



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.02.2022
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12624 of 2020

and W.M.P.No.15588 of 2020

The Kalakshetra Foundation,
Thiruvannamiyur,
Chennai 600 041
rep.by its Director.

... Petitioner

Vs.

1.The Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai 600 035.

2.The Inspector of Police,
Law and Order,
Sannathi Street, Thiruvannamiyur,
Chennai 600 041.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents and their men, agents servants and other persons claiming through or under them to forthwith remove the barbed fence wiring put up on the pathway / approach road Thiruvannamiyur Village, so as to enjoy easementary right and access to the property (Vacant land) of an extent of 2.91 acres situate at Survey No.170/1 Thiruvannamiyur, Chennai 600041 and not interfere with the petitioners right of peaceful possession and enjoyment of its said property.

For Petitioner	: Mr.S.Raghunathan
For R1	: Mr.R.Bharath Kumar
	Standing Counsel
For R2	: Mr.K.Murthi, Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus to direct the respondents to forthwith remove the barbed fence wiring put up on the pathway / approach road Thiruvannamiyur Village, so as to enjoy easementary right and access to the property (Vacant land) of an extent of 2.91 acres situate at Survey No.170/1 Thiruvannamiyur, Chennai 600041 and not interfere with the petitioners right of peaceful possession and enjoyment of its said property.



2. The case of the petitioner is that the petitioner Foundation was established as early as in the year 1936 and it continues to succeed as one of the most coveted arts and cultural academy in the Country, devoted to the protection and preservation of traditional art forms, music, dance, Indian art and crafts etc., The foundation is located and spread over an extent of 100 acres in Thiruvannamiyur, Chennai comprised in various survey nos and from and out of the larger extent, 2 acres and 91 cents of vacant land, situated at Thiruvannamiyur, Chennai, is comprised in S.F.No.170/1 (New TS.No.285 and 295). The petitioner had purchased the said property along with a larger extent of property by a Sale Deed dated 07.04.1960 and is in continuous possession and enjoyment of the said property. The only approach to the said property of the petitioner Foundation is through a parcel of land admeasuring an extent of about 1430 sq.ft, which is a private pathway, being a part of the vacant land belonging to the 1st respondent. Notwithstanding the fact that the said pathway belonged to the 1st respondent, the petitioner has been allowed to use and continued to use the said pathway to access the said property for about six decades since there is no other access thereto. While being so, on 5th October, 2019, the approach to the said property had been entirely obstructed by the 1st respondent by erecting a barbed wiring fencing and thereby preventing any ingress and egress to the said property. Therefore, the petitioner had approached the officials of the 1st respondent to remove the same and he had then been informed that about 1430 sq.ft around the said approach road, belongs to the 1st respondent and that there was a proposal to auction the said land. Once again, the petitioner Foundation has made series of representations, to the 1st respondent requested him to instruct its officials to remove the said fencing that continued to obstruct access to the said property and in response, the petitioner was suggested that a joint inspection of the site could be conducted to resolve the dispute being raised by the 1st respondent. However, neither the 1st respondent responded to the representations, nor had it arranged for a joint inspection to be conducted into the interference with the rights of the petitioner in enjoyment of the said property. Aggrieved by the said fencing which is in violation of the petitioner's easementary rights to adequate passage, right to entry and for proper enjoyment of the said property, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner submitted that for reasons best known to the 1st respondent, they had illegally and unauthorizedly put up the said wire fencing obstructing entry to the petitioner's premises by installing the said fencing in the said approach road, without any statutory warrant and or permission and hence prays for appropriate orders.



4. The learned Standing Counsel appearing for the 1st respondent Housing Board submitted that during the pendency of this petition, public auction for the said property has been conducted and the property was auctioned in favour of the third party namely S.Sathiyarayanan, for a sum of Rs.2 crores and the said person has also paid a sum of Rs.1 crore as part payment for the said property and the remaining amount is yet to be paid.

5. At this point, the learned counsel for the petitioner submitted that all along when the Writ Petition is pending for claiming the said property, without any information to this Court, the statutory authority / 1st respondent unauthorizedly auctioned the property in favour of the third party, is not sustainable and hence prays this Court to permit the petitioner to file a fresh Writ Petition, challenging the allotment made in favour of the private persons in the public auction. Further, the learned counsel also expressed his anguish due to the unfair act on the part of the 1st respondent, who unauthorizedly auctioned the said property to the third party through public auction.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. It is the claim of the learned counsel for the petitioner that when the Writ Petition is pending for claiming the said property, without any information to this Court, the statutory authority / 1st respondent has unauthorizedly auctioned the property in favour of the third party and he also expressed his deep anxiousness to the act on the part of the 1st respondent. Further though the learned counsel raised several grounds in the matter, nothing survives in the prayer sought for by the petitioner at this stage, as the subject matter property itself was auctioned in favour of the third party.

8. Considering the facts and circumstances of the case, this Court without going into the merits of the matter, permits the petitioner to file a fresh Writ Petition by challenging the allotment made in favour of the third party, namely S.Sathiyarayanan, through public auction and further the 1st respondent Housing Board is directed to furnish the copy of the public notice, allotment order including the terms of allotment and the third party details to the petitioner Foundation to enable them to workout their remedy in the manner known to law, within a period of four weeks from the date of receipt of a copy of this order.



9. The Writ Petition is disposed of with the above observations. No costs. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai 600 035.

2.The Inspector of Police,
Law and Order,
Sannathi Street, Thiruvanmiyur,
Chennai 600 041.

+1 cc to Mr.R.Bharath Kumar, Advocate Sr.NO. 6605

+1 cc to Mr..Raghunathan, Advocate Sr.NO. 6674(18/03/2022)

W.P.No.12624 of 2020

AK II(CO)
A.SK(02.02.2022)
GMY(18/03/2022)