



W.P. No. 16776 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K. RAJASEKAR

W.P. No. 16776 of 2018

&

W.M.P. Nos. 19959 to 19961 of 2018

K. Srinivasa Reddy

..Petitioner

Vs.

1. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Housing Unit,
Hosur 635 019.

2. The Thasildar,
Hosur Taluk, Hosur 635 109.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying



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for issue of a Writ of Certiorarified Mandamus to call for the records in Letter No.B2/5389/05 dated 28.06.2018 of the 1st respondent, quash the same and direct the respondents to survey and demarcate the lands of the petitioner and respondents.

For Petitioner :: Mr.P. Subba Reddy

For Respondents :: M/s. Sivagamasundari
 Ramachandran for R1
 Mr.A. Selvendran,
 Special Govt. Pleader for
 R2

O R D E R

(Made by S. Vaidyanathan,J.)

The present writ petition has been filed for issue of a Writ of Writ of Certiorarified Mandamus to call for the records in Letter No.B2/5389/05 dated 28.06.2018 of the 1st respondent, quash the same and direct the respondents to survey and demarcate the lands of the petitioner and respondents.

2. The case of the petitioner is that he and his wife had purchased



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some properties as early as in the year 1995 in Survey Nos. 363/2 and 357 in Hosur Village, Hosur Town, Dharmapuri District, Krishnagiri and they have been in peaceful possession and enjoyment of the same. After obtaining permission, he has constructed residential buildings in Survey No. 363/2 and another building has been constructed in Survey No.357, wherein a ladies hostel is run by M/s. Gabriel India Limited, the lessee of the petitioner. The petitioner is stated to have paid all necessary taxes till date.

3. According to the petitioner, the Housing Board had developed around 60 houses on adjacent lands and there is a compound wall separating the property of the respondents from that of the petitioner. That being so, on 28.06.2018, the respondent Housing Board had issued a notice alleging that the petitioner had encroached upon their lands, without even mentioning the survey numbers and the petitioner was asked to demolish and hand over the possession of the property within seven days. Hence, the present writ petition.

4. When the writ petition came up before this Court on



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05.07.2018, it was submitted on behalf of the 2nd respondent that the construction put up by the petitioner was wholly unauthorised as the planning permission sought by the petitioner was not issued for want of "No Objection" certificate from the Tamil Nadu Housing Board. Further, it was stated on behalf of the 1st respondent that the petitioner had caused an encroachment on a portion of the land in Survey No. 362, which belongs to the Tamil Nadu Housing Board. After hearing the submissions on either side, this Court, while granting interim stay for a limited period, directed the Executive Engineer, Hosur Municipality or any other delegated official to cause inspection of the superstructure said to have been put up by the petitioner on the lands in question and to file a status report as to whether the said superstructure is authorised/deviated/unauthorised.

5. The 1st respondent, pursuant to the directions of this Court, stated supra, filed the status report stating that the petitioner has encroached upon the land belonging to the Tamil Nadu Housing Board and prayed for an appropriate direction for removal of encroachment. As the petitioner stoutly refuted the report filed by the 1st respondent with regard to the



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encroachment made by the petitioner, this Court, by order dated 16.02.2023, appointed an Advocate Commissioner to visit the subject property and find out whether there is any encroachment and if so, the extent of encroachment.

6. The Advocate Commissioner, after causing inspection and after verifying the material records, submitted his report dated 17.07.2023 to the following effect:

"8. In the result, I have found that the 1st respondent encroached the petitioner's land into 2 feet in S.No. 363/2 and constructed a compound wall from the left to right over the length of 20 meters for the extent of a 140 square meter in the petitioner's land.

9. On the other hand, the petitioner have made an encroachment in the respondent area in Survey No. 362 by constructed a part of his ladies hostel building (Right Side Part of Building) along with the playground for the use of his ladies hostel members, over the extent of 490 square meter."

7. From the report of the Advocate Commissioner, it is evident



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that encroachment has been made by both parties. Though it is submitted on behalf of the petitioner that the petitioner is willing to exchange the land, the said proposal was not well-received by the Housing Board for the reason that it would amount to changing the entire layout and the persons, who are legally occupying the area in and around the pathway would get affected.

8. Learned counsel for the petitioner further submitted that the petitioner is willing to buy the property by paying the present guideline value/market value. However, on behalf of the Housing Board, it was submitted that there are no encroachments by the Housing Board in the property of the petitioner and that it is the petitioner, who has encroached upon the road.

9. As already stated, from the report of the Advocate Commissioner, it is seen that there are encroachments in the property in question. We are of the view that an encroacher, whomsoever it may be, cannot be dealt with slightly and the encroachment will have to be cleared forthwith. The question of permitting the petitioner to buy the portion



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marked as road is not acceptable as it would embolden people to buy public properties like OSR, parks, etc.

10. In the light of the observations aforesaid, we are not inclined to grant the relief sought by the petitioner. However, the authority concerned shall remove the encroachment made by the petitioner as well as Tamil Nadu Housing Board, if any. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order. The officials shall be given police protection to carry out the removal of encroachment. In case, the encroachment found is not removed, appropriate action shall be taken against the officials *in the light of the order dated 30.08.2023 passed by the Madurai Bench of Madras High Court in W.P.(MD) No. 16120 of 2023 (N. Sankar V. The Principal Secretary, Town and Country Planning and 3 others)*. The writ petition is disposed of accordingly. No costs. Connected W.M.Ps are closed.

nv

(S.V.N.J.) (K.R.S.J.)
11.12.2023

S. VAIDYANATHAN,J.

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AND

K. RAJASEKAR,J.

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To

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