



W.P.No.9344 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.9344 of 2011

Izan Basha

.. Petitioner

Versus

1.The Commissioner,
Villivakkam Panchayat Union,
Ambattur,
Chennai – 600 053.

2.R.Joseph Gunasekaran

3.The Commissioner,
Corporation of Chennai,
Chennai – 600 003.

4.The Tahshildar,
Office of the Tahshildar,
Ambattur Taluk,
Ambattur – 600 053.

5.V.Ramarathinam

6.R.Parimala

.. Respondents

[RR3 to 6 impleaded vide order
dated 31.10.2018 made in
M.P.No.1 of 2018 in
W.P.No.9844 of 2011]



W.P.No.9344 of 2011

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Se.Mu.Na.Ka.No.3290/2009/A3 dated 25.03.2011 and including all further proceedings and quash the proceedings of the 1st respondent in Se.Mu.Na.Ka.No.3290/2009/A3 dated 25.03.2011 and direct the first respondent to maintain the existing 24 feet wide Gopi Street, Raja Garden, Nolambur, free from any encroachment.

For Petitioner : Mr.D.Balaraman

For Respondents

For R1 : Mr.B.Anand

For R2 : No appearance

For R3 : Mr.P.T.Ramachandran

For R4 : Mr.V.Nanmaran

Additional Government Pleader

For R5 & 6 : Mr.I.Abrar Mohamed Abdullah

ORDER

This writ petition has been filed to quash the proceedings of the 1st respondent in Se.Mu.Na.Ka.No.3290/2009/A3 dated 25.03.2011 and direct the first respondent to maintain the existing 24 feet wide Gopi Street, Raja Garden, Nolambur, free from any encroachment.



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2. The petitioner is a purchaser of Plot No.21-B situated at Gopi Street, Raja Garden, Nolambur, Maduravoyal, Chennai, and he had constructed a house in the year 2006 as per the approved plan given by Chennai Metropolitan Development Authority (hereinafter referred to as CMDA).

3. The petitioner's vendor had purchased a Plot No.21 in the CMDA approved layout under a Sale Deed dated 27.03.2003. Subsequently, the said plot was sub-divided into two plots. The said plots were assigned as Plot No.21-A and Plot No.21-B as per the approval of CMDA, Chennai, vide Wa.Ka.A3/3575/05 dated 24.08.2005 (P.P.No.8879 dated 26.09.2005). Accordingly, the petitioner had purchased Plot No.21-B and constructed a house as per the approved building plan and it is assessed to tax. The sole access to his house is particularly 24 feet wide Gopi Street. In the year 2008, it appears that there was a dispute between the second respondent herein and his rear side owner of the Plot No.29. It is claimed by the second respondent that the owner of the Plot No.29 has encroached 7 feet inside Plot No.22. Accordingly, he has filed a writ petition in W.P.No.10871 of

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2010 wherein this Court, by an order dated 26.07.2010, directed the respondent to conduct an enquiry within a period of four weeks from the date of receipt of a copy of this order. Thereafter, since no orders are forthcoming, a contempt application has been filed. To avoid the same, the impugned order has been passed.

4. According to the learned counsel for the petitioner, the reasons assigned for cancelling the approved plan is without any basis. In fact, Plot No.21 was sub-divided with the permission of CMDA which had approved the same. On the contrary, the impugned order proceeds as if there is no such approval from the CMDA. Hence, he seeks to set aside the order.

5. According to the learned counsel appearing for the respondents 5 and 6, they have purchased the Plot No.29 and the learned counsel for the third respondent submitted that the order has been passed pursuant to the direction of this Court and there is some violations in the planning permission.



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6. I have perused the entire materials available on record. The impugned order proceeded mainly on the ground that there is some violations in sub-dividing the Plot No.21. Besides 16 feet road alone is sanctioned in the Plot whereas the same has been converted into 24 feet road.

7. On perusal of the Sale Deed filed by both the parties relating to the Plot No.29 and 21 and the same reveal that only 24 feet road has been given. With regard to the other violations particularly the violation of Sub-division of the Plot No.21-A and 21-B, the main contention of the Corporation is that the same has been done without approval from the CMDA. The documents produced before this Court makes it very clear that the CMDA has approved the Sub-Division of plan on 26.05.2005 itself and planning permission has been accorded. Therefore, the impugned order is without any basis.

8. It is relevant to note that this order seems to be passed only to avoid the contempt action based on the writ petition by the second respondent, without verifying its own records by holding that there was no



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sub-division. The order has been passed without any basis. Now, the learned counsel for the petitioner submitted that Plot No.22 had also been purchased by the owner of Plot No.29. Now, the existing road is only 24 feet and the width of the road is not disputed by the respondents 5 and 6. In view of the above, the order passed by the 1st respondent is liable to be set aside.

9. Accordingly, the writ petition stands allowed and the order passed by the first respondent dated 25.03.2011 is hereby set aside. No costs.

30.01.2023

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Index : Yes / No

Speaking Order : Yes / No

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N.SATHISH KUMAR, J.

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