



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.20723 of 2019 and WMP.Nos.19881 and 19882/2019

1. John Joseph

2. Arun Kurian Joseph

... Petitioners

-vs-

1. Greater Chennai Corporation
rep. by its Commissioner,
Rippon Buildings,
Chennai-600 003.

2. The Divisional Engineer,
Old Zone No.5, New Zone No.7,
Old Ward No.65, New Ward No.90,
Greater Chennai Corporation,
Chennai-600 107.

3. The Assistant Engineer,
Old Zone No.5, New Zone No.7,
Old Ward No.65, New Ward No.90,
Greater Chennai Corporation,
Chennai-600 107.

4. Executive Engineer,
Zone No.10,
Greater Chennai Corporation,
117, NSK Salai, Kodambakkam,
Chennai-600 024.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents herein to remove the structure put up on the 30 feet road connecting AKR road by encroaching on the southern side of petitioner's land comprised in T.S.No.6/1, Block No.32 of Koyembedu Village and to restore the 30 feet road to its original measurement.



WEB COPY

For Petitioners : Mr.N.Ishtiaq Ahmed

For Respondents : Mr.R.Gopinath
1 to 4 Standing Counsel

ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents herein to remove the structure put up on the 30 feet road connecting AKR road by encroaching on the southern side of petitioner's land comprised in T.S.No.6/1, Block No.32 of Koyembedu Village and to restore the 30 feet road to its original measurement.

2. Learned Counsel appearing for the petitioners would submit that the petitioners are the co-owners of the property comprised in Old Survey No.140/3, present T.S.No.6/1, Block No.32, Koyambedu-Nungambakkam Taluk having an extent of 999 Sq.mts = 10,750 Sq.ft. and out of the total extent of 999 Sq.mts = 10750 Sq.ft., an extent of 250 Sq.mts = 2691 Sq.ft was acquired by CMRL under the Land Acquisition Act. Therefore, the petitioners are left with only 749 Sq.mts.= 8,059 Sq.ft. When the said property was bounded on the north by land acquired by CMRL in T.S.No.6/2, South by 30 feet road and St.Thomas College and Church property, East by T.S.No.7/1, West by T.S.No.5/1, the owner of the property on the west of the petitioners' property comprised in T.S.No.5/1 have joined together with the petitioners and have put up a compound wall running North to South of their respective properties. It is also stated that the compound wall was put up within 3 feet of their southern boundaries leaving 3 feet for the purpose of planting shrubs and there is also a huge tree on the boundary line on the southern side of the petitioners' property. While so, the respondents have suddenly started putting up a concrete structure with columns abutting the southern boundary wall of the petitioners' property by encroaching 3 feet to a length of 32 feet. In view of the said construction made by the respondents on the 30 feet road, the width of the road has been reduced to 19 feet to a length of 32 feet. Besides, one of the petitioners have no access to his property from the 30 feet road.

3. Learned Counsel for the petitioners would further submit that since the respondents have encroached to an extent of 32 feet x 3 feet on the petitioners' land, preventing the access to the petitioners' property, the petitioners requested the respondents 2 and 3 to demolish the construction put up by them encroaching the southern wall and also to shift the



construction of toilet to the eastern side of AKR Road which is a poromboke land. The respondents 2 and 3 also promised to remove the said construction. But without removing the same, the respondents are continuing with the construction. Therefore, a notice was sent on 06.07.2019 to the respondents to remove the encroachment and construction in the land-in-question. Since there was no response for the same, the petitioners have come to this Court for the aforesaid relief.

4. Learned Counsel for the petitioners also drawing out notice to the affidavit filed by the 4th respondent argued that when the petitioners specifically mentioned in the affidavit filed in support of the petition that the construction of the toilet has been made on the road margin adjacent to the compound wall of their property, there is no any denial made by the 4th respondent in their counter affidavit. But paragraph 6 of the counter affidavit clearly says that there is a specific denial that the Greater Chennai Corporation has not encroached into the petitioners' property by putting up construction and they have also further averred in paragraph 5 of the Counter Affidavit that admittedly, the Greater Chennai Corporation is constructing a public convenience on the road margin in AKR Road, Chennai for the use of slum dwellers in that area, without encroaching any land belonging to the petitioners.

5. Again drawing our notice to an earlier order passed by this Court dated 12.09.2019 and also on 17.09.2019 in this Writ Petition, learned Counsel for the petitioners stated that at one point of time, the respondents have come forward to relocate the impugned toilet to some other place in which both the parties agreed to meet out the cost of reconstruction. Therefore, some time was sought for to negotiate on the said issue.

6. At the outset, firstly, when the petitioners have come to this Court with an allegation that the respondents are putting up a public toilet encroaching 3 feet on his property, this has been disproved by the respondents. Secondly, the further allegation made by the petitioners that by raising construction of the impugned toilet, their access to the property has not been established. Thirdly, the contention of the learned Counsel for the petitioners that by raising construction of the impugned toilet, the front view of their house also would be blocked and it would be loosing market value cannot be acceptable for the simple reason that the respondents have chosen to construct the impugned toilet in the place which is nearer to the burial ground. Fourthly, when it is pleaded that 80% of the construction was over, we do not want to interfere with the completion of the impugned toilet. In view of all the above, we find no merits in the Writ Petition.



7. In the result, the Writ Petition fails and the same is accordingly dismissed. However, we leave it open to the petitioners to approach the Civil Court concerned, if they are so aggrieved for access to their property-in-question and also the easementary right. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai-600 003.
2. The Divisional Engineer,
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4. Executive Engineer,
Zone No.10,
Greater Chennai Corporation,
117, NSK Salai, Kodambakkam,
Chennai-600 024.

+2cc to Mr.N.Ishtiaq Ahmed, Advocate SR.No.26232
+1cc to Mr.R.Gopinath, Advocate SR.No.26237

W.P.No.20723 of 2019

GSM(CO)
GMY (27/05/2022)