

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 34185 of 2013

and

M.P. No.1 of 2013

(Through Video Conferencing)

S.Sivabackiam,
W/o.Subbian

... Petitioner

Vs

The Commissioner,
Udumalpet Municipality,
Udumalpet.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondent or his men or agents or any one claiming under the respondent from in any manner interfering with the possession of the petitioner in T.S.No.13 & 14/2, Ward B, Block 13, Mahalakshmi Nagar North Street, Tiruppur Road, Udumalpet.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.P.Srinivas

ORDER

The petitioner has filed the present writ petition for the following relief to forbear the respondent or his men or agents or any one claiming under respondent from in any manner interfering with the possession of the petitioner in T.S.No.13 & 14/2, Ward B, Block 13, Mahalakshmi Nagar North Street, Tiruppur Road, Udumalpet.

2. It is the case of the petitioner that the respondent has encroached upon the land belonging to the petitioner for the purpose of laying road in terms of a Scheme Road announced under Section 29 of the Town & Country Planning Act, 1990. The petitioner has referred a sale deeds dated 14.11.1973 to substantiate her rights over the land to the extent of 35 cents (15246 Sq.ft).

3. It is submitted that the respondent has also sent letter dated 05.01.1998 to the Sub-Collector, Pollachi, to fix the land price and acquire the same for laying the road and that on 31.03.1998, the respondent sent a letter to the Tahsildar, Udumalpet, indicating that the road connecting Tiruppur and Tharapuram under the scheme road was constructed except for the land in Old T.S.No.51 (New T.S.No.13 & 14/2) to the extent of 7.25 cents and that the petitioner was willing to sell the land and therefore the land value may be fixed to take over the land of the petitioner for laying the road.

4. It is however noticed that a Government Gazette/Notification, dated 30.06.2000, declared the extent of land acquired for the purpose of laying road. Though the said Government Gazette/Notification refers to several survey numbers, it is the petitioner's land in Old T.S.No.51 (New T.S.No.13 & 14/2) not featuring in aforesaid Gazette/Notification.

5. During the pendency of the present writ petition, a letter dated 09.05.2016 issued by the respondent under Section 178 of the Tamil Nadu District Municipalities Act, 1920, wherein, it has been stated that the petitioner was obstructing for laying of the road and therefore appropriate proceedings will be initiated to recover the cost from the petitioner for the road to be laid by the respondent.

6. The fact that the petitioner's property was subject matter of the scheme road as was informed by the respondent themselves in various communications sent by the Municipal Chairman to the Sub-Collector, Pollachi and the letter of the respondent (Municipal Commissioner, Udumalpet) to Tahsildar indicates that the petitioner's land in question was to be used for widening of the road as per the Town Planning Scheme No.6. However, the petitioner's land is not mentioned in the said G.O.Ms. Therefore, the respondent cannot be restrained from laying of the road. Therefore, there is no merits in the prayer of the writ petitioner to forbear the respondent from laying the road in front of her property.

7. At the same time, the communication dated 05.01.1998 of the respondent to the Sub-Collector, Pollachi communicating the willingness of the petitioner to alienate the portion of the land to an extent of 3000 sq. ft. on the market value of the land or a higher value that may be fixed by the Government and another communication dated 31.03.1998 of the respondent to the Tahsildar, Udumalpet for taking steps to fix the value of the land for compensating the petitioner indicate that the respondent themselves had concluded that the property of the petitioner was forming part of the Scheme Road for widening the road between Tiruppur and Tharapuram. Thus, it would required a survey of the land.

8. Therefore, I direct the respondent to take steps to have the land purchased by the petitioner vide sale deed dated 14.11.1973 in Old T.S.No.51 (New T.S.No.13 & 14/2) surveyed, within a period of three months from the date of receipt of a copy of this order.

9. Such survey shall be carried out by the Town Surveyor or any other officer authorized to carry out such survey. The survey shall be in presence of the petitioner or her representative. If indeed it is found that the petitioner's land has been utilized for the purpose of widening the road between Tiruppur and Tharapuram, the respondent should take expeditious steps to compensate the petitioner in accordance with law and thereby regularize the taking over of the land.

10. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Commissioner,
Udumalpet Municipality,
Udumalpet.

+ CC.to R. KARTHIKEYAN, ADVOCATE, SR.NO.6063

MP(CO)
SM/26/02/2021

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