post without removing the encroachment. Hence, the petitioner made a written complaint on 31.08.2019 to the respondents, but till date no action was taken. When the petitioner approached the third and fourth respondents, they orally advised the petitioner to satisfy the demand of the fifth respondent and settle the issue without considering the huge amount received from the petitioner and also others for granting approval based on the road which is under encroachment. Since no action was taken, the petitioner is before this Court by way of the present Writ Petition for the relief stated supra.

8. The third respondent has filed counter affidavit stating that the fifth respondent is the owner of S.No.84/6A1B of Pallikaranai Village. He has encroached the portion of land lying on the Northern side of his land, thereby blocking the ingress and egress to the people who are the owners of the lands lying on the Southern side of the fifth respondent's property. It is further submitted that the portion of the land alleged to have been encroached by the fifth respondent is not classified as Government Poramboke and not stated as Road in the maps under maintenance of the third respondent's office. Hence, neither the third, nor the fifth and fourth respondents could invoke the relevant provisions and evict the fifth respondent from the portion claimed as road by the petitioner herein. Hence, the third respondent states that the petitioner may be directed to file a civil suit for remedy.

9. The first and fourth respondents have filed counter affidavit that in pursuant to the order passed by this Court in W.P.No.4359 of 2019 filed by the fifth respondent, the Regional Deputy Commissioner (South), Greater Chennai Corporation had conducted personal hearing, after giving opportunities to the parties concerned and inquiry was completed. The order is yet to be passed by the Regional Deputy Commissioner (South), Greater Chennai Corporation.

10. Heard both sides and perused the materials available on record.

11. Be that as it may. This Court is not conducting any roving enquiry with regard to the alleged encroachment made by the fifth respondent. It is seen from the counter affidavit of

respondents 1 and 4 that on the direction of this Court in W.P.No.4359 of 2019, the Regional Deputy Commissioner (South), Greater Chennai Corporation has already conducted personal hearing and after giving opportunities to the parties concerned, the order is yet to be passed by him.

12. But it is the grievance of the petitioner that she has not been given an opportunity of personal hearing. Therefore, it is directed that the respondents 1 and 4 or the Regional Deputy Commissioner (South), Greater Chennai Corporation, before passing any order, shall give a personal hearing to the petitioner and on such enquiry, the petitioner is entitled to produce all the relevant documents in support of her claim regarding the encroachment made by the fifth respondent. Thereafter, the respondents 1 and 4 or the Regional Deputy Commissioner (South), Greater Chennai Corporation, shall pass appropriate orders in the matter of the alleged encroachment made by the fifth respondent herein, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.

2. The District Collector,
Chennai District,
Singaravellanar Buildings,
Chennai.

3. The Tahsildar,
Sozhinganallur Taluk,
Sozhinganallur, Chennai.

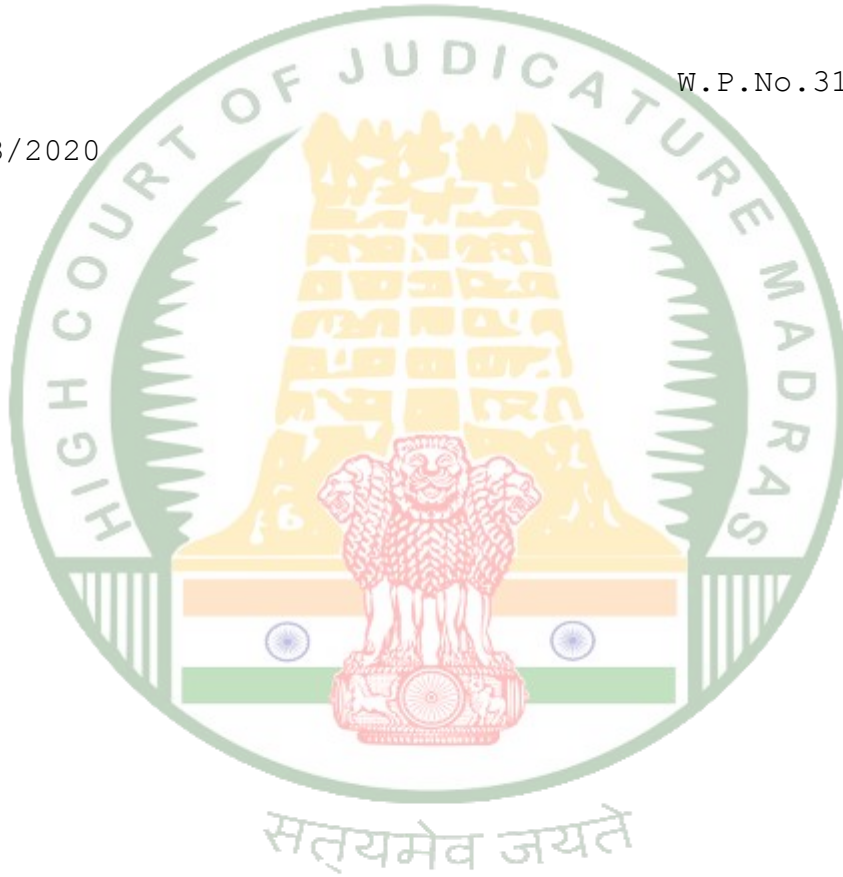
4. The Assistant Commissioner,
Corporation of Chennai,
Zone No.XIV, Puzhuthivakkam,
Chennai-91.

5.The Regional Deputy commissioner(South),
Greater Chennai Corporation,
Chennai.

+1cc to Mr.L.Chanrakumar, Advocate, SR.No.9587.

EV(CO)
CSR: 10/03/2020

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