

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.15132/2020
& WMP.No.18887/2020

R.Ravichandran

.. Petitioner

Versus

1. The District Collector
Chennai District,
Singaravelar Maaligai
Rajaji Salai, Chennai 600 001.
2. District Revenue Officer
Chennai District,
Singaravelar Maaligai
Rajaji Salai, Chennai 600 001.
3. Tahsildar
Mambalam Taluk
Bharathidasan Street,
K.K.Nagar, Chennai 600 078.
4. Regional Deputy Commissioner [South]
115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.
5. Superintendent of Engineer-Town Planning
Greater Chennai Corporation, Ripon Building
1131, EVR Periyar Salai, Park Town
Chennai 600 003.
6. Zonal Officer, [Zone-X]
Greater Chennai Corporation
NSK Salai, Kodambakkam
Chennai 600 024.
7. Assistant Executive Engineer [Zone-X]
Greater Chennai Corporation
Masilamani Street, T.Nagar,
Chennai 600 017.

8. Junior Engineer
Division 140, Jones Road
Saidapet, Chennai 600 015.

9. Sub Registrar,
Office of the Sub Registrar,
Saidapet, Chennai 600 015.

10.T.Loganathan

11.Varadarajan
Director, M/s.Sri Vignesh Properties Pvt Ltd
Vignesh Sai Gaden, Flat No.V3, 3rd Floor
Plot No.776k Door No.11, Munuswamy Salai
K.K.Nagar, Chennai 600078.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 9 to consider the petitioner's representation dated 24.12.2019, 30.12.2019 and 15.02.2020 and to remove the encroachment made by 10th and 11th respondents in property [existing road] situated at comprised in S.No.1/2, TS.No.38, Karunanidhi 2nd Street, Saidapet, Village, Mambalam Taluk, Chennai District.

For Petitioner : Mr.R.Gopi
For RR 1 to 3 : Mr.R.Vijayakumar
Additional Government Pleader
For RR 5 to 8 : Mr.M.Ganesh
Standing counsel
For R9 : Mr.T.M.Pappiah
Special Government Pleader
For R10 : Mr.C.T.Mohan
For R11 : Mr.G.R.M.Palaniappan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)The petitioner claims to be the President of Kalaighnar Karunanithi Second Street Residents Welfare Association, West Mambalam, Chennai-33 and in the affidavit filed in support of this writ petition would aver among other things that the approach road, having a width of 20 feet, breadth of 80 feet, connecting the Second street of Kalaighnar Karunanithi Residents

with the Kalaignar Karunanithi Main Road, is under encroachment and the land sharks had occupied the said land through an illegal Sale Deed at the instance of the 10th respondent for whom the 11th respondent is acting as the Power of Attorney and also putting up a commercial structure unauthorisedly.

(3) The learned counsel for the petitioner has drawn the attention of this Court to the affidavit filed in support of this writ petition as well as the typed set of documents and would submit that the Sale Deeds and documents which came into existence for quite number of years would disclose that a conspiracy was hatched by the 10th respondent and his father who was in Government services, clandestinely converted the land admeasuring to an extent of 1600 sq.ft., in N.K.B.Munusamy's name and thereafter, acquired through his wife through a registered Document bearing No.329/1974 dated 06.02.1974. It is also pointed out that the documents obtained under the Right to Information Act, would disclose that till the year 1995, the property in question has been shown as a road in the Schedule property and thereafter only, the illegal activities taken place and the road has become a private property. It is also the submission of the learned counsel that repeated representations with supporting documents, submitted in this regard, failed to invoke any kind of response and therefore, the petitioner came forward to file this writ petition praying for appropriate action to consider his representations dated 24.12.2019, 30.12.2019 and 15.02.2020 respectively and to remove the encroachment caused by respondents 10 and 11 in the existing road situate in S.No.1/2, TS.No.38, Kalaignar Karunanithi Second Street, Saidapet-Mambalam Taluk, Chennai and pass appropriate orders within the stipulated time frame.

(4) The writ petition was entertained and notices were ordered.

(5) The 6th respondent, viz., the Zonal Officer, Zone-X of Greater Chennai Corporation, has filed a counter affidavit and took a stand that on receipt of the representation with regard to the on-going construction being put up by respondents 10 and 11, a Notice dated 07.11.2020 was issued calling for the Approved Plan for which the 11th respondent has submitted his reply dated 11.11.2020 by enclosing the Approved Plan as well as the Building Permit consisting of Stilt, Ground, First, Second and Third Floors and the said construction was also inspected and it was found that respondents 10 and 11 had raised pillars and laid ceiling consisting of stilt, first, second and third floors and no set back deviations were also found and insofar as the land in question is concerned, further action against the on-going construction will be taken on receipt of the reply from the Director, Town and Country Planning and the Deputy Director, as per the rules in force.

(6) The 10th respondent has filed a counter affidavit and he traced out the history relating to the title and took a

specific stand that the property is a private property for all along for which patta has also been given and such ownership is also reflected in the 'A' Register. The 10th respondent also took a stand that at the instigation of the petitioner herein, one Tmt.Kuppa Bai, has instituted a suit in OS.No.847 of 2020 on the file of the Court of VII Assistant City Civil Court, Chennai against respondents 10 and 11 for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the property situate at No.39/17, Karunanidhi 2nd Street, West Saidapet, West Mambalam, Chennai-33 and despite the prayer for ad-interim injunction, no interim relief was granted. It is also stated that one Tirupathi Naidu and Parasurama Naidu who are the vendors of the petitioners, also claimed an easementary right of the pathway in respect of 20x150 sq.ft., from Munusamy and the suit in OS.No.4988/1968 has also been laid before the Court of the First Assistant City Civil Court, Chennai, claiming such right and the suit came to be dismissed on 09.07.1969. In sum and substance, it is the stand of the 10th respondent that the petitioner had made a false, untenable, vexatious claim and in the light of the fact that the required Planning Permission has been obtained and the on-going construction is also strictly in accordance with the Sanctioned Plan, the prayer sought for by the petitioner cannot be granted and prayed for dismissal of the writ petition.

- (7) The learned counsel appearing for the 10th respondent would submit that in the light of the personal and private dispute, the petitioner is having an axe to grind against the 10th respondent and in the light of the materials placed, the writ petition deserves dismissal with exemplary cost as the petitioner has abused the process of law.
- (8) Mr.G.R.M.Palaniappan, learned counsel for the 11th respondent would submit that the builder, by way of abundant caution has looked into the title of the property and thereafter only, started construction and that too, strictly in accordance with the Sanctioned Plan.
- (9) The petitioner has also filed a Rejoinder to the counter affidavit reiterating the earlier stand taken in the writ petition.
- (10) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (11) A perusal of the counter affidavit of the 10th respondent would prima facie disclose that there is a serious dispute as to the classification / title of the land in question. Even according to the petitioner, a fraudulent Sale Deed came into being bearing Doc.No.329/1974 followed by a Rectification Deed bearing Doc.No.802/1974. As per the revenue records, the land in question has not been shown as the road. It is also the stand of the 6th respondent that the Planning Permission was called for and the 10th respondent has submitted the same and the on-going construction has also been inspected and it was

found that the pillars have been raised and the construction is going on for putting up stilt + 3 floors and there are no set back deviations and as regards the land in question, queries have been raised in the form of communication to the Director and the Deputy Director of Town and Country Planning as per the rules in force and depending upon the result of the response, further action would follow in accordance with law.

(12) The 11th respondent, though is a builder, putting up construction in respect of plan obtained by the 10th respondent, curiously took a stand in support of the 10th respondent and in fact, the counter affidavit of the 11th respondent is more elaborate than that of the 10th respondent.

(13) In the considered opinion of the Court, whether the land in question is a public road or not and whether the documents in favour of the private respondents are genuine or not?, cannot be gone into by this Court in exercise under Article 226 of the Constitution of India. The matter requires necessary pleadings and evidence and the said exercise cannot be done by this Court in a litigation under Article 226 of the Constitution of India. The remedy open to the petitioner, if any, is to approach the appropriate competent Forum subject to law of limitation and delay and laches.

(14) It is a well settled position of law that in respect of the disputed questions of fact, which require adjudication, invocation of jurisdiction of this Court under Article 226 of the Constitution of India is not a proper and effective remedy.

(15) At the same time, it is also made clear that obligation is also cast upon the respondents 6 to 8 to cause regular and surprise inspection as to the on-going construction being put up by the 11th respondent on behalf of the 10th respondent and if any deviations/infraction is noted, it is always open to the said respondents to take appropriate action in accordance with law.

(16) In the light of the reasons assigned above, this Court is not inclined to entertain this writ petition.

(17) In the result, the writ petition stands dismissed. However, if the petitioner is so advised and if it is available to him under law, he is always at liberty to approach the competent Forum for redressal of his grievances subject to law of limitation and delay and laches. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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Rajaji Salai, Chennai 600 001.
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+1cc to Mr.G.RM.Palaniappan, Advocate, S.R.No.17275
+1cc to Mr.C.T.Mohan, Advocate, S.R.No.17808
+1cc to Mr.M.Ganesan, Advocate, S.R.No.17921

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AAB (CO)
TE (22/04/2021)