



W.P.(MD)No.16336 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.16336 of 2022
and W.M.P.(MD) Nos.11803 and 11804 of 2022

R.Sakthivel

... Petitioner

Vs.

1.The Corporation Commissioner,
Madurai Corporation,
Anna Maligai, Madurai.

2.The Assistant Commissioner,
Zone – 2, North Zone,
Madurai Corporation,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 12.06.2020 issued by the 1st respondent and quash the same as illegal and consequently direct the respondents not to interfere the petitioner's peaceful possession and enjoyment of the property in R.S.No.27/5 and U.D.R.S. No.27/5B.

For Petitioner

: Ms.S.Vanitha



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For Respondents

: Mrs.S.Devasena
Standing Counsel

* * *

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

The petitioner has filed this Writ Petition challenging the order dated 12.06.2020, issued by the 1st respondent and to direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the property in R.S.No.27/5 and U.D.R.S. No.27/5B.

2. Heard Ms.S.Vanitha, learned counsel for the petitioner and Mrs.S.Devasena, learned Standing Counsel for the second respondent. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. From the affidavit filed in support of the writ petition, it is seen that the petitioner has purchased two plots viz., plot Nos.29 and 30 in an unapproved layout and constructed a building. It is stated that the petitioner has purchased the property under the sale deed dated 20.02.2020, which is registered as document No.612 of 2020.



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4. This Court perused the sale deed, which clearly indicates that the petitioner has purchased two plots adjoining the 20 feet road. The layout plan also indicates that the property purchased by the petitioner lies on the East of the 20 feet road. Having purchased the property, adjacent to the road as formed in the layout the petitioner has come forward to challenge the impugned order passed by the first respondent, directing the petitioner to remove the encroachment in the public road.

5. The petitioner has put up a shed in the public road and a gate in the 20 feet road, which is the road made for the public to have access through it. It is the case of the petitioner that it is under the enjoyment of the petitioner and one Sampath Kumar for the past few years and the first respondent has issued the order directing removal of encroachment without considering the fact that the petitioner is in enjoyment of the road portion. The petitioner also alleges that the persons from the respondents' office came to his premises and removed the gate put up in the area and directed the petitioner to remove the shed put up by the petitioner.



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6. Having regard to the admitted facts and records, this Court is unable to find any merit in the writ petition. The petitioner, having purchased the property in an unapproved layout cannot exercise any right over the 20 feet road, which is reserved for the public, particularly the residents of the locality who have purchased respective plots. The fact that the petitioner has encroached by putting up a shed and gate exposes the petitioner's assertion of the right, which is misconceived.

7. The Hon'ble Supreme Court in ***PT. Chet Ram Vashist v. Municipal Corporation of Delhi*** reported in ***(1995) 1 SCC 47*** and Division Bench of this Court in ***T.M.Rajasekaran v. State of T.N.*** reported in ***2007-3-LW 995 and in T.G.Naveen v. The Chairman, TNEB*** reported in ***2021 (5) CTC 648*** held that even the promoter / developer has no right to deal with the property reserved for the public use.

8. The Hon'ble Supreme Court in ***PT. Chet Ram Vashist v. Municipal Corporation of Delhi*** reported in ***(1995) 1 SCC 47***, in paragraph No.6 held as follows:-



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“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself.”



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9. In such circumstances, the petitioner's claim cannot be sustained. The Corporation of Madurai, which is expected to maintain such pathway or road, which are formed in the private layout, has every right to initiate action for removal of encroachment under the provisions of the Act.

10. Learned Standing Counsel for the respondent Corporation submits that the respondents have arranged for a survey and that survey was conducted in the presence of the petitioner. It is only after the encroachment was confirmed, steps have been taken to remove the encroachment. As pointed out earlier, the petitioner does not dispute the encroachment by the petitioner by putting a gate and shed. Therefore, this Court is unable to find any irregularity in the order directing the petitioner to remove the encroachment within 7 days. In case the petitioner does not vacate from the premises, it is open to the respondents to proceed with the eviction in the manner known to law.

11. In view of the above, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are



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closed.

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[S.S.S.R., J.] [S.S.Y., J.]
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Index : Yes / No
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