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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 23239 of 2021

P.Rupesh Kumar

... Petitioner

-Vs-

The Chief Executive Officer,
Saint Thomas Mount-cum-Pallavaram Cantonment Board,
Saint Thomas Mount,
Chennai - 600 016.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondent not to obstruct the petitioner or his men from ingress and egress his property situated at Saint Thomas Mount Village, comprised in S.No.1919, measuring an extent of 7928 sq.ft. through Thulasisingapuram Gate, Saint Thomas Mount Village, Chennai - 600 016 and allow the petitioner for free access to his residence.

For Petitioner : Mr.D.Parthasarathy

For Respondent : Mr.C.Mohan
for King and patridge

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondent not to obstruct the petitioner or his men from ingress and egress his property situated at Saint Thomas Mount Village, comprised in S.No.1919, measuring an extent of 7928 sq.ft. through Thulasisingapuram Gate, Saint Thomas Mount Village, Chennai - 600 106 and allow the petitioner for free access to his residence.

2. That the case of the petitioner is that, the petitioner is one of the resident of a place called Saint Thomas Mount, Thulasisingapuram, where in Patta No.390 the petitioner is having a residential property. Along with the petitioner, 15 others families are also residing in that locality.



3. It is the grievance of the petitioner that, of course the other residents also, hitherto they were having direct ingress and egress to reach the property from the main road through the land belongs to Officers Training Academy in short 'OTA'. After sometime, since they put up a compound wall of the entire property of OTA, that ingress and egress are affected. Therefore, in order to resolve this issue, though representation on behalf of other residents as well as the petitioner had been given to the respondent Cantonment Board and the Principal Director of Defence Estates, Government of India, Chennai and those representations since have not been considered and the ingress and egress of the petitioner and other 15 residents in the Thulasingapuram area, i.e., behind the OTA land since is affected, he has come before this Court by filing the present Writ Petition seeking for a Writ of Mandamus.

4. Heard Mr.D.Parthasarathy, learned counsel appearing for the petitioner who having reiterated the aforesaid seeks indulgence of this Court to issue a direction by way of mandamus to the respondent.

5. However, Mr.C.Mohan, learned counsel appearing for the respondent / Cantonment Board, on instructions, would submit that, insofar as the plea raised by the petitioner to have a direct access, i.e., ingress and egress towards their residences right across the land belongs to the OTA is concerned, it is not in the domain of the respondent Cantonment Board, because the OTA is a defence installation where the land belongs to the OTA have been now fenced by way of a pucca compound wall. Therefore, without the concurrence of the OTA Authorities, the petitioner cannot expect any direct ingress and egress.

6. He would also submit that, apart from this, the petitioner is already having another approach route, under which, they have to take around the OTA compound and to reach their places, since it is somewhat comparatively more distance, they want now a direct access right across the OTA land which has already been compounded by the OTA Authorities.

7. In this regard, the representation given by the petitioner in fact has been considered by the respondent and has been replied by communication dated 17.11.2021, which reads thus:

"Sub:Request you to grant permission to go to our residence - which is located at Defence area and the wall constructed surrounded by Defence officials-Reg.
Ref: i) Letter from residents of Thulasingapuram (15 families), St.Thomas Mount, Chennai - 600 016 dated 18.02.2019 addressed to Cantonment Board, St.Thomas Mount cum Pallavaram, Chennai and copy marked to Vice



President, Cantonment Board.

ii) Letter from MR.P.Rupesh Kumar dated 21.08.2020 addressed to PDDE, SC, Pune.

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2. With reference to letters cited (i) & (ii) above, it is intimated that the subject lands and issues mentioned in the subject complaint letters are pertaining to OTA, Chennai and hence you are required to approach the OTA, Chennai in the subject matter.

Chief Executive Officer,
St.Thomas Mount cum Pallavaram"

8. Relying upon this communication, the learned counsel appearing for the respondent would submit that, if at all, the petitioner is having still any grievance, they should either negotiate with OTA by approaching them or to go to the Civil Court to establish their civil right, if any, with regard to the ingress and egress and therefore, in this regard, the respondent cannot do anything further except the communication that has been given already to the petitioner on 17.11.2021.

9. I have considered the said submission made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel appearing for the respondent that, the issue is between the petitioner and the other residents of Thulasisingapuram versus the Officers training Academy which is a defence installation and in their land for the Security purposes, they have already fenced it by having a pucca compound wall and if it is a gated one, it cannot be expected that, the petitioner should be permitted to have a direct access right across the defence land and in this regard, if at all, they want to have a negotiation with OTA, they can very well approach the OTA.

11. Otherwise, if the petitioner and other residents want to establish any easementary right in the Court of law, it is open to them to approach the Civil Court and to establish their legal right. Therefore, in this regard, the grievance espoused by the petitioner cannot be resolved by the respondent except the aforestated facts which they have already communicated to the Residents Welfare Association of the petitioner on 17.11.2021.

12. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:



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"(i) the prayer sought for in this Writ Petition cannot be acceded to and no such direction can be given to the respondent in view of the aforesaid, hence the Writ Petition fails and it is dismissed.

(ii) However, the dismissal of the Writ Petition shall not preclude the petitioner and other residents of the locality to approach the OTA Authorities for amicable settlement to have a direct access and also, it is open to the petitioner and other residents to approach the Civil Court to establish their right."

13. With these observations, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vji

To

The Chief Executive Officer,
Saint Thomas Mount-cum-Pallavaram Cantonment Board,
Saint Thomas Mount,
Chennai - 600 016.

+1cc to Ms.King and patridge, Advocate, S.R.No.67394

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PA(CO)
CT 19/01/2022