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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.6.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6861 of 2019 and
W.M.P.No.7623 of 2019

1.N.Senthamarai
S/O. MR. Narasimma Naicker,
No 74 Bangalore Main Road, Santhavelur Village,
Sriperumbudur Taluk, Kancheepuram District. ... Petitioner

Vs.

- 1.The District Collector,
Kancheepuram district
- 2.The Revenue Divisional officer,
Kancheepuram.
- 3.The Tahsildar
Sriperumbudur taluk, Sriperumbudur, Kancheepuram Dist.
- 4.The Block Development Officer
Sriperumbudur Panchayat Union,
Sriperumbudur taluk, Kancheepuram district
- 5.MR.G.C.Jain
S/O. Julam Jain No 6, Santha Nivas
Bangalore Main road, Sunguvarchatram
- 6.The Head master
Panchayat Union School, Sunguvarchathiram
Santhavelur village, Sriperumbudur Taluk,
Kancheepuram district. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent 1 to 4 to reconstruct and restore the Santhavelur Panchayat Union School compound wall to its original position as it was before the demolition based on the petitioner's representation, dated 19-7-2017 as there was no any street named called school street.



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For Petitioner	:	Mr.P.Balamurugan
For Respondents 1 to 3	:	Mr.M.R.Gokulkrishnan, G.A.
For Respondent No.4	:	Mr.Jayaprakash Narayanan
For Respondent No.5	:	Mr.K.M.Balaji
For Respondent No.6	:	No appearance

O R D E R

According to the petitioner, petitioner being the ex-President of Grama Seva Sangham, purchased the property situated at S.No.37/5 in the year 1962 and executed gift deeds in favour of the Panchayat Union School, Sriperumbudur.

2. The 5th respondent herein filed a suit in O.S.No.270 of 1990 before the Civil Court for permanent injunction and the same was dismissed. The First Appellate Court reversed the judgment and decree of the trial court in the Appeal preferred by the first defendant in A.S.No.11 of 2004. Panchayat Union School have preferred S.A.No.902 of 2005 and subsequently, gift deed was executed.

3. Further, the 5th respondent herein has filed a writ petition before this Court in W.P.No.28595 of 2015 by suppressing the material fact in the aforesaid writ petition by seeking direction to the respondents 1 to 4 therein for removal of encroachment put up at the School street, Jain Nagar, Sunguvarchatram, Sriperumbudur Taluk, Kancheepuram District. Based on the stand taken by the second respondent herein the Division Bench of this Court has passed the order. According to the petitioner, actually, there is no such street as found from the records. Based on the aforesaid order, the said compound wall was removed.

4. Now, the petitioner being the ex-President of Grama Seva Sangham has preferred the instant writ petition for the aforesaid relief. The petitioner further submitted that the petitioner also filed Review petition in R.P.No.4 of 2018 in W.P.No.28595 of 2015 and the same was dismissed with liberty granted to the petitioner to approach the competent forum in accordance with law. According to the petitioner, the 5th respondent suppressed the material fact in the aforesaid writ petition by seeking direction to the respondents 1 to 4 therein for removal of encroachment put up at the School street, Jain Nagar, Sunguvarchatram, Sriperumbudur Taluk, Kancheepuram District. According to the petitioner, actually, there is no such street as found from the records. Therefore, the aforesaid compound wall has to be restored to its original position.



5. The learned counsel appearing for the 5th respondent would submit that in the counter affidavit, dated 30 October 2015 filed by the second respondent herein viz., Revenue Divisional Officer, Kanchipuram District has taken a clear stand that Santhavellore Panchayat Union School encroached the land in question and constructed a compound wall for the school. It is further contended that it is for the fourth respondent-Village Panchayat and the third respondent, viz., Block Development Officer, Sriperumbudur Panchayat Union, to remove the encroachment in accordance with law. Based on the counter affidavit filed by the official respondents as well as Panchayat in W.P.No. 28595 of 2015, the Division Bench of this Court has passed the following order:

"On consideration of the averments made in the writ petition as well as counter affidavits, as afore stated, it appears that there is a dispute qua the encroachment and as such, the third respondent is directed to have a spot inspection of the place in question and take necessary steps for removal of the encroachment, if, on inspection, it is found that there is an encroachment, in accordance with law, after affording an opportunity of hearing to the alleged encroachers. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order."

Pursuant to the aforesaid order, the said compound wall was removed. The gift deed was executed by the 5th respondent in favour of the Panchayat only in respect of the formation of road and the dispute raised by the petitioner is that the compound wall constructed in the land belonging to the Panchayat School is totally encroached. If the petitioner is aggrieved, he can agitate the matter by placing the revenue records, examining the witnesses before the Civil Court.

6. The learned Government Advocate appearing for the respondent would submit that if the petitioner is aggrieved, he may seek remedy before the authority concerned and without resorting to the remedy available, the writ petition is not maintainable.

7. The petitioner has filed the instant writ petition in the capacity as ex-President of the Panchayat, has not explained facts before this Court as to how the petitioner is an aggrieved person seeking such prayer. He has not filed the writ petition as a Public Interest Litigation. On perusal of the affidavit and typed set of papers, the entire allegations made by the petitioner against the 5th respondent is misleading statement in the earlier writ petition.



8. The 5th respondent has preferred writ petition in W.P.No. 28595 of 2015. In the said writ petition, the revenue officials have filed counter affidavit. Relying upon the stand taken by the second respondent in the counter affidavit, the Division Bench of this passed an order directing the authorities concerned for removal of encroachment after spot inspection. The petitioner has filed the instant writ petition by stating that the 5th respondent suppressed the material fact in the aforesaid writ petition for removal of encroachment put up at the School street, Jain Nagar, Sunguvarchatram, Sriperumbudur Taluk, Kancheepuram District and obtained order of this Court. According to the petitioner, actually, there is no such street as found from the records. All these facts are raised by the petitioner in the Review application and subsequently, the Review application was dismissed as withdrawn. Further, all these are disputed facts shall not be gone into under Article 226 of Constitution of India.

9. However, the petitioner has not refuted the contention raised in the counter affidavit stating that the Panchayat Union School encroached the gifted land and constructed a compound wall for the school, further the petitioner has not placed any revenue records or any other documents before this Court in support of his contention.

10. In such view of the matter, prima facie, no case is made out in the writ petition. Hence, the writ petition is liable to be dismissed. It is open to the writ petitioner to approach competent forum to seek relief, if so advised.

11. In fine, the writ petition fails and dismissed accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram District.

2.The Revenue Divisional officer,
Kancheepuram.

3.The Tahsildar,
Sriperumbudur taluk,
Sriperumbudur,
Kancheepuram Dist.

4.The Block Development Officer,
Sriperumbudur Panchayat Union,
Sriperumbudur taluk, Kancheepuram Dist.

5.The Head master
Panchayat Union School,
Sunguvarchathiram
Santhavelur village,
Sriperumbudur Taluk,
Kancheepuram district.

+1cc to Mr.K.M.Balaji, Advocate (SR No.30194)

+1cc to Government Pleader (SR No.30400)

W.P.No.6861 of 2019 and
W.M.P.No.7623 of 2019

PL (CO)
PR (10/08/2021)