

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Petition No.20421 of 2020

Mr.T.R.Murugesan

S/o T.Rajagopal

..Petitioner

Vs.

1. The Commissioner,
Tiruvallur Municipality,
J.N.Road, SH-57,
Tiruvallur - 602 001.

2. Mr.V.Raja, S/o D.Velayutham

3. Tharun Kumar-Chartered Accountants

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to consider the petitioner's representation dated 02.11.2020 and to initiate appropriate action against (i) 2nd respondent for effecting illegal construction in Door No.1, J.J.Road, State Highway-57, Tiruvallur; and (ii) against the third respondent for effecting illegal construction in Door No.57, Gandhi Road, Tiruvallur.

For petitioner : Mr.G.Thalaimutharasu

For respondents : Mr.P.Srinivas for R-1

Mrs.Lita Srinivasan for R-2

No appearance for R-3

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to consider the petitioner's representation dated 02.11.2020 and to initiate appropriate action against (i) 2nd respondent for effecting illegal construction in Door No.1, J.J.Road, State Highway-57, Tiruvallur; and (ii) against the third respondent for effecting illegal construction in Door No.57, Gandhi Road, Tiruvallur.

2. In the affidavit filed in support of the Writ Petition, it has been averred by the petitioner, that an extent of 15 cents comprised in Survey No.633/1B2 absolutely belonged to one Mr.Thanikachalam, who had purchased the said property under the Registered Sale Deed, dated 20.11.1974 and registered as Document No.4306 of 1974. From the date of purchase, the said Thanikachalam was in absolute possession and enjoyment of the said property.

3. It is further stated that, in the year 1989, the first respondent-Municipality tried to disturb possession of the said property by laying road on the said property and hence, the said Thanikachalam had filed a suit for permanent injunction in O.S.No.182 of 1989 on the file of the District Munsif Court, Tiruvallur and on 18.12.2003, the said suit was decreed in favour of the said Thanikachalam. The patta was also issued in favour of the said Thanikachalam.

4. In the said suit, respondents 2 and 3 herein have made it clear that they do not propose to interfere with the enjoyment and possession subject to rights in forming new street, until due acquisition of the lands from the said Thanikachalam. The said suit was tried on merits and the suit was decreed in favour of the writ petitioner's predecessor-in-title Thanikachalam. Thereafter, the first respondent filed an appeal in A.S.No.62 of 2004 before the Sub-Court, Tiruvallur, which was dismissed on 23.03.2006, observing that the said Thanikachalam was the absolute owner of the property and the first respondent has no right to disturb his peaceful possession and enjoyment of the suit property, confirming the judgment and decree in O.S.No.182 of 1989.

5. While so, the petitioner herein, along with one Mr.Anbu and Ramabhadra Raju, had, as per Sale Deed dated 29.12.2008 and registered as Document No.13958 of 2008, purchased the entire extent of 15 cents comprised in Survey No.633/1, then Survey No.633/1B2, Periakuppam Village, Thiruvallur Taluk, Tiruvallur District. After the petitioner purchased the aforesaid property, he had applied for sanction of building plan. Since the first respondent delayed the grant of plan, the petitioner and another filed W.P.No.21190 of 2010 before this Court seeking for issuance of a Writ of Mandamus to direct the first respondent to sanction the plan. After receipt of notice in the said Writ Petition, the first respondent had rejected the building plan on the reason that they are having plan to acquire the lands for the purpose of formation of a Road. Subsequently, the petitioner filed another Writ Petition in W.P.No.21365 of 2010 to quash the order passed by the first respondent and to direct them to grant sanction of the building plan to the petitioner.

6. In the meanwhile, one Mr.Sathyamoorthy, who is a resident of V.M.Nagar under Rajaji Nagar Town Planning Extension Scheme, approved in Tiruvallur Municipal Council by its Resolution in No.240, dated 26.04.1965, filed W.P.No.20077 of 2009 for issuance of a Writ of Mandamus to direct the first respondent to acquire the said lands comprised in S.Nos.633/1B-1, 633/1B-2, 633/2B, 633/1A-2 to reach J.N.Main Road and this Road is the connecting link between Rajajipuram and J.N.Main Road, including the lands belonging to the petitioner and the other person. As the first respondent conceded in the counter affidavit that they are having proposal to acquire those lands, a direction was issued to the first respondent to acquire those lands. In spite of the same, no efforts are made to acquire those lands by initiating proceedings under the Land Acquisition Act.

7. Despite the fact that the petitioner is having right, title and interest over the property, the first respondent neither acquired the lands and paid compensation to the petitioner and other(s), nor granted sanction plan for putting up construction. Hence, after various legal proceedings, the present Writ Petition is filed by the petitioner for the relief stated supra.

8. The first respondent-Commissioner of Tiruvallur Municipality filed counter affidavit stating as follows:

"7. In regard to the statement of the Petitioner in para 16 with regard to the buildings of the respondents 2 and 3 it is submitted as follows:-

8. The Building of the 3rd respondent is consisting of 2 shops that are built facing the Scheme Road, that falls in the lands of the Petitioner. The shops numbering 2 shops have been built facing the scheme road that is claimed as the private lands of the petitioner. The said shops do not have any building permission from the Respondent herein, which is the competent authority to grant building permission.

9. With regard to the said shops this respondent has issued the Notices under Section 216(1) & (2) of the Tamil Nadu District Municipalities Act on 28.10.2020. The said notices have been issued to Dinesh Kumar, Tharun Kumar and Kishore Kumar, who are stated to be the owners of the lands on which the shops have been built. The extent of land is 40 Feet by 40 Feet. The said 3rd

respondent has not submitted any reply to the same and no application has been submitted for building permission also.

10. With regard to the structure of the 2nd respondent, the same is an approved construction that is in use as a Kalyana Mandapam. The approval has been obtained by one Mrs.Rose, wife of Velayutham. The Planning permission has been issued by the Deputy Director of Town Planning, Chengalpet Region by order dated 12.02.2013 and the Building permission has been issued by this Respondent on 25.02.2013 pursuant to the same for the construction of the Kalyana Mandapam with Ground plus first floor. The said structure is having its entrance facing the 60 Feet road that is on the East of the lands that are in dispute between the Petitioner and the respondents herein.

11. The entrance of the Kalyana Mandapam constructed by Mrs.Rose, W/o Velayutham falls in the portion of the 60 Feet scheme road that has been formed and the residents abutting the said parts are using the same in full extent. The Road has been laid by the Respondent herein except in the portion that is claimed by the Petitioner. The portion claimed by the Petitioner is in the junction of the 60 Feet Scheme Road with the J.N.Road.

12. It is submitted that the present Writ Petition with regard to the 2nd respondent is not maintainable as firstly, the said Building does not stand in his name and the same is also an approved Building. The said structure is 190 Meters away from the land that is owned by the Petitioner. Further action with regard to the building of the 3rd respondent will be pursued as per the provisions of the T.N. District Municipalities Act and further action will be carried out by passing final orders under Section 216(3)."

9. Recording the above paragraphs 7 to 12 of the counter affidavit of the first respondent, the present Writ Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

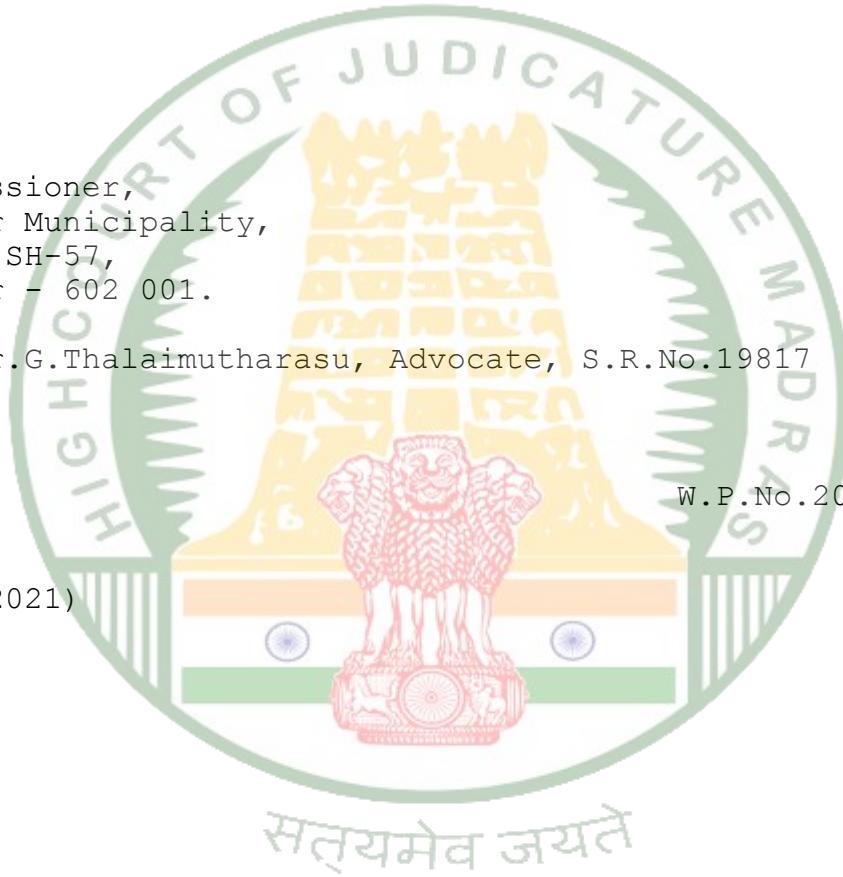
To

The Commissioner,
Tiruvallur Municipality,
J.N.Road, SH-57,
Tiruvallur - 602 001.

+1cc to Mr.G.Thalaimutharasu, Advocate, S.R.No.19817

W.P.No.20421 of 2020

RSI (CO)
SU(13/07/2021)



WEB COPY