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W.P. No. 21565 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 21565 of 2017

Kalaimagal Nagar Residential Welfare
Association rep by its President namely
ST Perumal, Wing Commander,
(Retd. Commissioned Officer of
Indian Air Force),
Regd. No. 406/2010
A-3, Srinivas Apartments,
No.8/84, Bazullah Road,
T. Nagar, Chennai – 600 017.

..Petitioner

Vs.

1. The Secretary to the Government,
Departmental of Municipal
Administration and Water Supply
Department,
Fort St. George,
Chennai – 600 009.



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2. The Secretary to the Government,
Department of Revenue,
Fort St. George,
Chennai – 600 009.
3. The Chairman,
Chennai Metropolitan Development
Authority Office,
Gandhi Irvin Road, Egmore,
Chennai 600 008.
4. Director of Town Panchayat,
Kuralagam, Chennai.
5. The District Collector,
Kanchipuram District,
Kanchipuram – 631 501.
6. Tahsildar,
Pallavaram Taluk,
Chennai – 600 043.
7. The Executive Officer,
Mangadu Town Panchayat,
Sriperumbudur Taluk,
Kanchipuram District.
8. Mr.A.C. Nagalingam ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Mandamus directing respondents 1 to 7 herein to take



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appropriate action to remove the encroachment and unauthorized construction on 30 feet public road situated at Kalaimagal Nagar, Mangadu, under Survey No. 375/3 376/1 & 376/2 duly approved by CMDA under layout plan vide PPD/LO/146/89 and 185/89 dated 02.09.1989 respectively at Mangadu Village, Sriperamuthu Taluk, Kancheepuram District.

For Petitioner :: Mr.G. Thangavel

For Respondents :: Mr.A. Selvendran,
Special Govt. Pleader for
R1, R2, R4 to R6 and R7
Mrs.P. Veena Suresh
for R3
Mr.T. Sundaravadanam for R8

ORDER

(Order of the Court was made by S. Vaidyanathan,J.)

This writ petition has been filed for issue of a Writ of Mandamus directing the official respondents to take appropriate action to remove the encroachment and unauthorized construction put up by the 8th respondent on 30 feet public road located at Kalaimagal Nagar, Mangadu, under Survey No. 375/3 376/1 & 376/2 duly approved by Chennai



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Metropolitan Development Authority under layout plan vide PPD/LO/146/89 and 185/89 dated 02.09.1989 respectively at Mangadu Village, Sriperumbudur Taluk, Kancheepuram District.

2. The grievance of the writ petitioner is that the 8th respondent has encroached upon 30 feet public road and put up unauthorized construction thereby causing continuous nuisance to the members of the petitioner association, which needs to be removed. According to the petitioner, the approved layout as per CMDA approval dated 13.07.1989 and the land for 30 feet public road to an extent of 3807.088 sq.m was taken over by Mangadu Town Panchayat through gift deed Document NO. 3924/1989 and gift deed Document No. 6087/1989 dated 02.08.1989. The CMDA approval plan, the gift deed, the FMB sketch, adangal, A Register would all show the existence of 30 feet road at first cross street, Kalaimagal Nagar, which has been encroached upon by the 8th respondent. According to the petitioner, the existence of 30 feet road is essential to have smooth flow of traffic and the failure on the part of the officials to maintain the public road by allowing encroachments has caused great hardship. Though



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several representations were given by the petitioner to the authorities concerned in this regard, they were of no avail. Hence, the present writ petition.

3. However, the 8th respondent would refute the contentions of the petitioner stating that he has not encroached upon the public road as alleged by the petitioner. As per the counter affidavit filed by the 8th respondent, as per original approved lay out plan vide PPD/LO 146/89 dated 13.07.1989 at Mangadu Village, Sriperumbudur Taluk, Kancheepuram District, only 28 plots existed and in the said layout, the road width was wrongly mentioned as 30 feet road while it was actually 10 feet road and one shop in the land was owned by him. The actual extent of layout is only 1 acre and 84 cents and not 2 acres. He would further state that the layout and its measurements are distinctively different and it is on the other part of the newly created layout in S.No. 375/2 with additional 21 plots and 1 shop with alleged approval by CMDA under layout plan vide PPD/LO 185/89 dated 02.09.1989 which is provided by the promoter one Mr.C.R. Mani, the power of attorney for the original land owner K. Deenadayalan. According to the



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8th respondent, as per gift deed dated 19.05.1989, the road in the layout measures only 2095.034 sq.m. and not as stated in the writ petitioner's affidavit. Two persons namely V. Sekar and A. Linganathan have only constructed the houses in their patta property exclusively issued to them which are constructed in front of Plot No.14 of alleged fabricated layout. The 8th respondent's father had purchased property to an extent of 16 cents in Survey No. 376, Mangadu Village, Sriperumbudur Taluk, Kancheepuram District under unregistered sale deed and the same was mortgaged with the Poonamalle Co-operative Development Bank on 05.02.1980 and later on stamp duty was paid to the registering authority through trial Court in O.S. No. 1425 of 2008 on the file of District Munsif Court at Sriperumbudur and the same is still pending. Another suit in O.S. No. 19 of 2010 was also filed not to disturb the peaceful possession and enjoyment of the said land owned exclusively by the 8th respondent. The entire layout, according to the 8th respondent, was actually only 1 acre 84 cents but it was made to believe that it was 2 acres and the present writ petitioner, who had actually purchased Plot No. 22 to an extent of 2370 sq.ft, had entered into a sale agreement with one R.Rajalakshmi, who is the adjacent plot owner, namely, Plot No.23



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to promote flat type building with larger floors which requires 30 feet road and only with the said intention, he has filed the present writ petition, suppressing even the earlier orders passed by this Court, in order to re-litigate the present matter, which has already been settled before this Court. Though photographs showing as if encroachments have been made by V. Sekar and A. Linganathan have been filed, they actually own the property and they have the patta for the said lands. The 8th respondent would further state that when civil disputes are pending before the jurisdictional court between him and the writ petitioner, without pursuing the same, the present writ petition has been filed by the petitioner in order to settle scores with him and also with a view to harass him.

4. The 3rd respondent, in their counter, has stated that the petition dated 30.09.2016 received from the petitioner association has been forwarded to the Executive Officer, Mangadu Town Panchayat for necessary enforcement action as per the powers delegated by the 3rd respondent and also as per local body Act.



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5. The 4th and 7th respondents have filed counter affidavit wherein it is stated as hereunder:

“4. It is submitted that in this office reference letter No.132-2005/A1 dated 05.01.2010 had clearly stated that, there are no encroachments on road portion of layout as alleged by the petitioner.

...

6. It is submitted that the eighth respondent has not encroached any portion of road layout. The land in S.No. 366 part rechristened as new S.No. 657/5 classified as Natham survey has been given patta to one A. Linganathan and another in S.No. 657/4 measuring 68 sq.metres correlated to old S.No. 366 patta given to one Thiru. Sekar S/o Vellai of Mangadu Village. Those lands are quite different and in no way connected with the approved layout.

...

9. The CMDA authorities in their letter L1/11096/2009 dated 8.09.2009 has stated that, as per layout approved by the CMDA the 30 feet width road is not uniformly available. The petitioner is very particular about the eviction of persons who



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have been granted house site pattas in natham survey in S.No. 657/4 and 5 of this village. Eviction of encroachments in zari (Natham) site and respect of cases where natham survey has granted house site patta cannot be done as the site is intended for dwelling purposes as per rules.

10. It is submitted that, the eighth respondent's land not covered in this layout area, other persons namely Linganathan and Sekar were granted patta under Natham Survey Scheme and the Old S.No. 366 and New.S.No. 657/4 and 5 are not a part of this approved layout.

12. It is submitted that the petitioner insisting the Respondents to evict the encroachers and to maintain 30 ft. road which could not be done because the dwellers namely Sekar and A. Linganathan were given house site patta under Natham Survey Scheme.

6. The counter affidavit filed by the 6th respondent, Tahsildar, Pallavaram Taluk, on his behalf and on behalf of 2nd and 5th respondents is also on the same lines as that of the counter filed by respondent Nos. 4 and 7.



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7. Taking into consideration the allegations made by the writ petitioner and the stand taken by the official respondents as well as by the 8th respondent refuting the same, in order to have a clear picture of the situation and to remove any obscurity, so as to resolve the issue, by order dated 15.02.2023, an Advocate Commissioner was appointed by this Court to visit and survey the subject land, with the assistance of revenue officials, after due intimation to all parties and find out whether there was any encroachment as alleged by the petitioner and if so, the extent of encroachment and to file a detailed report along with photographs and documents.

8. In compliance with the directions of this Court, the Advocate Commissioner submitted his report dated 10.07.2023 wherein paragraph Nos. 4 and 5 are relevant to be extracted hereunder:

4. I state that the surveyor gave a planned sketch of Kalaimagal Nagar and Then Colony from the plan sketch produced by the surveyor it is evident that the road lies on the Natham Boundary and many people were given patta in



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S.NO. 789. It is relevant to state that the said Natham boundary situated in S.No. 789 is overlapping on the 30 feet road situate in S.No. 376/1, 2. The surveyor was unable to show how the overlapping of the said two Survey numbers were made. It is further relevant to state that since S.No. 375/3 is in occupation and possession of various third parties, survey could not be taken.

5. I state that the Village Administrative Officer, Mangadu Village gave a A register for S.No. 788, 789, 791 and other Survey Numbers from the said A Register it is evident that Natham patta was issued to various persons. I state that the Writ petitioner's claim that many people have encroached on the said road cannot be proved from the revenue records as it is clear that many people have Natham Patta. It is further relevant to state that the extent of land given as Gift to the Mangadu Panchayat for laying the road is also not very clear."

9. From the above extracted portion of the Advocate Commissioner's report, it is evident that disputed questions of fact are involved, which cannot be gone into in this writ petition. It is open to the



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writ petitioner to approach the appropriate forum seeking redressal of his grievance. Eventhough the plan showing the approved layout has been produced before this Court, in the light of report of the Advocate Commissioner, the parties are entitled to approach the appropriate forum for relief. In case, the layout/records of the Government like “A”Register and other records show that the place is earmarked as OSR, waterbody, kuttai etc and on measurement of the plots towards E-W and N-S, the area is found to have been encroached and the road width is narrowed, then even without relegating to alternate remedy, in the light of the judgments of Hon'ble Apex Court in *The Kerala State Coastal Zone Management Authority vs. The State of Kerala, Maradu Municipality & Others*, reported in (2019) 7 SCC 248 and *Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others*, reported in 2021 SCC Online SC 648 and the judgment of this Court in **Mehraj Begum v The Government of Tamil Nadu and others** reported in 2018 5 LW 758, this Court can order demolition and that in case of undisputed facts, this Court can order razing of the building/encroached place and restore the road, OSR and public places.



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No costs. However, it is made clear that any observation made touching upon the merits of the matter will have no bearing on the parties approaching the appropriate forum seeking necessary relief.

(S.V.N.J.) (K.R.S.J.)
25.07.2023

nv

To

1. The Secretary to the Government,
Departmental of Municipal
Administration and Water Supply
Department,
Fort St. George,
Chennai – 600 009.
2. The Secretary to the Government,
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3. The Chairman,
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S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

4. Director of Town Panchayat,
Kuralagam, Chennai.
5. The District Collector,
Kanchipuram District,
Kanchipuram – 631 501.
6. Tahsildar,
Pallavaram Taluk,
Chennai – 600 043.
7. The Executive Officer,
Mangadu Town Panchayat,
Sriperumbudur Taluk,
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