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S.A.(MD)NO.173 OF 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.173 of 2010

Tuticorin Vegetable Marketing Company Pvt. Ltd.,
Tuticorin Through its President,
Office at
130, Palayamkottai Road,
Tuticorin.

... Appellant / Respondent / Plaintiff

Vs.

Tuticorin Municipal Corporation,
Through its Commissioner,
W.G.C.Road,
Tuticorin.

... Respondent / Appellant / Defendant

Prayer: Second Appeal filed under Section 100 of CPC., to set aside the judgment and decree passed in A.S.No.117 of 2005 on the file of the Sub Court, Tuticorin dated 16.11.2009 reversing the judgment and decree in O.S.No.369 of 1999 on the file of the Additional District Munsif Court, Tuticorin dated 15.10.2004.

For Appellant : Shri.V.Raghavachari,
for Mr.S.Ramesh.

For Respondent : Mr.S.Saji Bino

* * *

**JUDGMENT**

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The plaintiff in O.S.No.369 of 1999 on the file of the Additional District Munsif Court, Tuticorin is the appellant in this second appeal.

2. The suit prayer was for declaring the order passed by the local body on 25.08.1999 for demolition of the petition mentioned building as illegal and for consequential permanent injunction. Based on the divergent pleadings, issues were framed. P.W.1 to P.W.5 were examined on the side of the plaintiff. Ex.A.1 to Ex.A9 were marked. On the side of the defendant, two witnesses were examined. Ex.B.1 to Ex.B.9 were marked. The trial Court decreed the suit as prayed for on 15.10.2004. The local body filed A.S.No.117 of 2005 before the Sub Court, Tuticorin and it was allowed on 16.11.2009. Challenging the same, the plaintiff filed this second appeal. It is admitted on 04.03.2010 on the following substantial questions of law:-

“i) Whether the first appellate Court is correct in coming to the conclusion that the appellant had not perfected title over the disputed property, when the building had come into existence even to the year 1968 and the impugned notice is dated 25.08.1999?

ii) Whether the first appellate Court is correct in ordering demolition without taking into consideration of



laches, acquiescence and monetary value of the building?”

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3. On the last occasion, after hearing the counsel on either side, the following additional substantial question of law was formulated.:-

“Whether the first appellate Court was right in dismissing the suit when the Municipality failed to establish the road width?”

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree passed by the first appellate Court and restore the decision of the trial Court. Reliance was placed on the decision reported in *(1913) 25 MLJ 297 (Chairman, Municipal Council, Srirangam V. Subba Pandithar)*.

5. Per contra, the learned counsel for the respondent Corporation submitted that no substantial question of law arises for consideration and pressed for dismissal of the appeal.

6. I carefully considered the rival contentions and went through the evidence on record.

7. The plaintiff is a limited company. It purchased a piece of property under Ex.A.1 Sale Deed dated 22.12.1964. The claim of the plaintiff is that a lodging house was put up after getting permission and



planning approval from the local body and that due to efflux of time, the records have been lost. I cannot endorse the plaintiff's claim that approval was obtained from the local body in the absence of evidence. I take judicial notice of the fact that the constructions are put up without getting permission from the statutory authorities and that they have been allowed to remain. Hence, no positive conclusion in favour of the plaintiff can be made in this regard. Be that as it may, the fact remains that the lodging house has been in existence since 1968. The local body issued Ex.A.4 Notice dated 24.03.1997 proposing removal of the encroachment by the plaintiff on a portion of a public road. The issue was taken up in writ proceedings and the matter was remanded. Thereafter, the impugned order was passed on 25.08.1999 stating that the plaintiff had committed encroachment on Jeyaraj Road to the extent of 3201 sq.ft in survey No.3468/3A. The plaintiff was directed to remove the same.

8. It is true that the plaintiff purchased the property in the year 1964. There was a compound wall. The present superstructure was put up in the year 1968 within the said compound wall. The local body initiated action only in 1997. The question is whether the plaintiff can be said to have perfected his title by adverse possession. The Courts below have



rendered contrary findings.

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9. The learned counsel for the appellant relied on the decision reported in *ILR 38 Mad 456 (The Chairman, Municipal Council, Srirangam V. Subba Pandithar)* in support of his contention that even a person in adverse possession of a public street can perfect his title. It is true that this judgment was subsequently followed in quite a few decisions (*AIR 1920 Mad 193 Arunachala Chettiar V. Municipal Council of Mayavaram*). I am not inclined to accept the proposition advanced by the learned counsel for the appellant for more than one reason. Section 182 of the Tamil Nadu District Municipalities Act, 1920 which governed the field when the impugned notice was issued reads as follows:-

“ **182. Removal of encroachments .—** (1) The Executive Authority may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any



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municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same. ”

Section 182(2) empowers the municipality to cause removal of encroachment in a public street even after the expiry of the limitation. There is one requirement to be complied with. It must pay reasonable compensation to the encroacher in such a case. The resultant position is that even perfecting of title by the encroacher on a public street will not come in the way of action being taken by the local body. Of course, the Tamil Nadu Urban Local Bodies Act, 1998 which came into force on 13.04.2023 had repealed the earlier laws relating to Municipalities and Municipal Corporations. There is no provision in the new Act corresponding to Section 182(2) of the Tamil Nadu District Municipalities Act, 1920. But power has been conferred on the Corporation Commissioner to remove any encroachment from public place. Street encroachment has been made into a punishable offence.

10. The Hon'ble Supreme Court in the decision reported in **(2019) 8 SCC 729 (Ravindar Kaur Grewal V. Manjith Kaur)** observed as follows:-



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“ 63. When we consider the law of adverse possession as has developed vis-a-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.”

11. More than anything else, the appellant sought the relief of declaration only in respect of the impugned order passed by the local body. They did not seek declaration in respect of their title over the land in question. The trial Court did not frame any specific issue regarding adverse possession. In matters such as this, the encroacher must have asserted his hostile title vis-a-vis the local body. Mere encroachment cannot constitute such assertion of hostile title. Article 111 of the Limitation Act which prescribes the period of limitation of 30 years will not come to the rescue of the appellant because the Municipality did not file any suit but only exercised its statutory power. Section 27 of the Limitation Act, 1963 which states that at the determination of the period



hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished will not avail when the public authority takes action as per law for removal of encroachment of a public place.

12. Even though I have held that encroachment of public street cannot be legalised, the burden lies on the local body to show that there has been such encroachment. The Municipality must show that the disputed site falls within the road portion. Even though the appellant was a plaintiff, it was the local body that took action. Though the local body became a Corporation later, it was a Municipality when it issued the impugned notice. Section 166 of the Tamil Nadu District Municipalities Act conferred power on the local body to prescribe building line and street alignment. Section 167 of the Act prohibits any person from constructing any portion of any building within a street alignment. Only if the street alignment and building lines had been properly fixed, one would be in a position to find out if the road portion has been encroached upon. Otherwise, it is not possible. In this case, there is nothing on record to show that the street line has been fixed.

13. Though a mere look at Ex.B.3 would show that the land comprised in old survey No.3468/3 equivalent to R.S.No.316A/3C alone



has been earmarked as municipal road, the land comprised in old survey No.3468/4 equivalent to R.S.No.316A/3A actually belongs to one Ari Subbayya Nadar. The defendant had not at all correlated the disputed site as falling within R.S.No.316A/3C. The first appellant Court had failed to take note of this vital aspect.

14. I therefore answer the first and second substantial questions of law against the appellant. But the third substantial question of law is answered in favour of the appellant. In this view of the matter, the judgment and decree passed by the first appellate Court is set aside. The judgment and decree passed by the trial Court is restored. The local body is at liberty to act as per law. The second appeal is allowed accordingly. No costs.

04.04.2022

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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S.A.(MD)NO.173 OF 2010

To:

1. The Additional District Munsif,
Tuticorin.
2. The Sub Judge,
Tuticorin.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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