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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 19642 of 2021

P.Jaykumar

...Petitioner

-vs-

The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chengalpattu District - 603 209.

...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the Commissioner, Maraimalai Nagar Municipality, Maraimalai Nagar, Chengalpattu District - 603 209, the respondent herein to consider the petitioner's representation dated 14.07.2021.

For Petitioner : Mr.R.Vinoth Kumar

For Respondent : Mr.L.P.Maurya
Standing counsel

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the Commissioner, Maraimalai Nagar Municipality, Maraimalai Nagar, Chengalpattu District - 603 209, the respondent herein to consider the petitioner's representation dated 14.07.2021.

2. The petitioner is having a property at New Door No.12, Old Door No.20, Bajanai Koil Street, Potheri, Kattankulathur, Chengalpet Taluk, Kancheepuram District, comprised in part of Survey Nos.239/16 part, 239/17 and 239/18, Potheri Village, which is the part of a large extent of land originally belong to the parents of the petitioner and subsequently, by way of settlement deed, they bequeathed the property in favour of the



petitioner and his brothers. Thereafter, a partition had taken place among the brothers on 05.09.2013, which was registered in the concerned Sub Registrar Office. Accordingly, the petitioner inherited part of the said property by way of the said settlement deed and partition and that is how, he became owner of the said property.

3. In this regard, it is the case of the petitioner that, there has been lot of encroachments in that area especially in the street, where the petitioner's land is located. Like that, there has been several encroachments in that area, where indiscriminately the people are encroaching the road margin belonging to the respondent Municipality. However, no action has been taken to remove such encroachments. With the result, 30 feet road are shrunk into 10ft road and the storm water drain put up by the local authorities is used as drainage, thereby, a lot of drained water is stored at the petitioner's plot, where it causes public nuisance and health hazards. Therefore, in order to remove such encroachment, the petitioner has given a representation to the respondent on 14.07.2021 along with photographs showing the alleged encroachment, however since there was no action on the part of the respondent Municipality, the petitioner has approached this Court by way of filing the present Writ Petition with the aforesaid prayer.

4. On earlier occasion, a direction has been given by a learned Judge to have a combined inspection in the presence of the petitioner on the location assigned or the area concerned, in order to verify the complaint made by the petitioner and to file a report to that effect by way of counter affidavit.

5. Accordingly, after having conducted an inspection on three days, i.e., on 24.09.2021, 30.09.2021 and 04.10.2021, the respondent Municipality has given the details about the said inspection by way of counter affidavit, where, inter alia the respondent Municipality has stated the following:

"4. I respectfully submit that the averments in para 5 and 6 of the affidavit to the effect that the road in between R.S. No. 239 and 240 is Erikarai road is false whereas Erikarai road is perpendicular to Brahmin Cross Street which is situated in between R.S. No. 239 and 240. I respectfully submit that the Brahmin Cross Street bearing Revenue Survey No. 240/1 is having width of 13 feet in its northern side, 37.25 feet in its southern side and 19.05 feet at the junction of Survey Nos. 239 and 240.



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5. I respectfully submit that pursuant to the order of this Hon'ble Court a joint field inspection was conducted by the officials of the respondent Municipality and Revenue Authorities on 24.09.2021, 30.09.2021 and 04.10.2021. I respectfully submit that all the persons concerned including the petitioner were present during the inspection.

6. I respectfully submit that on inspection, it was found that there are no encroachments in the Erikarai road as contended by the petitioner. Similarly, in R.S. No. 239, there are no encroachments. However, with respect to R.S. No. 240/1, encroachments have been identified, earmarked and necessary actions under Tamil Nadu District Municipalities Act, 1920 are being initiated to remove the encroachments made by third parties."

6. Relying upon these averments, Mr.L.P.Maurya, learned Standing counsel appearing for the respondent Municipality would submit that, insofar as Survey Nos. 239 and 240 is concerned, it is not an Erikarai road as claimed by the petitioner and there has been no encroachment in those streets which fall under R.S. Nos. 239 and 240.

7. However, the said inspection conducted by the Municipality has alleged certain encroachments in next survey number, i.e., R.S. No. 240 and in this regard, the following specific encroachment noticed by the respondent Municipality through the inspection team has been provided in para 7 of the counter affidavit, which reads thus:

"7. I respectfully submit that on inspection, it has been found that there are a series of encroachments in Brahmin Cross Street bearing R.S. No. 240/1, Potheri Village, Maraimalai Nagar, which are enlisted as follows:

I. One Mr.Sheshadri owning the land in R.S. No. 240/16 had encroached the road in R.S. No. 240/1 by constructing a compound wall to an extent of 17 sq.mt projecting towards the road.

II. One Mr.Bhasam Iyengar, owning the land in R.S. No. 240/17 had encroached the road in R.S.



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No. 240/1 by constructing a compound wall and a shed to an extent of 40 sq.mt projecting towards the road.

III. One Mr.Vijaya Kumar, owning the land in R.S. No. 240/19 had encroached the road in R.S. No. 240/1 by raising construction of his building projecting towards the road to an extent of 14.7 sq.mt.

IV. Legal heirs of one Mr.Arumugam, namely Mr.Vijaya Kumar and Mr.Parthasaradhi, owning the land in R.S. No. 240/20 and 240/21 had encroached the road in R.S. No. 240/1 by raising construction of his building projecting towards the road to an extent of 1.56 sq.mt.

V. One Mr.Parthasaradi, owning the land in R.S. No. 240/22 had encroached the road in R.S. No. 240/1 by raising construction of his building projecting towards the road to an extent of 9.46 sq.mt.

VI. One Mr.Arumugam and Sithammal, owning the land in R.S. No. 240/23 had encroached the road in R.S. No. 240/1 by constructing a floor mill projecting towards the road to an extent of 8.4 sq.mt.

8. I respectfully submit that the respondent Municipality has initiated steps to remove all of the above said encroachments as in accordance with Tamil Nadu District Municipalities Act, 1920."

8. Therefore, by relying upon these averments made in the counter affidavit, the learned Standing counsel appearing for the respondent Municipality would contend that, there has been some encroachments in Survey No.240 as stated in the counter referred to above. However, insofar as Survey No.239 is concerned, where specifically in between 239 and 240, though the petitioner claims that, there has been encroachment, the inspection team did not find any such encroachment.

9. Insofar as the other encroachment which were found during the inspection in Survey No.240 is concerned, the learned Standing counsel would further contend that, in view of the pendency of this Writ Petition, action, though was intended, could not be initiated under the provisions of the Tamil Nadu District Municipalities Act, 1920, in short 'The Act'. However, the respondent Municipality is ready and willing to initiate action against those encroachers for removal of encroachment under the provisions of the said Act.



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10. I have considered the said case projected by the petitioner as well as the submissions made by the learned counsel appearing for both sides.

11. Insofar as the alleged encroachment which was specifically mentioned by the petitioner in between Survey Nos.239 and 240 is concerned, where the petitioner's property is located, it is the definite stand of the respondent Municipality after inspection that, there has been no such encroachment in that particular area.

12. However, it is the definite case of the respondent Municipality that, there are number of encroachments in the adjacent land or adjacent survey number, i.e., R.S. No. 240 etc., as stated in para 7 of the counter affidavit referred to above.

13. In this regard, it is the further stand of the respondent Municipality that they would take action under the provisions of the Act for removal of such encroachment.

14. In view of the said stand taken by the respondent Municipality, this Court feels that, a direction can be given to the respondent Municipality to initiate action under the provisions of the Tamil Nadu District Municipalities Act to remove such encroachments which has been specifically identified by the respondent Municipality as found in the counter.

15. In view of the aforesaid discussions, this Court is inclined to dispose of this Writ petition with the following orders:

"(i) That there shall be a direction to the respondent Municipality to initiate action under the provisions of the Act especially under Section 182 by issuing notices to all encroachers identified in this regard and accordingly, complete the action of removal of such encroachment after giving an opportunity to the encroachers and such removal of encroachment to be initiated by the respondent Municipality shall be completed within a period of three months from the date of receipt of a copy of this order.



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(ii) It is made clear that, despite this order which has to be complied within a time frame, if the respondent has not initiated any action to remove the encroachment and complete the same as indicated above, it is open to the petitioner to bring it to the notice of this Court for such inaction on the part of the respondent Municipality."

16. With these directions and observations, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chengalpattu District - 603 209.

W.P. No. 19642 of 2021

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NSK 29/11/2021