



WEB COPY



W.P.No.28693 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.28693 of 2017 &
W.M.P.Nos.30921 & 30922 of 2017

M.Tamil Selvi

... Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.

2.The Zonal Officer,
Corporation of Chennai Zone-III,
Madhavaram, Chennai.

3.Mr.Durairaj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 to take steps to effectively prevent the obstruction or encroachment of the Bharathiyar Street (Uma Nagar), 5th Street, Kolathur, Chennai-99 by the third respondent and have the above said public road accessible at all times to the public and the petitioner.



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For petitioner : Mr.Kiran Venkatesh
For M/s.G.Vijay Anand Associates

For respondents : Mr.D.B.R.Prabhu
Standing Counsel for R1 and R2

Mr.Madhan Ray
For Mr.R.Anandkumar for R3

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

According to the petitioner, she is the owner of the property situated in Door No.7A/2, Madhava Nagar, Vinayagapuram, Kolathur, Chennai-600 099 having purchased the same from one D.Ravi Chettiyar, vide registered sale deed bearing No.9742 dated 30.08.2004 on the file of SRO, Ambattur, and had constructed a house there in the year 2007. Thereafter, they have been living and using access to their property through the 20 feet road situated on the western side of their property, viz., Bharathiyar Street (Uma Nagar), 5th Street, Kolathur, which is being maintained by the Corporation of Chennai. It is the grievance of the petitioner that the third respondent, who is the neighbour and owner of the property situated in Bharathiyar Street, Uma Nagar, has been creating obstruction to the petitioner's property by blocking her gate on the western side leading into Bharathiyar Street and he is treating the public road as if he owns the same. Therefore, the petitioner made a representation dated 11.09.2017 to the



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respondents 1 and 2 to take appropriate action to keep Bharathiyar Street (Uma Nagar) 5th Street, Kolathur, Chennai-99, free from obstruction or encroachment by any person, including the third respondent. However, the said representation has not been considered so far. Therefore, the petitioner has come up with this writ petition to issue a writ of mandamus directing the respondents 1 and 2 to take steps to effectively prevent the obstruction or encroachment of Bharathiyar Street (Uma Nagar), 5th Street, Kolathur, Chennai, by the third respondent, and ensure that the said road accessible to the public and the petitioner at all times.

2. When the matter was taken up for hearing on 10.11.2017, this court directed the respondent authorities to cause an inspection of the subject property and file a status report. Accordingly, inspection was conducted and a status report was filed by the second respondent, wherein, in paragraphs 5, 6 and 7, it is *inter alia* stated as follows:

"5. I respectfully submit that as per the directions of the Hon'ble High Court the officials of Greater Chennai Corporation inspected the site in question on 26.12.2017 after putting the third respondent herein on notice. Further on inspection it was found that on rear side of the petitioner's property the third respondent herein has placed a steel grill in front of the gate temporarily denying access to the petitioner.

6. I respectfully submit that at the time of inspection the third respondent herein has submitted his documents stating that the road is a dead end road and the petitioner is not having any access through this road. Further on scrutinizing the documents of the petitioner herein it was found that the petitioner is having access through 8 feet common passage alone.



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8. I respectfully submit that in order to know the genuinity of the claim made by the third respondent herein a letter dated 09.01.2018 was addressed to the Tahsildar, Madhavaram Taluk requesting to earmark the boundaries of Bharathiyar Street (Uma Nagar), 5th Street, Kolathur, Chennai-99. I further submit that Tahsildar, Madhavaram Taluk, has given a reply dated 06.02.2018 vide Na.Ka.40/2018/Aa1 by enclosing the FMB sketch stating that the Uma Nagar, Kolathur, Chennai is a unapproved layout an the land before the third respondent property is a dead end road. Further the petitioner herein has put up the gate in the rear side facing the third respondent property by creating an additional access to her property the photographs taken at the time of inspection are annexed herewith."

3. The averments made in the status report filed by the second respondent, have been seriously refuted by the learned counsel for the petitioner. According to the learned counsel, the third respondent has encroached the road belonging to the Corporation, thereby creating obstruction and denying access to the petitioner's property. Pointing out the same, the petitioner made a representation dated 11.09.2017 to the respondent authorities, however, the same was not considered. Therefore, the learned counsel prayed for appropriate direction in this regard.

4. Considering the facts and circumstances of the case and upon hearing the learned counsel on either side, this court, without going into the merits of the case, directs the respondent authorities to conduct inspection afresh, after giving notice to the parties including the petitioner and the third respondent, and



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thereafter, pass appropriate orders, on the petitioner's representation dated 11.09.2017, on merits and in accordance with law, after affording an opportunity of hearing to all the parties concerned. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is needless to state that if there is any encroachment in the public property / water body, the same shall be removed, after following due process of law.

5. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
22.02.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes/No

To

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