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Writ Petition No.29381 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.29381 of 2022

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... Petitioner

Vs

1.The Secretary to Government,
Department of Revenue,
Office of the Chief Secretariat,
Government of Pondicherry.

2.The District Collector Cum Sub Divisional Magistrate,
Villianur Commune Panchayat, Villianur, Pondicherry.

3.The Tahsildar,
Taluk Office, Villianur, Pondicherry.

4.The Commissioner,
Villianur Commune Panchayat, Villianur, Pondicherry.

5.Radha

6.Ravichandran

7.Prema

8.Rajaveni

9.Baskar

(R5 to R9 impleaded vide order dated 12.06.2023 made in
WMP.No.16468 of 2023 in W.P.No.29381 of 2022 by NAVJ)

... Respondents



Writ Petition No.29381 of 2022

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the 4th respondent to remove the laying of road and return the property occupied unlawfully from the petitioner's private land in R.S.No.65/10 G in accordance with the Registered Agreement in Document No.2006 of 2003, dated 08.08.2003 and in compliance with the road boundary – field survey – Survey Report, dated 24.08.2020 of the 3rd respondent – Tahsildar, Villianur Taluk Office, Government of Puducherry in No.1184/Demarcation/FS/Survey Report/2020 addressed to the 4th respondent – Commissioner, Villianur Commune Panchayat, Villianur, Puducherry, in favour of the petitioner along with exemplary costs.

For Petitioner : Mr.E.V.Chandru

For Respondents : Mrs.V.Usha
Additional Government Pleader (P)
for R1 to R4

ORDER

The writ petitioner herein has come up with this writ petition seeking to issue a writ of Mandamus directing the 4th respondent to remove the road portion laid in the petitioner's private land in R.S.No.65/10G and return the encroached portion to the petitioner.



2. It is the case of the petitioner that he purchased 2 Kuzhi 5 veesam of land in R.S.No.65/10 from his vendor Sivagami under registered sale deed dated 15.06.1996. On the very same day, the property on the northern side of property purchased by the petitioner with an extent of 2 kuzhi 4 veesam was sold to one Veeramani by the very same vendor. Subsequently, the said Veeramani sold his property to the petitioner on 01.12.1999. Thus, the petitioner owned 4 kuzhi 9 veesam of land in R.S.No.65/10.

3. On the western side of the property purchased by the petitioner, there was a road called Mettu Street, which measured 3.8 meters in east west direction. The petitioner and his neighbours on the eastern side of the road and the owners of the property on the western side of the road namely the respondents 5 to 9 executed a gift deed in favour of 4th respondent to enable him to expand the width of the road from 3.8 meters to 4.5 meters. The petitioner and others contributed proportionate portion of their patta land and executed the above said gift deed.



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4. As per the description found in the gift deed dated 15.06.1996 executed in favour of 4th respondent, the property in S.No.65/10 with an extent of 4.5 meters east-west and 51 meters north-south was gifted in favour of the 4th respondent.

5. It is the case of the petitioner that the 4th respondent while expanding the road, encroached upon the patta land of the petitioner on the eastern side of the road. Though as per the gift deed executed by the petitioners, the 4th respondent is entitled to extend the road portion only by 1.5 feet, he extended the road portion by 6 feet and thereby encroached portion of the patta land of the petitioner.

6. The encroachment made by the 4th respondent was brought to his notice by representation of the petitioner dated 24.02.2020. The 4th respondent directed the 3rd respondent to conduct survey of property in question and file a report. Based on the directions issued, the 3rd respondent conducted a field survey and filed his report dated 24.08.2020 and the same is enclosed in the typed set of papers at page Nos.57 and 58. As per the plan submitted by the 3rd respondent, the road has been laid on the patta



land of the petitioner and the same is shown as green marked portion in the plan. The plan submitted by the 3rd respondent also points out the fact that portion of the road is enjoyed by the owners on the western portion of the road namely the respondents 5 to 9.

7. Based on the plan and reports submitted by the 3rd respondent, the petitioner seeks a direction to the 4th respondent to remove the portion of the road laid in his patta land and return the encroached portion.

8. Mrs.V.Usha, learned Additional Government Pleader appearing for the respondents 1 to 4 submits that the road has been laid within the portion of the land donated by the petitioner and respondents 5 to 9 and no portion of the patta land of the petitioner is encroached.

9. The learned Additional Government Pleader appearing for the respondents 1 to 4 further submitted that the petitioner and others donated a strip of land measuring 2.25 meters on east-west direction on eastern side and another strip of land measuring 2.25 meters on east-west



direction on the western side of the road. The learned Additional Government Pleader by taking this Court to plan included in the typed set of papers filed by the 4th respondent at page 19 submitted that total breadth of the road is 8.30 meters, at present the width of the said road is only 4.80 meters. Therefore, the entire road portion lie within the land donated by the petitioner and others.

10. The submissions made by the learned Additional Government Pleader appearing for the respondents 1 to 4 cannot be accepted for a simple reason, as per the registered gift deed executed by the petitioner and other neighbouring land owners, the total breadth of the property gifted in favour of the 4th respondent is only shown as 4.5 meters. Now, the 4th respondent claims right over 8.3 meters, therefore, the submission made by the learned Additional Government Pleader that entire road lie within the portion gifted in favour of the 4th respondent cannot be accepted.

11. In the report and plans submitted by the 3rd respondent as per the directions of the 4th respondent, it is clearly mentioned by the 3rd



Writ Petition No.29381 of 2022

respondent that the road has been laid in the portion of the patta land of the petitioner and the same is shown as green marked portion. Therefore, this Court feels it would be appropriate to direct the 4th respondent to survey land, in the light of the report and plan submitted by the 3rd respondent dated 24.02.2020 in his proceedings F.No.20-57/VCP/JE(O)/2018-19/661 and remove the portion of the road, if any, found in the patta land of the petitioner. The entire exercise shall be over within a period of eight weeks from the date of receipt of a copy of this order. It is needless to say that the 4th respondent before surveying the land in the light of the report and plan submitted by the 3rd respondent shall issue notice to all the interested persons who are owning the properties adjacent to the disputed road.

12. Accordingly, this Writ petition is disposed of. No costs.

31.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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S.SOUNTHAR, J.
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