



W.P. No. 11801 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 11801 of 2022

and

W.M.P. Nos. 11246 and 11247 of 2022

Anna Enclave Residents Welfare Association,
Rep. by its Secretary and Authorized Signatory,
Mr. K.S.Raja,
No. 2/168E, East Coast Road,
Injambakkam,
Chennai – 600 115.

... Petitioner

-VS-

1. State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration Department,
Fort St. George,
Chennai – 600 009.
2. Corporation of Madras,
Rep. by its Commissioner,
Rippon Building,
Chennai – 600 003.
3. The Zonal Officer,
Corporation of Madras,
Zone 15,
Sholinganallur,
Chennai – 600 119.
4. The Executive Engineer,
Corporation of Madras,
Zone 15,
Sholinganallur,
Chennai – 600 119.



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5. The Inspector of Police,
Neelankarai Police Station,
East Coast Road,
Chennai – 600 115.

6. Radiance Reality Developers India Ltd.,
Rep. by its Managing Director,
1st Floor, 33 Feet Road,
Guindy,
Chennai – 600 032.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent in proceedings in Letter No. Z.O.XVC.No. B3/02547/2021 dated 07.08.2021 and quash the same since the Third Respondent therein had erroneously and illegally classified the Petitioner's private roads within 'ANNA ENCLAVE' Gated Unit as Public Road and direct the First to Fifth Respondents herein not to interfere with the Petitioner's right over the property situated in 'ANNA ENCLAVE' Gated community area situated at S. Nos. 138/2 to 7, 139, 140, 141/1, 152/1,2, 144/1A,1B,2, 3PT, 6 to 10, 145, 147, 148/2, 149, 150, 151, 152, 153, 154/1,2,4 240/3, 241, 242/1,2 Injambakkam Village, East Coast Road, Chennai – 600 115.

For Petitioner : Mr. G.Vijay Anand
for M/s. G.Vijay Anand Associates

For Respondents : Mr. M.Shahjahan,
Special Government Pleader
(for R1 & R5)

Mr. S.Silambanan, Senior Counsel
for M/s. P.T.Ramadevi (for R2 to R4)

Mr. N.L.Rajah, Senior Counsel
for M/s. Ashok Kumar (for R6)



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3. In response to the contention of the Sixth Respondent that the owners of housing plots in Anna Enclave had obtained regularization of the layout and as its consequence, the roads in that property have been vested with Greater Chennai Corporation and are maintained by it as public roads with prescribed facilities as per Rule 7(g) of the Tamil Nadu Regularization of Unapproved Plots and Layout Rules, 2017, as amended by G.O. Ms. No. 172, Housing and Urban Development [UD(4)3] Department dated 13.10.2017, the decision of the Hon'ble Supreme Court of India in ***Municipal Board, Manglaur -vs- Mahadeoji Maharaj*** (AIR 1965 SC 1147) is referred on behalf of the Petitioner, where it has been observed as follows:-

*“7. A Division Bench of the Madras High Court in **S.Sundaram Ayyar -vs- Municipal Council of Madura and Secretary of State for India in Council** [(1902) ILR 25 Mad 635] dealt with the scope of such vesting under the Madras District Municipalities Act, 1884. The head-note therein brings out the gist of the decision, and it reads:*

“When a street is vested in a Municipal Council, such vesting does not transfer to the Municipal authority the rights of the owner in the site or soil over which the



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street exists. It does not own the soil from the centre of the earth usque ad caelum, but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers.”

8. *The law on the subject may be briefly stated thus: Inference of dedication of a highway to the public may be drawn from a long user of the highway by the public. The width of the highway so dedicated depends upon the extent of the user. The side-lands are ordinarily included in the, road, for they are necessary for the proper maintenance of the road. In the case of a pathway used for a long time by the public, its topographical and permanent landmarks and the manner and mode of its maintenance usually indicate the extent of the user.*



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9. *In the present case it is not disputed that the metalled road was dedicated to the public. As we have indicated earlier, the inference that the side lands are also included in the public way is drawn much easily as the said lands are between the metal road and the drains admittedly maintained by the Municipal Board. Such a public pathway vests in the Municipality, but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and “so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street”. It has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers. Subject to the rights of the Municipality and the public to pass and repass on the highway, the owner of the soil in general remains the occupier of it and, therefore, he can maintain an action for trespass against any member of the public who acts in excess of his rights.”*

While the Second to Fourth Respondents in their Counter-Affidavit dated 15.07.2022 assert that the Sixth Respondent has demolished a part of the compound wall abutting the access through Anna Enclave without their knowledge and had erected a gate in that location for which they had neither



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granted permission nor provided men and material for the same, the Sixth

Respondent in its Counter-Affidavit dated 22.08.2022 states that it is no way responsible for any of the acts done by the general public who had removed the portion of the illegally constructed wall on the village road in the presence of authorities, which was obstructing access to another road. At this juncture, it must be recapitulated that the Hon'ble Supreme Court of India in ***Roshina T -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned against determining disputed questions of fact relating to property rights in proceedings following summary procedure under Article 226 of the Constitution and has held that the same would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court.

4. That apart, the Hon'ble Supreme Court of India has laid down the dictum in ***Mahinder Kumar Gupta -vs- Union of India*** [(1995) 1 SCC 85] that an Association cannot file a Writ Petition seeking to espouse the cause of its individual members and does not affect any legal right of that Association, which would obviously mean that the Writ Petition at the instance of an Association cannot be entertained for the relief sought in this case.



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5. Viewed from that perspective, this Court is not inclined to delve into the merits of the controversy involved in this case which touches upon disputed questions of fact for effectual and complete adjudication of the matter.

6. In the result, the Writ Petition is dismissed with the aforesaid clarification. Consequently, the connected Miscellaneous Petitions are closed.

No costs.

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Index: Yes/No

Note: Issue order copy by 18.11.2022.

To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration Department,
Fort St. George,
Chennai – 600 009.
2. The Commissioner,
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P.D. AUDIKESAVALU, J.

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