



W.P. No. 9625 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 9625 of 2019

Ashok Leyland Employees Co-operative
Industrial Housing Society,
represented by its President,
No.101, Sir-A Ramasamy Mudaliar Nagar,
Thiruvottiyur,
Chennai – 600 019.

..Petitioner

Vs.

1. The Additional Chief Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai -9.
2. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai -3.
3. The Regional Deputy Commissioner
(North),
Greater Chennai Corporation,
Moolakothalam, Chennai – 600 021.



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4. The Zonal Officer,
Greater Chennai Corporation,
Zone-I, Tiruvottiyur,
Chennai – 19.

5. Thiru. Sivashankar

6. Thiru. V. Krishnan

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondents 1 to 4 to remove the illegal encroachments made by the 5th and 6th respondents on the public road comprising in Survey No. 618/A and 281/3 at Sir-A Ramasamy Mudaliar Nagar, Tiruvottiyur, Chennai and consequently restore the survey marks and public road on the basis of the representations of the petitioner dated 16.08.2016, 21.10.2016, 04.02.2017, 21.09.2017, 25.04.2018 and finally 01.12.2018.

For Petitioner :: Ms.K. Janani

For Respondents :: Mr.J. Ravindran,
Addl. Advocate General
assisted by Mr.A. Selvendran,
Special Govt. Pleader for R1
Mr.M. Ganesan,
Standing Counsel for R2 to R4
Mr.U. Suriya Sankar for R5 & R6



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ORDER

(Made by S. Vaidyanathan,J.)

The present writ petition has been filed seeking issue of a Writ of Mandamus directing respondents 1 to 4 to remove the illegal encroachments made by the 5th and 6th respondents on the public road comprising in Survey Nos. 618/A and 281/3 at Sir-A Ramasamy Mudaliar Nagar, Tiruvottiyur, Chennai and consequently restore the survey marks and public road on the basis of the representations of the petitioner dated 16.08.2016, 21.10.2016, 04.02.2017, 21.09.2017, 25.04.2018 and finally 01.12.2018.

2. The case of the petitioner, in brief, is as hereunder:

(i) The petitioner is a Housing Society registered under the Societies Registration Act, 1860 formed for the purpose of providing house sites to the erstwhile employees of M/s. Ashok Leyland Limited, Ennore. For the said purpose, the Society purchased lands to an extent of 10.17 acres in Thiruvottiyur Village by a registered sale deed dated 24.09.1962 bearing Registration No.3282 of 1962 and 635/1963 on the file of Sub-Registrar, Sembium. After converting the land into 172 house sites, with the approval



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of L.P.H/DTH bearing No. 92/1963, which was later approved by MMDA bearing approval layout PPN. LP.NO. 9/77, the house sites were allotted by the society to its members for a considerable amount. Even at the time of sanctioning layout, a pucca road of width 60feet was earmarked and this road was locally known as *Sadayankuppam Battai* comprised in Survey Nos. 274, 275, 276, 279, 280, 418 and 618/B.

(ii) The petitioner Society executed a gift deed dated 20.03.2002 bearing No. 1018/2002 conveying certain portions of land scheduled therein to then Tiruvottiyur Municipality for public purpose such as laying roads, water and sewerage connections, erecting electrical poles, street lights, etc. However, the land conveyed by the petitioner society was neither maintained properly nor utilised for the purpose for which it was conveyed resulting in encroachments mushrooming in the lands conveyed to the Municipality and therefore, the petitioner filed W.P. No. 3039 of 2011 for a direction to the authorities to evict the illegal encroachments made by one *Berachah Prayer House* on the subject land, which was conveyed to the Municipality for public purpose. The said writ petition came to be allowed by order dated 12.04.2011 and the same was affirmed by a Division Bench



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of this Court in W.A. No. 704 of 2011 by judgment dated 29.04.2011 and also by the Hon'ble Apex Court by order dated 22.07.2015 in SLP (C) No. 14883 of 2011.

(iii) In the year 2011, the Tiruvottiyur region was brought under the canopy of Greater Chennai Corporation. Pursuant to the order passed by the Hon'ble Apex Court, the 2nd respondent, with the aid of 3rd and 4th respondents, removed the encroachment made in Survey No. 618/A alone. As the order passed by the Apex Court was not implemented in toto, the petitioner Society had taken steps to initiate contempt proceedings. While so, the 5th and 6th respondents had encroached the other portion comprising of Survey No. 618/A and 281/3 of land conveyed to the then Municipality, which is now under the possession of the 2nd respondent Corporation. The 5th respondent has encroached about 300 sq.ft of road measuring 10 feet in width and 30 feet in length and had erected structures, rented a tea shop, bunk shop and butcher shop while the 6th respondent has encroached upon 600 sq.ft of road measuring 20 feet in width and 30 feet in length and has put up a welding shop right on the road, thereby causing great inconvenience to the members of the petitioner society and the public at



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large. The representations made by the petitioner society to the authorities informing about the encroachments and seeking necessary action to remove them did not evoke any response necessitating the petitioner to file the present writ petition.

3. The 5th and 6th respondents, have filed counter affidavits, on the same lines, wherein it is stated as hereunder:

(i) The alleged President and representative of the petitioner in the present writ petition is a trouble monger and also a court bird and he is used to launching litigations for his personal, unlawful and unjust benefits, not only against innocent public, but also against Government Officials. The property covered in the writ petition comprised in Survey No. 618/A (Part) of Tiruvottiyur Village & Taluk, is admittedly a Government Poramboke and it has been in continuous, uninterrupted and independent possession and enjoyment of nearly thirty families including these respondents for more than 60 years and the occupants of the said area have formed an association named as Thiruvotriyur Kamaraj Nagar Kudisai Vazhvor Sangam, which is a registered society and they have been requesting the Government for issuing patta in respect of the land in Survey No. 618/A for



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several decades to the members of the said society. According to the private respondents, this is the 3rd round of litigation initiated against them for the same relief in respect of the same property with different version and that the petitioner has suppressed the pendency of connected civil litigations. It is also their case that the petitioner had clandestinely obtained MMDA approval for layout bearing No.PPN 9/1977 and Re-Layout Approval in the year 1983 by wrongly including the Government Poramboke land comprised in Survey No. 618/A which is under their occupation for several decades, as if it is a patta land of the petitioner and gifted the same to the Government body for public purpose, which is illegal. The private respondents have further stated that the petitioner had filed a suit in O.S. No. 665 of 1987 before the District Munsif Court, Ponneri against the Chairman, Tamil Nadu Slum Clearance Board and sought mandatory injunction and permanent injunction in respect of the land in Survey No. 618/A of Thiruvottiyur Village as if it was a private property of the petitioner, which came to be dismissed on merits on 14.11.1995 as against which A.S. No. 61 of 1996 was filed before the Sub Court, Tiruvallur, and a decree was obtained behind their back by playing fraud on the Court.



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Pursuant to the decree obtained, execution petition was filed for removal of alleged encroachments as against the Tamil Nadu Slum Clearance Board.

E.A. No. 58 of 2015 was also filed by the petitioner in the said execution petition before the District Munsif Court, Thiruvottiyur, as if the private respondents were obstructing the execution of decree and sought their removal.

(ii) It is their further case that several writ petitions were filed by the petitioner for removal of so-called encroachments in the subject property and in one such writ petition, namely, W.P. No. 26435 of 2013, the Hon'ble First Bench of this Court, while modifying the earlier order passed by this Court in W.P. No. 38717 of 2005, filed by one Jayaraman, seeking an order for removal of alleged encroachments made in the Scheme Road at *Sadayankuppam Battai*, which came to be disposed of on 20.12.2005 directing the statutory authorities to remove the alleged encroachments, if any and to submit a report, directed all the Government Authorities to have collective application of mind by all statutory authorities and also to ascertain whether the rights of the petitioner have been prejudiced by the regularization of encroachments and issuance of pattas and granted four



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months time to sort out the issue. While issuing the said direction, the First Bench had referred to the counter filed by CMDA in W.P. No. 2360 of 1989 wherein it was stated that the entire area was declared as Slum Area by the Tamil Nadu Slum Clearance Board and slum improvement programme was also approved in favour of Tamil Nadu Slum Clearance Board in the year 1991.

(iii) It is further stated that pursuant to the orders passed in W.P. No. 26435 of 2013, the District Collector, Tiruvallur, had conducted a comprehensive enquiry, in consultation with various Government Authorities of different departments and after obtaining statements from parties concerned and based on the reports and records submitted by the statutory authorities, passed a well-considered order on 26.03.2018 holding that there are no encroachments in the *Sadayankuppam Battai* Government poramboke as complained by the petitioner and rejected their representation and claim to remove the alleged encroachments. Aggrieved by the said order, W.P. No. 15681 of 2019 has been filed by the petitioner and the same is pending. Though the petitioner claims to have purchased the lands totalling 10.17 acres, neither any sale deed nor any patta has been produced



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to substantiate their claim and there is no obstruction in the road as alleged by the petitioner.

4. On behalf of respondents 2 to 4, a counter affidavit dated 16.07.2019 has been filed by the 4th respondent stating that though the Tiruvottiyur Municipality was merged with the Corporation of Chennai vide G.O.Ms. No. 97 MA & WS Department dated 19.07.2011, the so called road namely *Sadayankuppam Battai* comprised in S.Nos. 274, 275, 276, 279, 280, 282, 418 and 618B, Tiruvottiyur Village has not been handed over by the Tiruvottiyur Municipality to the Corporation of Chennai. It is also stated that the then Municipal Commissioner, Tiruvottiyur Municipality, had written a letter dated 31.12.1999 to the District Collector, Tiruvallur, stating that while preparing Town Planning Scheme in the Government poramboke vehicular road comprised in the aforesaid survey numbers, it was proposed to form 10 feet wide road and presently the aforesaid Town Planning Project had been dropped at draft stage itself. Since the encroachment was within the Government Poramboke land as per Revenue Records, the then Commissioner, Tiruvottiyur Municipality requested the



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Collector to give necessary direction to the Revenue Officials to remove the encroachments as per the Court order. Moreover, it is stated that since the alleged road had not been handed over to the Greater Chennai Corporation, the Greater Chennai Corporation was not in a position to take necessary action especially when it falls within the Government Poramboke land as per Revenue Records and Collector of Tiruvallur, alone was competent to take action against the encroachers. Further, in the Second Master Plan, it was not shown as road. The counter affidavit also states that pursuant to the orders passed by this Court in the writ petition filed by the petitioner in W.P. No. 26435 of 2013 seeking for a direction to the authorities concerned to remove the encroachments, the District Collector, Tiruvallur had conducted a meeting with the officials of Chennai Metropolitan Development Authority, Tamil Nadu Slum Clearance Board, Revenue Authorities along with the officials of Greater Chennai Corporation on various dates and after affording an opportunity of personal hearing to the petitioner and another, by name, Jayaraman, the District Collector, Tiruvallur had passed orders dated 26.03.2018 observing that the petitioner association was having access through Manali Expressway and there was no



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encroachment as alleged by the petitioner in the said locality and rejected the claim of the petitioner.

5. When the matter was listed before this Court on 05.03.2021, this Court had passed the following order:

“...Counter affidavit filed by the 4th respondent is bereft of material particulars as to the removal of the encroachment in S.Nos. 618/A and 281/3 of Sir-A Ramasamy Mudaliar Nagar, Thiruvottiyur, Chennai – 19...”

Pursuant to the said order, a status report was filed by the Corporation of Chennai dated 29.07.2021 stating that notice under Section 220 read with 222 of the Chennai City Municipal Corporation Act IV of 1919 was served on 15.04.2021 on the alleged encroachers calling upon them to remove the encroachment within 3 days. Since no such removal was made, demolition of the superstructure was carried on, on 22.04.2021, completely in respect of 2 shops and partially in respect of one shop. Even then, the alleged encroachers had reconstructed similar construction at the same place on 23.04.2021 and therefore, stop work notice was also issued under Section



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56(1) and 57 r/w Section 85 of Tamil Nadu Town and Country Planning Act, 1971 on 23.04.2021. In the said report, the Corporation has admitted that there is encroachment in respect of S.No. 618/A and 281/3 at Sir A. Ramasamy Mudaliar Nagar, Thiruvottiyur and that the said portion was gifted to the Greater Chennai Corporation. The Corporation had also filed photographs of the encroached area.

6. Heard both sides.

7. The fact that the petitioner association had purchased the property totalling 10.17 acres and the same were converted to house sites and allotted to its members is not in dispute. It is also not in dispute that a portion of the land has been gifted to the Tiruvottiyur Municipality, which has been now taken over by the Chennai Corporation. Admittedly, the portion of the land said to have been encroached by respondents 5 and 6 is a vandipathai and steps have been taken by the Corporation to remove the encroachments and the demolished structures have been reconstructed by respondents 5 and 6. It is very clear that respondents 5 and 6 have encroached upon public road belonging to the Corporation. Even assuming



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for the sake of argument that it is a vandipathai and it cannot be gifted, the factum that it belongs to the Government is not in dispute. No one can encroach upon Government property, much less the members of the petitioner association or respondents 5 and 6.

8. ***Section 220 of Chennai City Municipal Corporation Act, 1919***, prohibits building of any wall or erection of any fence or other obstructions or projections or make any encroachment in or over any street or any public place, the control of which is vested in the Corporation and ***Section 222 of the said Act*** lays down the procedure for removal of encroachment made in any land, the control of which is vested with the Corporation. The said provisions are extracted hereunder:

“220. Prohibition against obstruction in streets:- No one shall build any wall or erect any fence or other ⁵[obstruction or projection or make any encroachments] in or over any street ⁶[or any public place, the control of which is vested in the Corporation) except as hereinafter provided.”



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222. Removal of Encroachments:- (1) *The Commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than door, gate, bar or ground-floor window) situated against or in front of such premises and in or, over, any street ¹or any public place, the control of which is vested in the Corporation]*

(2) *If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a perspective title 2[or where such period is less than thirty years, for a period of thirty years] or that it was erected with the consent of any municipal authority duly empowered in that behalf and that the period, if any, for which the consent is valid has not expired, the Corporation shall make reasonable compensation to any person who suffers damage by the removal or alteration of the same.”*

9. Learned Standing counsel appearing for the Chennai Corporation would submit that the Chennai Corporation is willing to remove the encroachments with the help of Police and that the Court may direct the Police to render assistance to remove the encroachments.



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10. Inasmuch as it has been admitted by the respondent Corporation in its additional counter that there is encroachment in respect of S.No. 618/A and 281/3 at Sri.A. Ramasamy Muthaliar Nagar, Thiruvottiyur, Chennai, which is a gifted property to the respondent Corporation and taking note of the pleadings of the Chennai Corporation, ***the encroachment shall be removed with the help of Police within a period of one week from the date of receipt of a copy of this order.***

11. The contention of 5th and 6th respondents that the writ petitioner is a court bird cannot be accepted. Any person can bring it to the knowledge of the Court about the encroachment on public property. It is not necessary that the petitioner should reside there. However, in the present case, the petitioner association had brought to notice of this Court by filing the writ petition stating that the property in question had been purchased by the association for its members welfare. Hence, we are of the view that encroachment will have to be removed. We make it very clear that if the encroachment is not removed within a period of one week from the date of receipt of a copy of this order, as stated supra, the Commissioner, Greater

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Chennai Corporation is expected to initiate action against the officials, who are responsible for not taking proper action to remove the encroachments. The Authorities are expected to follow the dictum of this Court in W.P. No. 28143 of 2021 dated 27.10.2022 and the various decisions referred to therein and apply the principles in its letter and spirit. The officials who fail to discharge the duty are traitors and unfit to be in Government Service and we expect the Government to initiate disciplinary proceedings for a major misconduct against the officials who fail to discharge their duty honestly and impose major punishment and enter the same in their service records.

12. With the above direction, the writ petition stands disposed of.

nv

(S.V.N.J.) (K.R.S.J.)
28.07.2023

S. VAIDYANATHAN,J.



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AND

K. RAJASEKAR,J.

nv

To

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Municipal Administration and
Water Supply Department,
Fort St. George, Chennai -9.
2. The Commissioner,
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