



WEB COPY



WP No.10532 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P No. 10532 of 2018

and W.M.P.Nos.12485 to 12487 & 39004 of 2018

G.Joseph

.. Petitioner

Versus

1. The District Collector
Thiruvallur District
Thiruvallur

2.The Superintending Engineer
Chennai Metropolitan Water Supply and
Sewerage Board
(Avadi Water Supply and Drainage Scheme)
Chennai – 600 002

3.The Commissioner
Avadi Municipality
Avadi

4.The Assistant Director of Survey and Lands
Thiruvallur District
Thiruvallur

5.The Revenue Divisional Officer
Thiruvallur District
Thiruvallur



WP No.10532 of 2018

6.The Tahsildar

Avadi Taluk

Avadi, Chennai – 600 054

7.The Tahsildar

Urban Land Tax Scheme

Avadi, Chennai – 600 054

8.Masjid-e-Mohamadia

Rep by its Secretary Mr.Amsa Bai

No.11, Karumariyamman Koil Street

Nandhavana Mettur

Avadi, Chennai – 600 054

9.The Special Tahsildar

Town Survey and Settlement

Avadi, Chennai – 600 054

(R9 Impleaded vide Order dated 31.08.2018 made

in W.M.P.No.26398/2018 in W.P.No.10532/2018 by MVJ & SRTJ)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Letter dated 12.02.2018 under Reference Na.Ka. No.105/2017/A1, issued by the 7th respondent and the consequential letter dated 13.2.2018, under Reference No. Na.Ka. No.8099/2018/F1, issued by the 3rd respondent and to quash the same and consequently direct the 3rd respondent to remove the encroachment put up by the 8th respondent here in at Gandhi 1st Street, Nandhavana Mettur, Chennai - 600 054 comprised in Town Survey Field No.14 Block No.29, G-Ward, Vilingiyambakkam Village, Avadi Municipality immediately.

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.A.Selvendran for R1, 4 to 7
Special Government Pleader



WP No.10532 of 2018

M/s.S.Deepika for R2

Mr.R.Gopinath for R3

Mr.Nissar Ahmed for R8
Senior Counsel

Mr.A.Nileshram
Advocate Commissioner

ORDER

(Order of the Court was made by **R. MAHADEVAN, J.**)

This Writ Petition has been filed for a writ of Certiorarified Mandamus to call for the records pertaining to the letter bearing No.Na.Ka.105/2017/A1, dated 12.02.2018 issued by the 7th respondent and consequential letter bearing No.Na.Ka.8099/2018/F1 dated 13.02.2018 issued by the 3rd respondent, quash the same and consequently direct the 3rd respondent to remove the encroachment put up by the 8th respondent herein at Gandhi 1st Street, Nandhavana Mettur, Chennai - 600 054 comprised in Town Survey Field No.14 Block No.29, G-Ward, Vilingiyambakkam Village, Avadi Municipality.

2.The facts in brief, are as follows:

2.1. According to the petitioner, the house property measuring an extent of 353 sq.mt, comprised in old survey no.246/1 Part, S.F.No.13, Block No.29,



WP No.10532 of 2018

Vilingiyambakkam Village, Avadi Municipality, Avadi, belongs to him. It is further stated that the only access to the said property is on the northern side through a 10 feet passage, which is known as Gandhi 1st street running through the property of the eighth respondent herein. It is also submitted that as per the survey conducted by the fourth respondent in respect of the entire Vilingiyambakkam village, the said property was assigned as Town Survey Field No.13 in Block No.29 and the property of the eighth respondent situated on the northern side of the petitioner's property was assigned as Town Survey Field Nos.9 and 22 and that, the Gandhi 1st Street was assigned as Town Survey Field No.14. While so, the second respondent, for the purpose of laying underground drainage system in the entire Nandhavanamettur Area, dug the Gandhi 1st street, which was opposed to by the eighth respondent and they went to the extent of encroaching the Gandhi 1st street by laying construction material, etc., and thereby prevented the petitioner from accessing to his property.

2.2. Feeling aggrieved, the petitioner made a representation dated 07.05.2015 to the 3rd respondent and another dated 08.06.2015 to the first respondent for removal of the encroachment made by the eighth respondent. Based on the same, as per the direction of the first respondent, the third



respondent directed the second respondent to complete the laying of underground drainage work in the Gandhi Nagar 1st Street. However, nothing progressed.

2.3. Thereafter, the petitioner made repeated representations to the respondent authorities for removal of encroachment made by the eighth respondent. Upon considering the same, the third respondent issued a notice dated 09.03.2017 to the 8th respondent under sections 182 and 183 of the Tamil Nadu District Municipalities Act, directing them to remove the encroachment, failing with, action would be taken under section 339(2) of the Act. However, the eighth respondent did not respond to the same, which compelled the petitioner to file WP.No.24415 of 2017. By order dated 12.09.2017, the said writ petition was disposed of, by directing the third respondent to act on the communication dated 02.11.2015 and notice dated 09.03.2017 after putting the 8th respondent on notice and take action, within a period of six weeks. But the said order has not been acted upon, which forced the petitioner to issue contempt notice dated 07.02.2018 to the third respondent.

2.4. Upon receipt of the contempt notice, the third respondent by reply dated 13.02.2018, rejected the claim of the petitioner stating that the property in



WP No.10532 of 2018

SF No.246/6, TS No.14, Ward G Block 29, Vilingiyambakkam Village which is said to have been encroached by the eighth respondent, was wrongly recorded as sarkar poramboke in the Revenue records, as per the report of the seventh respondent dated 12.02.2018 and therefore, further action cannot be taken by the third respondent. Stating that the report of the seventh respondent dated 12.02.2018 is illegal and without jurisdiction, as he has no power to pass such an order under the Tamil Nadu Survey and Boundaries Act, 1923, the petitioner has come up with this writ petition for the aforesaid relief.

3.On 08.03.2023, when the matter was taken up for consideration, after considering the submissions made by the learned counsel appearing for all the parties, this court appointed an Advocate Commissioner to conduct inspection of the subject property / pathway, note down the physical features of the same and file a report enclosing necessary documents. Accordingly, the Advocate Commissioner conducted inspection and filed his report on 11.04.2023, in which, in paragraphs 7 and 8, it has been stated as follows:

"7.....I started to inspect the physical feature of the subject pathway / property (T.S. No.14). The said T.S. No.14 was also named as Gandhi Street 3rd Cross by the Local Body. It is submitted that to my visual appearance, there runs a pathway from north to south direction. It starts from the Gandhi Street and ends in T.S.No.13. It extended as a pathway in between T.S.No.15 on the east side (there is a two storeyed red colour house) and T.S.No.8 on the west side (There is a one storeyed green colour house). I further submit that next to



T.S.No.15 on the eastern side of T.S.No.14 (Pathway) is T.S.No.22 which is a vacant land and next to T.S.No.8 on the western side of T.S.No.14 (Pathway) is T.S.No.9 (There is shed made of blue metal sheets). At the southern end of T.S.No.14, it was closed and blocked with tall blue metal sheets along with the southern end of T.S.No.22 and that is where T.S.No.13 starts. I further submit that the EB line to the above survey numbers also runs exactly above and along the T.S.No.14 and ends inside T.S.No.13. ...

8.I submit that I was not able to see and determine the physical feature of the T.S.No.13, since its entry was closed by metal sheets, so we went around to see if there is any other way to ascertain the T.S.No.13, but there was no way around. So I along with the surveyor and officials went to the terrace of two houses in T.S.No.23 and 24 which are present in eastern adjacent side of T.S.No.13 to see its physical features. It is submitted that to my physical observation T.S.No.13 is surrounded by other properties on the east, west and southern side and on the northern side it was closed by blue metal sheets erected in T.S.Nos.22, 9 and 14 (pathway).

9.I submit that in T.S.No.13 there are two tile houses and they are in dilapidated state, one small well, EB line post and surrounded with trees. It is also submitted that again I gone through the revenue record (Survey Map) to ascertain if there is any other access and pathway to the T.S.No.13, but to my understanding on perusal of the revenue record (Survey Map) also, there was no other access to the T.S.No.13 except through the subject pathway (T.S.No.14). The subject property / pathway for which I was warranted to inspect is presently, a pathway physically and also as per the record. It passes through anterior lands of third parties in T.S.Nos.8 and 15 and ending to T.S.No.13..."

Thus, according to the Advocate Commissioner, there is an encroachment in the subject property.

4.The report so filed by the Advocate Commissioner has been conceded by the learned counsel for the petitioner.

5.Refuting the averments so made in the report of the Advocate Commissioner, the learned counsel for the eighth respondent submitted that the



WP No.10532 of 2018

property comprised in S.No.246/6 Villinjampakkam Villlage, measuring 13 cents originally belonged to one V.Mohammed Zakariah, by virtue of a registered sale deed dated 30.07.1964 bearing Doc.No.1950/1964 and he endowed the said property to the eighth respondent wakf under a settlement deed dated 05.05.1979 bearing Doc.No.1484/1979. Since then, the property is in possession and enjoyment of the eighth respondent and has been registered with the Tamil Nadu Wakf Board. The learned counsel further submitted that the petitioner never had any access or right of way over this respondent's property, which is situated on the northern side of his property; and that, the revenue records wrongly reflect the said wakf property as grama natham and a lane to be running in between the wakf property and that, the Tamil Nadu Wakf Board has already requested the authorities concerned to rectify the same and restore the name of the Wakf in all the records, but the same has not been considered till date.

6.Considering the facts and circumstances of the case and having regard to the rival submissions and also taking note of the report filed by the Advocate Commissioner, this court, without going into the merits of the case, directs the third respondent to verify all the revenue records, such as, FMB sketch, field



WP No.10532 of 2018

map, title deeds of the respective parties, etc. and thereafter, proceed further with respect to removal of encroachment, if any, as per law and after providing due opportunity of hearing to all the parties, including the petitioner and the private respondent herein, within a period of eight weeks from the date of receipt of a copy of this Order.

7. Along with his report, the Advocate Commissioner filed a Memo dated 11.04.2023 seeking additional remuneration, by stating that he spent additional expenses for travel, typing and preparation of report and other miscellaneous expenses. Considering the nature of the work done by him, this Court directs the petitioner to pay a sum of Rs.10,000/- as additional remuneration to the Advocate Commissioner, within a period of one week from today.

8. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

J.]

[R.M.D., J.]

[M.S.Q.,

13.04.2023

Index : Yes / No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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