



W.P.No.5088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.5088 of 2023

K.R.Saraswathi

...Petitioner

Vs

- 1 The Commissioner
Salem City Municipal Corporation,
Main Office, Fort Main Road, Salem 636 001.
- 2 The Executive Officer,
Mallamoopampatty Village Panchayat,
Salem Block, Salem West Taluk, Salem District.
- 3 The Block Development Officer,
Suramangalam, Salem West Taluk, Salem District.

...Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to remove public toilet which constructed in the Petitioners land comprised in Re-survey No.32/33 situated at



W.P.No.5088 of 2023

Mallamoopampatty Village, Sooramangalam Union, Salem West Taluk, Salem District.

For Petitioner : Mr.R.Bala Ramesh
For Respondents : Mr.K.V.Sanjeev Kumar
for R2 and R3
Mr.M.Manoharan
Advocate Commissioner

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to remove the public toilet which was constructed in the patta land belonging to the petitioner in survey No.32/33 at Mallamoopampatty Village, Sooramangalam Union, Salem West Taluk, Salem District.

2. The grievance of the petitioner is that she is the owner of a larger extent of property and the land in Survey No.32/33 also belongs to the petitioner. According to the petitioner, the Salem corporation had encroached upon her land and had constructed a public toilet and thereby had totally



W.P.No.5088 of 2023

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blocked the ingress and egress of the petitioner into the property. The petitioner has therefore filed this writ petition for the removal of the public toilet.

3. When the matter came up for hearing on 22.02.2023, this Court passed the following order :-

This Writ Petition has been filed seeking to direct the respondents to remove the public toilet which constructed in the petitioner's land comprised in Resurvey No.32/33 situated at Mallamoopampatty Village, Sooramangalam Union, Salem West Taluk, Salem District.

2. It is the contention of the learned counsel for the petitioner that the petitioner is the absolute owner of the agricultural land measuring 1 acre 52 cents in Resurvey No.32/33 situated at Mallamoopampatty Village, Sooramangalam Union, Salem West Taluk, Salem District. Since, the petitioner is aged about 81 years, bedridden and taking medical treatment, the Respondent Corporation has constructed the public toilet by



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W.P.No.5088 of 2023

encroaching the petitioner's property. It is his further contention that even the area does not fall within the limits of the Respondent Corporation. Hence, submitted that unless the property is properly surveyed and identified, it is very difficult to prove his rights. Hence, seeks appointment of Advocate Commissioner.

3. Considering the plight of the petitioner, this Court is inclined to appoint an Advocate Commissioner in order to ascertain that if there is any encroachment made by the Respondent Corporation with regard to the petitioner's property.

4. Accordingly, Mr.M.Manohar, Enrl.No.2472/2016; Mobile No.94459 88479, having office at No.62, New Additional Law Chambers, High Court Buildings, Chennai - 600 104 is appointed as Advocate Commissioner, who shall go and inspect the land in question, after due intimation to all the parties and find out as to whether any encroachment made by the Respondent Corporation. The Tahsildar, Salem



WEB COPY



W.P.No.5088 of 2023

West is hereby directed to provide necessary assistance by deputing Head Surveyor with all the revenue records to the Advocate Commissioner and a detailed report as to the status of the property be filed before this Court by the Advocate Commissioner along with the relevant documents such as photographs, sketch etc., if any, on or before 10.03.2023.

5. The petitioner is directed to pay a sum of Rs.30,000/- (Rupees Thirty Thousand Only) towards remuneration to the learned Advocate Commissioner, apart from transportation and other incidental charges, within a period of two days from today.

6. For filing report of Advocate Commissioner, post the matter on 10.03.2023.

4. Pursuant to the above order, the Advocate Commissioner conducted the survey in the presence of both the parties. A report has been filed before this Court on 14.03.2023



W.P.No.5088 of 2023

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and the relevant portions in the report are extracted hereunder

3. *As per the directions of this Hon'ble Court, I went to the subject matter of the property on 06.03.2023 at about 10.a.m. Counsel for petitioner and respondent 1 to 3 were present in the subject matter of land. The son-in-law of the petitioner namely S.Nagarajan and the petitioner counsel MR.Balaramesh was present on behalf of the petitioner. The first respondent counsel namely Mrs.Devi was present. Mr.Tamilmani, Assistant Revenue Officer and suit clerk Mr.Sivakumar was also present on behalf of the 1st respondent. For the 2nd and 3rd respondent, Mr.M.Parivelan, Deputy Block Development Officer and Kumaresan, Head Surveyor was present.*



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W.P.No.5088 of 2023

4. *I respectfully submit that the public Toilet is situated at Mallamoopampatty Village Sooramangalam Union, Salem West Taluk, Salem District. The property is properly surveyed and identified before all the parties with the head surveyor.*

5. *I respectfully submit that the Public Toilet is situated on the western side of the road. The public toilet is totally admeasuring 839.5 Sq.Ft comprised in three survey numbers namely, land admeasuring 183 Sq.ft in Survey No.32/33 and Village Panchayat land admeasuring 419 $\frac{3}{4}$ Sqft in Survey No.33 and Ammapalayam, Salem Corporation land admeasuring 0.236 $\frac{3}{4}$ Sq.ft in Survey No.50/1, Ward A, Block 14, T.S.No.6/1. The land admeasuring adjacent to the road and constructed western side of the petitioner 183 sq.ft in S.No.32/33 is the private land*



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W.P.No.5088 of 2023

belonging to the petitioner Saraswathy ammal as per the Revenue Record. I have also verified with the Surveyor and Computer extract Chitta or Patta No.595 is standing in the name of the petitioner for the property admeasuring 0.52 ares in S.No.32/33.

Along with the above report, photographs and sketch have also been filed before this Court. According to the report, an extent of 183 Sq.ft has been encroached in Survey No.32/33 and this portion belongs to the petitioner.

5. This Court directed the 2nd and 3rd respondents to file a counter affidavit and accordingly, the Counter affidavit was also filed by the respondents 2 and 3 as well as the 1st respondent.

6. The matter came up for hearing on 02.03.2023 and it was reported before this Court by the learned counsel for Salem



W.P.No.5088 of 2023

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Corporation that the alleged encroachment into the property of the petitioner has been removed. This Court directed the learned counsel for the petitioner to take instructions and report before this Court.

7. The writ petition was posted for hearing today and this Court heard the learned counsel appearing on either side and perused the materials available on record.

8. The report filed by the Advocate Commissioner as well as the Counter affidavit filed by the 1st respondent shows that the total extent of the public toilet put up by the 1st respondent is 839.5 Sq.ft, which is comprised in three Survey Numbers. The same is clear from Page No.13 of the report which has been filed along with the report of the Advocate Commissioner. Insofar as the petitioner is concerned, the encroachment is confined to Survey No.32/33 to an extent of 183



W.P.No.5088 of 2023

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Sq.ft. This encroachment has been removed and the same is evident from photographs that were produced before this Court.

9. The learned counsel for the petitioner submitted that the left out portion containing structure above which there is a water tank and the compound wall must also be removed since there will be no use in keeping this structure and it will atleast provide an access to the property.

10. Per contra, the learned Standing counsel appearing on behalf of the Salem Corporation submitted that the Corporation is intending to remove this structure at the earliest point of time. However, the learned counsel submitted that the petitioner cannot be claiming any right or title over the property in which the remaining structure is existing as on today.

11. In reply to the above submissions, the learned counsel for petitioner submitted that the petitioner is not entitled to



W.P.No.5088 of 2023

claim any right over the property in which the existing structure is situated.

12. In the light of the above submissions, the Salem Corporation shall take immediate steps to demolish the existing structure which has absolutely no use to any one. This process shall be undertaken by the 1st respondent corporation within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the demolition of the existing structure will not create any new right or title for the petitioner over the said property. It is seen from photographs that there is a road passing through beyond the compound wall of the public toilet and if the existing structure is removed, at the best it will only provide for right to access the road. Beyond that, the petitioner cannot claim any other right.

13. This writ petition is disposed of in the above terms. A memo has been filed seeking for additional remuneration of



W.P.No.5088 of 2023

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Rs.10,000/- by the Advocate Commissioner. The said memo is ordered and there shall be a direction to the petitioner to pay the additional remuneration immediately.

12.04.2023

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To

- 1 The Commissioner
Salem City Municipal Corporation,
Main Office, Fort Main Road, Salem 636 001.
- 2 The Executive Officer,
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W.P.No.5088 of 2023

N.ANAND VENKATESH.,J
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W.P.No.5088 of 2023

12.04.2023