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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.6234 OF 2021

&

W.M.P.NOS.6848, 6853 AND 9171 OF 2021

R.Angathal, F/Aged 56 years,
W/o.Late C.P.Rajendran

... Petitioner

.Vs.

1. The District Collector,
Tiruppur District,
Tiruppur.
2. The Commissioner,
Town Panchayat Union,
Palladam, Tiruppur District.
3. The Tahsildar,
Palladam Taluk,
Tiruppur District.
4. The Block Development Officer,
Palladam Panchayat Union Office,
Palladam,
Tiruppur District.
5. The President,
Village Panchayat,
Chitambaram,
Palladam Taluk,
Tiruppur District.

... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus forbearing the respondents from carrying out any construction in front of the Petitioner's Plot Nos.10, 39 and 40 in Survey No.359/1B, 2B, 3A, 3B, 4A and 4B at V.P.Golden City, Sri Kumaran Nagar, Chitambaram Village, Palladam Taluk, Tiruppur District and consequently directing the respondents to demolish and remove the constructions of round cylindrical blocks made in front of the Petitioner's property and restore the same in its



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original position, thereby protecting the ingress and egress to the Palladam to Udumalpet Road from the petitioner's residential plots.

For Petitioner : Mr.M.Purushothaman

For Respondents : Mr.A.Selvendran,
1 to 3 Government Advocate

For Respondents : Mr.P.M.Duraisamy
4 and 5

O R D E R

This writ petition has been filed for issue of writ of mandamus forbearing the respondents from carrying out any construction in front of the residential Plot Nos.10, 39 and 40 belonging to the petitioner and for a consequential direction to demolish and remove the constructions that have already been put up blocking the ingress and egress of the petitioner to Udumalaipet Road.

2. The case of the petitioner is that a layout was developed and she purchased Plot Nos.10, 39 and 40 through a registered sale deed dated 13.02.2015. The further case of the petitioner is that the petitioner's property is having a direct access to Udupalaipet-Palladam Main Road. It is alleged that the 4th respondent started to dig a huge pit in front of the property of the petitioner and thereby blocked the access of the petitioner to the Palladam- Udumalpet Road. Aggrieved by the same, the petitioner made a representation to the respondents on 23.02.2021 objecting to putting up any construction and thereby preventing the petitioner to access her property from the Main Road. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

3. When the writ petition was admitted on 10.03.2021, this Court issued notice to the respondents and also passed an interim order to maintain status quo. Subsequently, the 4th and 5th respondents filed a petition to vacate the interim order passed by this Court on 23.03.2021 on the ground that the interim order has virtually stopped the Panchayat from providing drinking water to the residents belonging to the locality and that almost the entire construction has been completed and what remained was to cover the top of the sump. Since the interim order virtually prevented the 4th and 5th respondents from proceeding further to utilise the ground level water tank, the petition to vacate the interim order was filed before this Court.



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4. The matter came up for hearing on 13.05.2021 and this Court passed the following order:

There is a dispute raised by the petitioner herein on the construction of overhead water tank. It is claimed that though the said tank has been constructed on a odai poramboke land, that the petitioner has purchased two plots in the said land. This contention is very seriously disputed by the Mr.Doraisamy, learned counsel who appears for the third respondent and who has filed an application seeking to vacate the order of status quo, which has been granted in the month of March, 2021. Photographs have been produced by both the sides.

2.Learned counsel for the petitioner states that when the writ petition was moved in March 2021, only the foundation was laid for constructing the tank and in violation of the order of status quo, the tank was raised and the construction was ongoing. However, this contention is disputed by Mr.Doraisamy, learned counsel for the third respondent, who states that even four months prior to the order of status quo, the construction of the tank had commenced and as on date only the roofing/ceiling will have to be done. Photographs have also been produced showing that the construction of the water tank is at the last stage of completion. It is also stated that if the water tank is completed and once the water is utilized, it will only augment supply of water to the villagers and who are seeking the same.

3. Now, the interest of both the petitioner vis-a-vis the interest of the villagers seeking augment of waters are to be balanced. Prior to that a fundamental exercise will have to be done with respect to the land on which the water tank has been constructed and whether the petitioner has any right to claim that such a water tank should not at all be constructed over the said land. The Tahsildar, Palladam Taluk is therefore directed and Mr.M.Elumalai, learned Additional Government Pleader is also present, to produce all the revenue records for the perusal of the Court specifically indicating by way of an affidavit

(i) land over which the water tank has been constructed



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(ii) its nature

(iii) the date of commencement of construction of the water tank and

(iv) whether all proper formalities have been completed prior to commencement of the construction of the water tank.

4. Let the preliminary enquiry be completed on that particular aspect and the Tahsildar produce records with regard to the same. This is done because there is a dispute also with respect to the basic fact of date of commencement of construction of the water tank, whether prior to the order of status quo or subsequent to the order of status quo.

5. For furnishing such records, list the matter on 01.06.2021.

5. It is clear from the above order that this Court directed the Tahsildar, Palladam Taluk to conduct a preliminary enquiry and to produce the relevant records before this Court.

6. Pursuant to the above order, the matter was once again listed for hearing on 27.07.2021 and this Court passed the following order:

The learned counsel appearing for the writ petitioner has submitted he advised the writ petitioner to allow the respondent/Panchayat to construct the ground level water tank by the Panchayat in the petitioner's locality. The learned counsel received instructions from the writ petitioner that the said tank being constructed by the Panchayat is abutting the property of the writ petitioner comprised in Survey No. 359, therefore he seeks indulgence of this Court to consider the said grievance of the petitioner. To that extent, the learned counsel appearing for the petitioner also agreed to appoint an Advocate Commissioner or Tahsildar along with Surveyor to inspect the property and submit a report before this Court.

The learned counsel appearing for the 5th respondent/Panchayat has strongly objected that the writ petitioner has approached this Court with unclean hands by suppressing the fact that the



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said construction of ground level water tank which is purely for the drinking water purpose to the locality people is being stalled by the petitioner one way or other, therefore, the submissions made by the learned counsel appearing for the petitioner are incorrect. Further the learned counsel appearing for the respondent, on instructions informed this Court that the petitioner's property is situated in Survey No. 360 and there is 2meter space between the petitioner's property and ground level water tank.

Considering the submissions made by the learned counsels appearing for the parties concerned, and to resolve the issue this Court directs the Tahsildar, Palladam Taluk, Tiruppur District with the assistance of Surveyor shall inspect the petitioner's property and the disputed ground level water tank and file a detailed report before this Court to the effect that the ground level water tank is really abutting the petitioner's property as alleged by the petitioner.

Accordingly, the Tahsildar, Palladam Taluk, Tiruppur District and the Surveyor are directed to inspect the property on 03.08.2021 after due notice to the petitioner as well as 5th respondent/Panchayat. The petitioner and the 5th respondent/Panchayat shall also be present on that day and cooperate for the inspection.

Post this writ petition for final disposal for filing report on 09.08.2021 under the caption 'For orders'."

7. It is clear from the above order that this Court directed the Tahsildar, Palladam Taluk to inspect the property along with the Surveyor after due notice to the petitioner and the 5th respondent-Panchayat and directed a report to be filed before this Court.

8. Pursuant to the above order, the Tahsildar has also filed a report by way of an affidavit dated 07.08.2021 along with a Survey Memo.

9. Before proceeding further with the contentions raised on either side, it will be relevant to take note of the specific stand taken by the 4th and 5th respondents in the counter affidavit and the same is extracted here under:



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"4. It is submitted that the over-head water tank with the capacity 60,000 litres to meet the requirement of drinking water (Athikadavu water scheme) for the Chitambalam village, was constructed in the year 2009 in the said poromboke land in S.F.No.360 and the same has been main source of drinking water supply to the Chitambalam, Chitambalam pudur and Pulliappampalayam hamlets for more than 12 years. Apart from the over-head water tank, there exists two panchayat bore wells, Aavin milk society building, Siddhi Vinayakar Koil and number of trees in the said S.F.No.360. It is submitted that the Writ Petitioner has purchased the above said plots from the promoter of unapproved layout called as Sri Kumaran Nagar-VIP Golden City, Chitambalam privu and the poromboke land in S.F.No.360 situated on the eastern side of the layout has been suppressed and Palladam to Udumalpet road was falsely shown as eastern boundary of the Writ petitioner's Plot Nos.10 & 40 of the unapproved layout for the reason best known to the promoter of the layout. It is very unfortunate that the unapproved layout plan has falsely been drawn in such a way that the layout was abutting the North-South Palladam-Udumalpet Main Road suppressing the existence of poromboke land in S.F.No.360 in between the Road and the layout.

5. It is further submitted that on the northern and southern sides of the Plot Nos.10, 39 & 40, there exists 23 feet and 30 feet width layout roads respectively of the Writ Petitioner and she has two way access to her above said properties. There is no road in existence on the eastern side of the Writ Petitioner's plots as stated in the Writ Petition. It is submitted that the village panchayat is constructing a sump with a capacity to store 1 lakh litre Athikadavu drinking water under the central Government scheme called JJM Scheme, nearer to the over-head tank to facilitate pumping up the water from the sump to over-head tank using electric motor for free flow of water supply to the villages. It is submitted that the 90% of the construction work is already over and only the top of the sump has to be covered with construction. It is submitted that when the preparation was made for covering up the top of the sump after a week layoff, we received this



Hon'ble Court's order of status quo dated 10.03.2021 on 18.03.2021 and we stopped all activities of construction of the sump in S.F.No.360 of Chitambalam Village, Palladam Taluk.

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6. It is respectfully submitted that the allegations of land grabbing, traffic hindrance and collusions with the real estate people are unsubstantiated and motivated and the same have been made to create grounds for filing the vexatious Writ petition. The Writ petitioner has absolutely no case and the writ petition has been filed on suppression of real facts. It is very unfortunate that the Writ Petitioner knowing very well that there is no road abutting the eastern side boundaries of her Plot Nos.10, 39 and 40, this Hon'ble Court was misled as if the sump is being constructed in front of the Writ petitioner's residential plots. It is submitted that the water sump is being constructed for the drinking water needs of the villagers and the people of the villages are facing acute water scarcity in the hot summer and the construction work has been halted following the interim order of status quo. It is submitted that there is no cause of action for the Writ Petitioner to invoke Article 226 of the Constitution of India and the Writ petitioner has halted the public welfare project on filing vexatious Writ Petition. It is submitted that neither fundamental nor constitutional rights of the Writ petitioner has been infringed but on the other hand this Hon'ble Court was misled to pass the interim order of status quo based on misrepresentation of facts. Unless this Hon'ble Court was pleased to vacate the interim order of Status quo and dismiss the Writ Petition, the petitioner Village Panchayat will be put into great hardships and sufferings. The Writ Petition is liable to be dismissed with heavy costs for blocking the works of sump construction through filing of vexatious writ petition.

10. It is also relevant to take note of the counter affidavit filed by the Tahsildar on 14.07.2021 and the relevant portions in the counter affidavit are extracted here under:

"5. I further humbly submit that the Writ Petitioner in her affidavit has stated that she had purchased site Nos.10, 39 and 40 situated at



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V.I.P. Golden City, Sri Kumaran Nagar, Chithambalam Village, Palladam Taluk, Tiruppur District comprised in S.F.Nos.359/1B, 2B, 3A, 3B, 4A and 4B of Chithambalam Village under a sale deed dated 13.02.2015 bearing document No.4129/2015 before SRO, Palladam. But the eastern boundaries described in the above said sale deed with respect to the Site Nos.10 and 40 are not correct. The Topo sketch clearly shows that there is a land i.e. S.F.No.360 of Chithambalam Village an extent of acres 0.79, which is on the eastern side of the S.F.No.359. On the eastern side of the S.F.No.360, there exists a North-South Palladam-Udumalpet Main Road. As per the Revenue records, the said S.F.No.360 with an extent of 0.79 acres (0.32.0 Hectres) has been the Government Poromboke land classified as Local fund road as per 1912 Re Survey and Re Settlement Resister. Now the said S.F.No.360 with an extent of 0.32.0 Hectres (0.79 acres) has been the Government Poromboke land classified as 'Vandipathai' as per 1984 Re Survey Resister. The Site Nos.10 and 40 are situated in S.F.No.359 and on the eastern boundaries there exists S.F.No.360 which is a Government poromboke land and not Palladam-Udumalpet main road as stated in the above said sale deed dated 13.02.2015 and the Writ Petition.

6. I humbly submit that the Writ Petitioner has purchased the said sites No.10,39 and 40 in S.F.No.359/1B, 2B, 3A, 3B, 4A and 4B of Chithambalam Village. The above said fields were converted as house sites named as Sri Kumaran Nagar VIP Golden city without obtaining any approval from the Directorate of Town and Country Planning Authority. The unapproved layout had been formed by the promoters suppressing the Government poromboke land situated in S.F.No.360 on the eastern side of the layout and unfortunately, north-south Palladam to Udumalpet road was falsely shown as eastern boundary of the Writ Petitioner's site Nos.10 and 40, for the reason best known to the promoters of the layout, the S.F.No.360 is situated on the western side adjoining the Palladam to Udumalpet Road in a north-south manner. On the western side of the above said S.F.No.360 of Chithambalam Village there exists lands in S.F.No.358, 359/2A, 359/2B and the land in S.F.No.360 is utilised by the Government and the Panchayat for the public welfare purpose. The



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Siddhi Vinayagar Temple which was constructed about 40 years ago is situated in the northern portion of S.F.No.360.

7.I further humbly submit that on the western side adjacent to the above said Siddhi Vinayagar Temple, there exists an Aavin Milk Co-operative Society building which was constructed decades ago and the said Aavin Society has been utilised by the local farmers and villagers. To avoid the scarcity of the water supply, the Chitambalam Village Panchayat had dug two borewells more than 10 years ago in S.F.360 and same have been under usage for supplying water to the Villagers. Besides the two borewells, there is an over-head water tank with the capacity of 60,000 litres was constructed more than 10 years ago in the said Government land in S.F.No.360. Adjacent to the southern side of the above said water tank, the ground level water tank is under construction for drinking water supply to the villagers and the Writ Petitioner is now raising objection for construction of the same."

11. For completion of facts, it will also be relevant to extract the report of the Tahsildar, Palladam Taluk filed by way of an affidavit on 07.08.2021, after the inspection was conducted:

"4. I humbly submit that as per order and direction of this Hon'ble Court, I had issued notice to the petitioner and 5th respondent to measure the subject site on 05.08.2021 along with Surveyor. On that day we measured the property in presence of petitioner and 5th respondent. As per field measurement, 2 meter distance between the petitioner's site in S.F.No.359/2B and the place where the ground level water tank which is under construction in S.F.No.360 which is a poromboke land. I have also annexed the field sketch map along with this affidavit."

12. Heard Mr.M.Purushothaman, learned counsel appearing on behalf of the petitioner, Mr.A.Selvendran, learned Government Advocate appearing for the respondents 1 to 3, Mr.P.M.Duraisamy, learned counsel appearing for the respondents 4 and 5.

13. The learned counsel for the petitioner submitted that pressure was exerted on the petitioner by some real estate brokers compelling her to sell the property and since she did



not concede for the same, they have colluded with the 4th respondent and as a result of the same, the illegal ground level tank has been constructed virtually preventing the ingress and egress of the petitioner from her property to the Palladam-Udumalpet road. The learned counsel further submitted that the layout in question is an approved layout and the same can be substantiated by the fact that even a gift deed was executed in favour of the President of the Panchayat by a document dated 29.10.2012. The learned counsel further submitted that even assuming that the plots are unapproved, that does not mean that the petitioner can be prevented to utilise her property by putting up a ground level water tank right in front of the property. The learned counsel concluded his arguments by submitting that the report of the Tahsildar shows that it is a Government Poramboke and it has been classified as a 'Vandipathai' and therefore, no construction can be put up over the same and hence whatever construction has been made by the 4th and 5th respondents will have to be removed and the petitioner must be permitted to have an easy access to her property.

14. Per contra, the learned counsel appearing on behalf of the 4th and 5th respondents submitted that the petitioner has not approached this Court by stating the correct facts. The learned counsel in order to substantiate his submission, first invited the attention of this Court to the so-called approved layout that is found at Page 33 of the typed set of papers filed by the petitioner. The learned counsel submitted that the Plot Nos.10, 39 and 40 are shown as if it is abutting the Palladam-Udumalpet Road. The learned counsel also invited the attention of this Court to the sale deed that was executed in favour of the petitioner and pointed out the schedule of property where in again it is depicted as if the plots are immediately on the western side of the Palladam-Udumalpet Road. The learned counsel submitted that the manner in which the property has been described is totally misleading since, there is a property in between the plots belonging to the petitioner and the Palladam-Udumalpet road. To substantiate this submission, the learned counsel apart from relying upon the counter affidavit, also brought to the notice of this Court, the sketch that was filed along with the counter affidavit. By relying upon the same, the learned counsel submitted that S.F. No.360 which is a Government Poramboke is situated on the eastern side of the plots belonging to the petitioner and it is actually this Government Poramboke land which abuts the Palladam-Udumalpet road. The learned counsel therefore submitted that the petitioner by not revealing this fact has actually approached this court with unclean hands.

15. It was further submitted that the layout in question is an unapproved layout and the petitioner does not have any right to stop the ground-level water tank being put up by the 4th and



5th respondents for the welfare of the people belonging to the locality and the present proceedings are an abuse of the process of Court thereby preventing the 4th and 5th respondents from extending a welfare scheme in favour of the people belonging to the locality. The learned counsel therefore submitted that the present writ petition is liable to be dismissed by this Court.

16. The learned Government Counsel appearing on behalf of the respondents 1 to 3 submitted that the petitioner has concealed the fact that S.F.No.360 which is a Government Poramboke is the actual property which abuts the Palladam-Udumalpet Road. The learned counsel further submitted that this Government Poramboke land has been classified as 'Vandipathai' as per the Resurvey Register that was prepared in the year 1984 and it is in the eastern side of the plots belonging to the petitioner.

17. The learned Government counsel further relied upon the Report of the Tahsildar and submitted that as per the field measurement conducted by the Tahsildar with the help of the Surveyor, pursuant to the orders passed by this Court, it was found that there is a two metre distance between the petitioner's property and the place where the ground-level water tank was constructed in S.F.No.360. The learned counsel therefore submitted that there are absolutely no merits in this case.

18. In the considered view of this Court, the documents that have been filed on the side of the petitioner, which are the sale deed executed in favour of the petitioner and also the layout plan, describes the property as if it is abutting the Palladam-Udumalpet road on the eastern side. The fact remains that there is absolutely no material to show that the layout was approved by the concerned authority. The mere gift deed that was brought to the notice of this Court cannot be taken as a document to establish that the layout was granted approval by the concerned authority in favour of the developer of the property.

19. As rightly contended by the learned counsel appearing for the 4th and 5th respondents, there is a property in S.F.No.360 measuring an extent of 79 cents which is a Government Poramboke land which actually abuts the property belonging to the petitioner on the eastern side. The Palladam-Udumalpet road is actually abutting this Poramboke land. It is also clear from the counter affidavit filed by the 3rd respondent. Therefore, there is a problem with regard to the very description of the property of the petitioner.



20. It is also seen from the records that there are two other alternative access to the property belonging to the petitioner. The same is clear from the Sketch that has been prepared by the Village Administrative Officer and filed along with the counter affidavit. The allegations made by the petitioner to the effect that she was pressurised to sell her property and since she did not concede for the same, the concerned persons have colluded with the 4th respondent, are all factual disputes into which this court cannot go into. The fact remains that the ground level water tank has been put up only in the Poramboke land situated in S.F.No.360. That apart, the Report of the Tahsildar, Palladam Taluk shows that there is a two metre distance between the property of the petitioner and the place where the ground level water tank has been put up. Even though this was vehemently denied by the learned counsel for the petitioner, for the present, this Court has to go by the Report given by the Tahsildar.

21. In view of the above discussion, this Court does not find any legal right for the petitioner to oppose the construction of the ground level water tank by the 4th and 5th respondents. The construction of this tank does not actually prevent the petitioner from accessing the property since the petitioner is having alternative access to her property. In any case, the petitioner does not have the direct access to the main road since S.F. No.360 which is a Government Poramboke land is situated abutting the property of the petitioner and the Main Road.

22. In the result, this Court does not find any ground to grant the relief as sought for by the petitioner and accordingly, this Writ petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

23. The learned counsel for the petitioner complained that the debris have been stacked in the property of the petitioner and at least the same can be directed to be removed by the 4th and 5th respondents. The learned counsel appearing on behalf of the 4th and 5th respondents submitted that if the debris have been stacked in the property of the petitioner, the same will be immediately removed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssr/mka



To

1. The District Collector,
Tiruppur District,
Tiruppur.
2. The Commissioner,
Town Panchayat Union,
Palladam, Tiruppur District.
3. The Tahsildar,
Palladam Taluk,
Tiruppur District.
4. The Block Development Officer,
Palladam Panchayat Union Office,
Palladam, Tiruppur District.
5. The President,
Village Panchayat,
Chitambaram,
Palladam Taluk,
Tiruppur District.

+lcc to Mr.M.Purushothaman, Advocate, S.R.No.47958

+lcc to Mr.P.M.Duraisamy, Advocate, S.R.No.48481

+lcc to the Government Pleader, S.R.Nos.48207 & 48543

W.P.NO.6234 OF 2021 & W.M.P.NOS.6848,
6853 AND 9171 OF 2021

GJ(CO)
PBS/06/10/2021