

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.10672 of 2021
and WMP.Nos.11290 and 11292 of 2021

S.Sankar Singh ... Petitioner
Vs

1.The Commissioner,
Cuddalore Municipality,
Bharathi Road,
Cuddalore - 607 001.

2.The Town Surveyor,
Cuddalore Municipality,
Bharathi Road,
Cuddalore - 607 001.

3.Singaravelu

4.Jose Kamal Morris

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, praying to call for the records and quash the impugned order in Na.Ka.No.9922/2020/F1, dated 02.04.2021 issued by the 1st respondent.

For Petitioner : Mr.R.Gururaj

For Respondents: Mr.V.Jayaprakash Narayanan

Government Pleader for R1 and R2

ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The matter was heard through "Video Conference".

2.The petitioner has challenged the order passed by the respondent by which the petitioner was directed to remove the encroachment made by him on the road by putting up cowshed and juice shop, to an extent of 100.5 sq. meter . The said order is challenged before this Court.

3.The petitioner states that he is the owner of the property in T.S.Nos.1151 and 1186/B. The property is located in Bashyam Street, the petitioner is entitled to an extent of 2265 sq.ft., in T.S.No.1155 and an extent of 372 sq.ft in T.S.No.1186/1B along with a house and other superstructure. The property was obtained by the petitioner by way of release deed dated 19.10.1983. Since the official respondent tried to remove the petitioner's property stating that the petitioner is encroached upon the road, the petitioner filed O.S.No.220 of 2002 and got a decree and judgment on 27.06.2003. Subsequently, the 3rd respondent filed O.S.No.311 of 2017 making the petitioner as party. The said suit was dismissed holding that the 3rd respondent has got no right of way and there is no necessity to issue mandatory injunction.

4.When things stands so, it seems one Jose Kamal Morris filed a writ petition in W.P.No.17585 of 2020 making the petitioner as a party and obtained an order on 10.12.2020, directing the authorities to make inspection of the property, after giving notice of the parties and to remove the encroachment.

5.Pursuant to that only the petitioner was put on notice and survey was conducted on 27.03.2021. After measuring the property in the presence of the petitioner, it was found that to an extent of 100.5 sq.meter, the petitioner encroached upon the pathway i.e., equivalent of 1082 sq.ft. Thereafter, only the impugned order has been passed.

6.Heard Mr.D.Baskar, learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Government Pleader appearing on behalf of respondents 1 and 2.

7.It is evident from the release deed dated 19.10.1983, executed by M/s.Gowri Bai, that the petitioner was given only 246 sq.ft in S.No.1186/1B and the new Town Survey No.421/1B, Ward No.7, Block No.9. When the petitioner was entitled for only 66 sq.meter, it seems he has encroached upon to an extent of 100.5 sq.meter, which is equivalent of 1082 sq.ft. The measurement was taken in the presence of the petitioner, therefore, he cannot plea ignorance. A look at the photographs would show that the shops and cowshed have been constructed encroaching upon the road. The petitioner is entitled to enjoy his property to an extent of 246 sq.ft only. He cannot have right to encroach upon the pathway, which is meant for public. The principles of natural justice has been duly complied with and the petitioner has got no document to show that he is the owner of the property to an extent of 1082 sq.ft. In view of that the impugned order cannot be set aside.

8. Even though Mr.D.Baskar, would vehemently contend that there is a decree in O.S.No.220 of 2002 dated 27.06.2003 against the local body/1st and 2nd respondents, the present cause of action arises pursuant to the direction of this Court made in W.P.No.3222 of 2021. There is no proof that any inspection was made during the trial of the suit and thereafter the suit was decided. Whereas, pursuant to the direction given by this Court, in the presence of the petitioner, the property was measured and it is found that he has encroached upon 1082 sq.ft, whereas, as per the settlement dated 19.10.1983 is entitled to only 246 sq.ft and hence, the impugned order has been passed and it cannot be found fault with.

9. The respondents 1 and 2 are directed to remove the encroachment, as per the impugned order within a period of four weeks.

10. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

11. Call the matter for "Reporting Compliance" on 07.06.2021.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ub/sai

To

1. The Commissioner,
Cuddalore Municipality,
Bharathi Road,
Cuddalore - 607 001.

2. The Town Surveyor,
Cuddalore Municipality,
Bharathi Road,
Cuddalore - 607 001.

Copy to

The Section Officer
Writ Section

High Court, Madras 104.

(To list the case on 07.06.2021)

+1 CC to Mr.D. Baskar, Advocate sr 26937.

W.P.No.10672 of 2021

SP(02/06/2021)