

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 19.03.2021
CORAM
THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN
W.P.No.12927 of 2019

1.Vasantha @ Vasanthammal
2.D.Sathyararj

.. Petitioners

Vs.

1.The District Collector
Thiruvallur District
Thiruvallur

2.The Commissioner
Avadi Municipality
Chennai

3.The Town and Country Planning Officer
Avadi Municipality
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondents 2 and 3 to forthwith remove the encroachment made in the South East Side of T.S.No.102, Old Survey No.709/Part, situate at Kovil pathagai Village, Avadi Taluk, Thiruvallur District.

For Petitioners : Ms.S.Sridevi

For 1st Respondent : Mr.S.Kamalesh Kannan
Government Advocate

For 2nd Respondent : Mr.P.Srinivas

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)
By consent, the writ petition is taken up for final disposal and is disposed of by this order.

2. The petitioners filed O.S.No.107 of 2016 against Tvl. R.Nagarajan, V.Udayasankar, G.Subramani, Town Planning Officer, Avadi Municipality and the Commissioner, Aavdi Municipality, praying for judgment and decree for grant of permanent injunction restraining them from in any manner disturbing, trespassing and encroaching upon the suit schedule property in

Grama Natham old survey No.709/part at plot No.104 admeasuring to an extent of 0.0208 sq.mtrs in Kovilpathagai village, Avadi Taluk, Thiruvallur District and also for mandatory injunction directing them to restore the part of the suit property trespassed and possessed by them by way of laying the road. This suit has been entertained and the 5th defendant has filed the counter affidavit and took a stand that the site in survey No.709, Ward-C, Block 29, T.S.No.104, Kovilpathagai Village, Avadi Taluk, which is in possession of the plaintiffs/petitioners herein is classified as "Grama Natham" (village site) as per Town Survey Field register and that apart, as per relevant entries in the land record, a road is already existing, which is being used by the general public for a long time. It is also a stand of the 5th defendant/2nd respondent herein that the Municipal authorities have taken steps to relay the road, since the site is a Grama Natham and the Municipal authorities have the right to lay the road for common use by the public.

3. It is to be noted at this juncture that it is the 5th defendant/ 2nd respondent herein who had taken such a stand in the written statement, however, curiously taken a stand in paragraph No.4 that they are not the necessary party.

4. In the considered opinion of this Court, in the light of the above said stand, the 5th defendant/2nd respondent herein is a proper and necessary party for effective adjudication of the issue involved in the said suit and the said stand taken by the 5th defendant/2nd respondent herein prima facie appears to be not satisfactory.

5. The grievance expressed by the petitioners is that in respect of the aforesaid land which is in their possession, the official respondents should have taken recourse to due process of law, but, had trespassed the same and laid road and therefore, prays for removal of the same. It is also submission of the learned counsel for the petitioners on account of the pressure exerted by some unruly elements including the politicians, the road has been laid and the grievance expressed by the petitioners has not been addressed properly and prays for appropriate orders.

6. The Court heard submissions of Mr.S.Kamalesh Kannan, learned Government Advocate appearing for the 1st respondent and Mr.P.Srinivas, learned counsel appearing for the 2nd respondent, who would submit that in the light of the comprehensive suit in O.S.No.107 of 2016 filed by the petitioners, the writ petition is per se not maintainable.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. The 2nd respondent as the 5th defendant, in the written statement has admitted the possession of the petitioners in respect of the land in question and however, took a stand that it is classified as "village site" and the road is also existing and they have also got right to lay and relay road for common use by the public. The points urged by the learned counsel for the petitioners in this writ petition, are also the subject matter of the adjudication in the pending suit in O.S.No.10 of 2016 on the file of the Court of the District Munsif, Ambattur and therefore, the petitioners cannot parallelly prosecute this writ petition.

9. In the considered opinion of this Court, the points urged and the grounds raised on behalf/by the petitioners involve adjudication on the disputed questions of fact. Therefore, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot venture into the same.

In the result, the writ petition is dismissed and the petitioners are granted liberty to agitate their rights in the pending suit in O.S.No.107 of 2016 on the file of the Court of the District Munsif, Ambattur. At this juncture, the learned counsel for the petitioners would submit that in the light of the fact that pleadings are already completed, this Court may issue appropriate directions for expeditious disposal of the said suit. Taking note of the said submission, this Court directs the District Munsif, Ambattur to dispose of O.S.No.107 of 2016 as expeditiously as possible and not later than four months from the date of receipt of a copy of this order/uploading of the order in the website. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gya

To

1.The District Munsif
Ambattur

2.The District Collector
Thiruvallur District
Thiruvallur

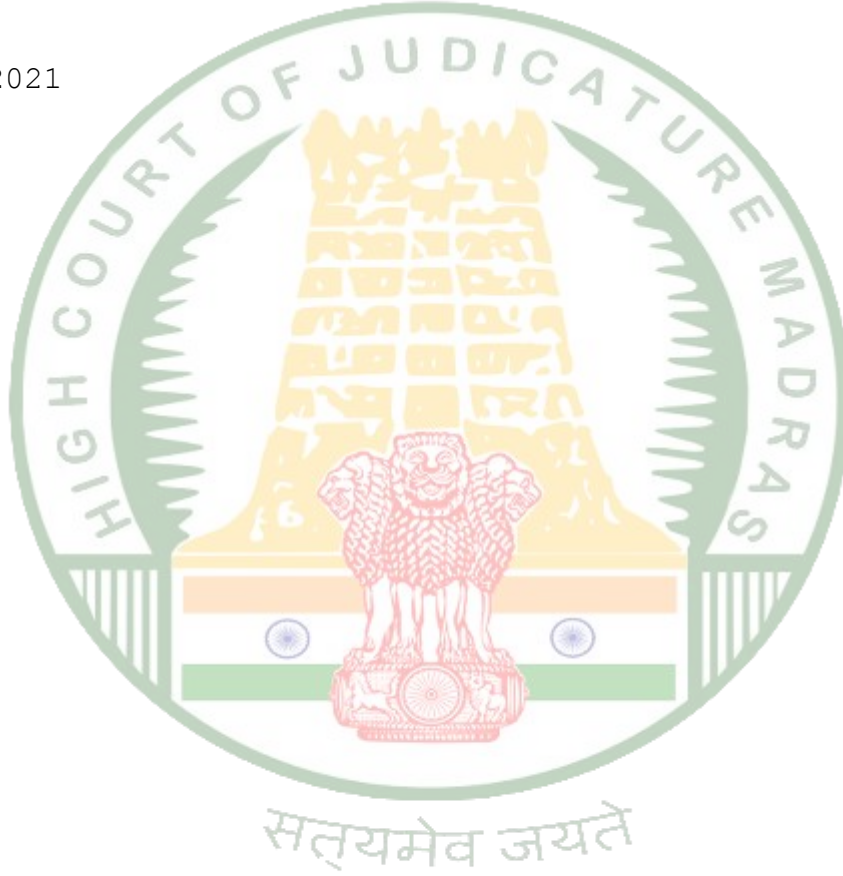
3.The Commissioner
Avadi Municipality
Chennai

4.The Town and Country Planning Officer
Avadi Municipality, Chennai

+1cc to M/s.S.Sri devi, Advocate Sr.NO.18270
+1cc to Government Pleader Sr.No.18429

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