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W.P. No.19234 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.19234 of 2018

Kamakshi Sukumar

Petitioner

v

1 The Divisional Engineer (Highways)
Chennai Metropolitan Road Division
Saidapet
Chennai 600 015

2 The Assistant Divisional Engineer (Highways)
Tambaram
Chennai 600 100

3 The District Collector
Kancheepuram District

4 The Tahsildar
Tambaram
Kancheepuram District

5 Jeyachandran

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the official respondents to remove the encroachments in Rajakilpakkam-Velacherry Main Road at 17/0 – 17/6 kms. abetting the petitioner's property in S.No.27A/1B/1B of Rajakilpakkam Village.



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For RR 1 to 4

Mr. A. Selvendran
Special Government Pleader

For R5

Mr. S. Jagannathan

Advocate Commissioner Mr. Sharath Chandran

ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed seeking a writ of mandamus directing the official respondents to remove the encroachments in Rajakilpakkam-Velacherry Main Road at 17/0 – 17/6 kms. abetting the petitioner's property in S.No.27A/1B/1B of Rajakilpakkam Village.

2 On 01.08.2023, in order to enable this Court to give a quietus to the matter, this Court appointed Mr. Sharath Chandran, learned counsel, as Advocate Commissioner, who has submitted a detailed report dated 19.09.2023, the relevant portion of which is extracted below:

“1. By an order dated 01.08.2023, this Hon’ble Court had directed the undersigned to inspect the alleged encroachments at 17/0 -17/6 kilometers abetting the Petitioner’s property in S.No.27A/1B/1B, Rajakilpakkam village, Chennai, with the assistance of the surveyor. This Hon’ble Court was also pleased to direct that the copy of the earlier order dated 15.03.2021 as well as the counter affidavit dated 11.03.2021 filed by one Mr. N. Anandaraj, Assistant Divisional Engineer (ADE) (Highways), (Tambaram), were to be furnished the undersigned to facilitate inspection.

2. The undersigned issued notice to Mr. S.V. Karthikeyan, learned counsel for the Petitioner, as well as the Officials (Respondents 1 to 4) and the 5th Respondent Mr. Jeyachandran, who is stated to be running a shop in the premises, fixing the date of inspection on 01.09.2023 at 15:00 hrs.



Notice issued to Mr. Jeyachandran was however, returned.

3. The Premises was inspected by the undersigned on 01.09.2023 between 3:30 to 4:30 pm in the presence of:

- 1.Mrs. Kamakshi Sukumar, Petitioner
- 2.Mr. S.V. Karthikeyan, Counsel for the Petitioner
- 3.Ms. S. Subashini, Assistant Surveyor
- 4.K. Vasanthakumar, Assistant Engineer (Highways)
- 5.Mr. K. Balamurugan, VAO (Revenue Department)
- 6.Mr. Easuraja, Employee of Jaya Depot and Hardware, Proprietor
- Mr. P. Edward, the owner of the building in question.

4. Prior to the inspection, the undersigned had ascertained from the shops functioning in the building that the building was owned by Mr. P. Edward, the owner of Jaya Depot and Hardware, which functions in the ground floor of the said building. The undersigned interacted with Mr. Easuraja, an employee who informed Mr. P. Edward over phone that the inspection team was waiting for his presence. After waiting for some time, as there was no confirmation if Mr. P. Edward would arrive at the premises, the undersigned requested Mr. Easuraja who was the employee of Mr. P. Edward, to be present.

5. The, VAO Mr. K. Balamurugan produced the FMB Sketch for Survey No.27A which has now been sub-divided. With the assistance of the Officials of the Revenue Department and the Assistant Divisional Engineer (Highways) (Tambaram), and the Surveyor Mr. V.S. Rao, the premises was inspected and measured.

OBSERVATIONS

i. The building in question is a G + 2 floors structure. The ground floor is occupied by “Smart Mobiles” a mobile phone accessory shop and Jaya Depot and Hardware, owned by Mr. P. Edward who is also stated to be the owner of the building.

ii. Upon physical inspection of the land and building, it was found that there is an encroachment of **1.6 meters on the first and second floor** for a total length of 14.3 meters. The **ground floor is encroached by 2.3 meters** for the entire length of 14.3 meters. The photographs enclosed as Annexure C8 would show that the steps to the building (total extent of 0.7 meters) have been constructed over a portion of the storm water drain on the GST-Velachery Road built by the Highways Department.

iii. It should also be pointed out that in the said survey number, there is a TASMACH shop presently functioning. The observations made by the Surveyor together with his rough sketch is enclosed as **Annexure C5**.

iv. In the counter affidavit dated 11.03.2021 filed by the Assistant Divisional Engineer (Highways) (Tambaram), it has been stated as follows:



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“I respectfully submit that in spite of notice, dated 02.02.2021, the fifth respondent did not remove the encroachment. Therefore, with the assistance of the Revenue Department officials, Police Officials and in co-ordination with the Highways Department officials, the temporary encroachment on the Storm water drain made by the fifth Respondent was removed and the sunshade put up had been razed down. The temporary encroachments made by the fifth respondent were in Kilometer 16/10 (right side) of Sembakkam Municipality area which was removed on 18th of February 2021. The entire eviction drive was photographed, and which was taken after the removal of the eviction would indicate that there was no encroachment as on today. Thus, it is respectfully submitted that in the light of the above development in as much as the encroachments pointed out by the petitioner have been removed.”

v. The inspection in the presence of the VAO and other revenue officials and the ADE (Highways) (Tambaram), confirms that the aforesaid statement by the ADE (Highways), Tambaram is incorrect. As on date, there exists an encroachment 2.3 meters on the ground floor. The encroached portion stands over the storm water drain built by the Highways as could be seen from the photographs at page 36 of this report. This position was confirmed by all the officials present at the time of the inspection.”

3 Today, when the matter was taken up for hearing, the learned counsel for the fifth respondent submitted that the fifth respondent had already vacated the place.

4 The second respondent, in the counter affidavit dated 11.03.2021, has stated that there was a temporary encroachment on the storm water drain, which was removed and a sunshade has been raised. However, in paragraph no.v of the report of the Advocate Commissioner, it is stated that the aforesaid



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Mr. A. Selvendran, learned Special Government Pleader, submitted that the fifth respondent had put up further construction after demolition.

6 On 01.08.2023, it was submitted by the learned counsel for the fifth respondent that the fifth respondent had put up a thatched shed in the place in question and is running a business, but, he is not the owner of the land. However, it was further submitted by him that the fifth respondent had already vacated the land and he cannot be construed as an encroacher.

7 Be that as it may, from the report of the learned Advocate Commissioner, it is very clear that encroachment is still on. Further, the learned Advocate Commissioner has categorically mentioned in his report that one Edward is the owner of the building and that there is encroachment. Since the survey number mentioned in the prayer cannot be occupied by any person and nearly 2.3 metres of the ground floor has been encroached, the encroachment will have to be removed within a period of one month from the date of receipt of a copy of this order. It is made clear that the second respondent should also be present at the time of removal of encroachment,



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With the above directions, this writ petition stands allowed. Costs made easy.

(S.V.N., J.) (K.R.S., J.)
13.10.2023

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