



W.P.(MD).No.17475 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.11.2022

ORDER PRONOUNCED ON : 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.17475 of 2013 and
MP(MD).No.1 of 2013**

C.Arumugam

...Petitioner

Vs

1.The Revenue Divisional Officer
Devakottai
Sivagangai District

2.K.Ramasamy

3.The Tahsildhar
Thirupattur Taluk
Sivagangai District

4.The Village Administrative Officer
K.Vairavanpatti Village
Thirupattur Taluk
Sivagangai District

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order %K.m.1-5377-2013 dated 19.09.2013 on the file of the Respondent No. 1 and quash the same as illegal.

For Petitioner
For R1, R3 & R4

: Mr.M.Mohamed Ajeesdheen
: Mr.A.Sivanupandian
Government Advocate
: Mr.R.Balakrishnan

For R2



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For Mr.K.N.Govardhanan

ORDER

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The present writ petition has been filed challenging an order passed by the first respondent herein under which he has permitted the second respondent and two others to use a road in an approved layout. In the said order, the first respondent has also directed the Village Administrative Officer to conduct a field survey and restore a track that was obliterated by the writ petitioner.

2.According to the learned counsel for the petitioner, the second respondent and two others have approached the first respondent seeking a right of pathway in a 30 feet road which is running through survey Nos. 177, 178 and 179 in K.Vairavanpatti Group in order to reach their patta land in survey No.48/1D. The learned counsel for the petitioner had contended that the 30 feet road is part of a lay out that was approved by the Directorate of Town and Country Planning. The said 30 feet road is meant for the benefit of the persons who have purchased the plots from the writ petitioner. The said 30 feet road cannot be used by the second respondent and others to reach their layout.

3.The learned counsel for the petitioner had further contended that the pathway that is found in survey No.179-1A ends within the private property of the writ petitioner and hence, the question of restoring the said pathway for



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the benefit of the second respondent and others could not arise. He had further contended that the 30 feet pathway is in the patta land of the writ petitioner and the private respondents will not have any right of pathway through the same. However, under the impugned order, the first respondent has directed the petitioner not to disturb the second respondent and others from using the said 30 feet pathway. The first respondent had further directed the Village Administrative Officer to restore a pathway that was allegedly obliterated by the writ petitioner in Survey No.179-1A. Hence, the present writ petition.

4.The learned counsel appearing for the second respondent had contended that 30 feet road running through Survey Nos. 177, 178 and 179 is the only access to the property of the second respondent in 48/1D. Since the said 30 feet road forms part of a road in an approved lay out, the petitioner cannot have any objection for opening up the said road in favour of the second respondent and others. He had further contended that the first respondent has directed the Village Administrative Officer to restore and obliterate the pathway in survey No.179-1A. They may not be interested in restoring the said pathway, in view of the fact that the said pathway ends within the private property of the writ petitioner. Hence, he prayed that the order impugned in the writ petition may be sustained with regard to the usage of 30 feet road alone.



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5.I have considered the submissions made on either side and perused the materials available on record.

6.As per paragraph No.5 of the writ petition, it is clear that the petitioner has obtained a layout approval consisting of Survey Nos.177, 178 and 179 from the Directorate of Town and Country Planning. The petitioner has also admitted that there is a 30 feet road in the said layout which forms part of the lay out approval. From the said fact, it is clear that the 30 feet road in dispute is admittedly a property shown as a road in an approved layout. When a property is shown as a road in an approved or in an unapproved layout, the promoter of the layout or any person claiming under him can never claim title to the said property. Whether it is gifted to the local body or not, the same retains the character of a public road which can be used by the general public.

7.This Court in a Judgment reported *in 2022-3-L.W.614 (M.Rajagopal Vs. Suresh and another)* has held that if a portion of a property is carved out either in an approved lay out or in an unapproved lay out, it becomes a road and the developer cannot retain any title over it. In the present case being an approved lay out, automatically the road vested with the local body. Whether it is gifted by the developer or not, once it is a public



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road, the right of access through the said road is, as a matter of right to the general public. The question of seeking permission of the developer or any order of a statutory authority is not required.

8.The first respondent herein has specifically rendered a finding that the 30 feet road is forming part and parcel of the approval layout and it belongs to the Government. Hence, I do not find any illegality or infirmity in the order passed by the first respondent herein with regard to the order granted to the second respondent and others to have access to the said 30 feet road running through Survey Nos.177, 178 and 179. As far as the other direction of the first respondent relating to the restoration of a pathway in Survey No.179-1A is concerned, the second respondent has conceded that he is no longer interested in having access to the said pathway.

9.The writ petition is allowed only with regard to the order of the first respondent herein directing the Village Administrative Officer to restore pathway in Survey No.179-1A. The other portion of the order namely granting access to the second respondent and others over 30 feet road in the approved layout in Survey Nos.177, 178 and 179 is concerned, the same is confirmed and the writ petition is dismissed.



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10. Accordingly, the writ petition is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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