



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.2487 of 2021

and

W.M.P (MD) .Nos.2066 and 4481 of 2021

B.Srinivasan Raja @ B.Suresh

... Petitioner

Vs.

1.District Collector,
Collectorate,
Virudhunagar.

2.The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhuangar District.

3.The Tahsildar,
Adi Dravidar Welfare Department,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhuangar District.

4.The Executive Officer,
Town Panchayat,
Mamsapuram,
Srivilliputhur Taluk,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the third respondent herein to issue 'No Objection Certificate' as requested by the 4th respondent vide letter dated 12.03.2020 in Na.Ka.No.92/2020 with regard to the petitioner's property within a fixed time frame.

For Petitioner

: Mr.V.Karthic
Senior Counsel
for M/s.Ravi Raja.B

For Respondents 1 to 3 : Mr.R. Suresh Kumar
Government Advocate



ORDER

This writ petition has been filed for the issue of writ of mandamus directing the third respondent to issue a 'No Objection Certificate' as requested by the fourth respondent through letter dated 12.03.2020 within the time limit fixed by this Court.

2. When the matter was taken up for hearing on 16.04.2021, this Court was considering the petition filed for appointment of an advocate commissioner to inspect the subject property. This Court therefore directed the third respondent to come up with the correct facts and ascertain the true picture, before this Court takes a decision in the said petition. Accordingly, a counter affidavit was filed on 17.06.2021 and this Court found that the counter affidavit was a mere reiteration of the earlier communication made by the third respondent dated 18.01.2021.

3. This Court on going through the records and after hearing the learned Senior Counsel appearing on behalf of the petitioner, directed the third respondent to inspect the property since at the time of approving the layout, it was found that the width of the access road is six metres which is equivalent to twenty feet. This Court therefore directed the third respondent to physically verify and give the correct status.

4. The matter was again taken up for hearing on 28.06.2021 and the following order was passed:

"Pursuant to the orders passed by this Court on 17.06.2021, an inspection was conducted by the Special Tahsildar on 24.06.2021 and an additional counter affidavit has been filed before this Court. The relevant portions in the additional counter affidavit are extracted hereunder:

"3.The pathway in the "Adi Dravidar Colony" has been measured. "Drainage facility" has been provided by the "Town Panchayat of Mamsapuram" on the East and West sides (Totally 4 (four) feet). "Electric Post" also has been installed by the "TNEB" (2 feet distance from the drainage.). Four feet vacant site is also available from the East side of the pathway.

The town Panchayat has provided "Pavour Block" on the pathway adjoining to the four (4) feet vacant site. Hence, the area has been reduced from 20 feet (6 meters) to 10 (ten) feet.



WEB COPY

4.As per the "Layout" the then pathway was 6 meters but now because of the drainage facility, erection of electric post, paviour block provided by the Town Panchayat of Mamsapuram adjoining to the 4 feet vacant site, the pathway has been reduced to 10 feet."

2. It is clear from the above that 20 feet pathway has now been reduced to 10 feet and various reasons are cited in the counter affidavit for the reduction in the total width of the public pathway.

3. The learned Senior Counsel appearing on behalf of the petitioner submitted that if encroachments have been made, which has resulted in the total extent of the public pathway coming down drastically by 10 feet, that cannot be taken advantage by the respondents to deny the sanction to the petitioner. That apart, the learned Senior counsel also questioned the authority and jurisdiction of the third respondent to raise such an objection.

4. The learned senior counsel further submitted that de hors the availability of this 20 feet wide public pathway, there is also an alternative, which could be considered by the respondents. It was submitted that there is a 30 feet width road, which leads to the lay out of the petitioner. To substantiate the same, the learned Senior Counsel relied upon the gift deed that was executed by one Mr.S.Venkatesh kumar on 03.02.2021. The learned Senior counsel specifically brought to the notice of this Court the description of the property in the gift deed and submitted that at Page No.6 of the document, there is a categoric mention about the availability of the 30 feet width road. The learned senior counsel submitted that the availability of this 30 feet width road, which continues up to the lay out of the petitioner, can be taken into consideration by the respondents.

5. By considering this alternative proposal given by the petitioner, the petitioner wants to get an approval for the lay out without putting anybody to hardship.

6. The learned Government Advocate appearing on behalf of the respondents submitted that he will take instructions and report before this Court. In the meantime, the learned counsel for the petitioner shall file a topography of the property in order to enable this Court to properly understand regarding 30 feet width road about which the petitioner is referring and



its access to the lay out belonging to the petitioner.

7. Post this case under the same caption on 06.07.2021."

5. The matter was again taken up for hearing on 06.07.2021 and this Court passed the following order:

"When the matter came up for hearing on 28.06.2021, this Court directed the learned Senior counsel appearing on behalf of the petitioner to take instructions and file a topography of the property to enable this Court to understand the availability of a 30 feet width road, which can be taken as an access to the lay out that is proposed to be established by the petitioner.

2. When the matter was taken up for hearing today, the learned Senior counsel appearing on behalf of the petitioner brought to the notice of this Court the additional typed set of papers filed on 02.07.2021. The first page contains the lay out plan showing the various house sites and also the 30 feet width road that extends up to the lay out of the petitioner from Srivilliputhur Main Road. The learned Senior counsel also brought to the notice of this Court various photographs that have been filed in the additional typed set of papers.

3. A copy of the additional typed set of papers was also furnished to the learned Government Advocate. The learned Government Advocate shall take instructions from the third respondent and report before this Court as to whether the lay out approval sought for by the petitioner can be considered by virtue of the availability of a 30 feet width road connecting the lay out from the main road. If this alternative access road is taken into consideration, the other issue with regard to the availability of the access from the southern portion of the lay out, which has shrunk due to encroachment need not be gone into in the present writ petition.

4. This suggestion is made without prejudice to the contentions raised by the learned Senior counsel for the petitioner to the effect that the fourth respondent is the sanctioning authority for the lay out and the third respondent cannot be sitting on judgment and controlling the fourth respondent from granting the sanction.

5. post this case under the caption 'for orders' on 13.07.2021."



6. When the matter was taken up for hearing today, the learned Government Advocate based on the instructions received from the third respondent submitted that the 'No Objection Certificate' will be granted based on the availability of a thirty feet width road connecting the layout from the main road.

7. In view of the specific stand taken by the third respondent and recording the submissions of the learned Government Advocate, there shall be a direction to the third respondent to issue the 'No Objection Certificate' within a period of two (2) weeks from the date of receipt of a copy of this order. The fourth respondent, on receipt of the same, shall process the application given by the petitioner and issue necessary orders for approval of the layout within a period of six(6) weeks thereafter.

8. This writ petition is disposed of with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

2. Issue order copy on 16.07.2021.

To

1. The District Collector,
Collectorate,
Virudhunagar.
2. The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhuangar District.



3. The Tahsildar,
Adi Dravidar Welfare Department,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhuangar District.

4. The Executive Officer,
Town Panchayat,
Mamsapuram,
Srivilliputhur Taluk,
Virudhunagar District.

+4 CC to M/s.R.R.KANNAN, Advocate (SR-22408[F] dated 14/07/2021)

+1 CC to M/s.SPL GP (SR-22532[F] dated 14/07/2021)

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RC (16.07.2021) 6P-10C