



W.P.(MD)Nos.479 and 2621 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)Nos.479 and 2621 of 2021

and

**W.M.P.(MD).Nos.409, 411, 4562 of 2021, 16573 of 2022,
2159 and 2162 of 2021**

W.P.(MD)No.479 of 2021

Dr.(Neelam) N.R.Karthic Kumar

... Petitioner

Vs.

- 1.The Director of Town and Country Planning,
Chennai.
- 2.The Deputy Director of Town and Country Planning,
Madurai Region,
No.4 Hakkem Ajmalkhan Road,
Chinna Chokkikulam,
Madurai.
- 3.The Commissioner
Madurai Corporation,
Anna Maligai,
Madurai.
- 4.The Director of Handlooms and Textiles,
Kuralagam II Floor,
Chennai-600 108.



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5.The Assistant Director of Handlooms and Textiles,
No.5 Ramaiah Cross St.,
Shenoy Nagar,
Madurai-20.

6.A.2317, Madurai Tiruvalluvar
Weavers' Co-Operative Manufacture and Sales Society,
Through its President,
Valluvar Colony 2nd Street,
Madurai-17.

7.The Sub Registrar,
O/o.Thallakulam Sub Registrar Office,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents 5 and 6 from in any way deal with or claiming the space in between the house plots and the roads, road margin and other OSR area earmarked in the House Layout in Tiruvalluvar Colony in R.S.No.224 at present in Ward No.2 in Madurai Corporation particularly the space in between the plot 93 and its southern 40ft road.

For Petitioner : Mr.R.Suriyanarayanan

For R-1, R-2,
R-4 to R-7 : Mr.A.K.Manikkam,
Special Government Pleader

For R-3 : Mr.K.K.Kannan



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M.J.Sivakumar

... Petitioner

Vs.

- 1.The Director of Town and Country Planning,
Chennai.
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No.4 Hakkem Ajmalkhan Road,
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- 6.A.2317, Madurai Tiruvalluvar
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Through its President,
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- 7.The Sub Registrar,
O/o.Thallakulam Sub Registrar Office,
Madurai.

...Respondents



W.P.(MD)Nos.479 and 2621 of 2021

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 3rd respondent to forbear the respondents 5 and 6 from in any way deal with or claiming the space in-between the house plots and the roads, road margin and other OSR area earmarked in the House Layout in Tiruvalluvar Colony in R.S.No.224 at Present in Ward No.2 in Madurai Corporation Particularly the space in- between the Plot No.50 and its southern 40ft road.

For Petitioner : Mr.R.Suriyanarayanan

For R-1, R-2,
R-4 to R-7 : Mr.A.K.Manikkam,
Special Government Pleader

For R-3 : Mr.S.Vinayak

COMMON ORDER

The issue in both these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. The case of the petitioners is that they are the owners of Plot Nos.93 and 50 respectively measuring an extent of 2400 Square Feet each. The petitioners are claiming their right over the subject property by



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virtue of the registered sale deed, dated 10.12.2020 and 04.06.2014 respectively.

3. The grievance of the petitioners is that their plots are located near the road margin and they have been accessing their properties only through the space reserved for road under the lay out. While so, an attempt was made to take over a portion of really 600 Square Feet near the road margin and thereby, prevented the petitioners from accessing their properties in Plot Nos.93 and 50 respectively. A general notice was issued in this regard on 11.12.2020 to the effect that the petitioners cannot claim any right in excess of 2400 Square Feet and that whatever portion is remaining vacant adjacent to the plots belongs to the Society. The petitioner apprehended that their access to their plots will be jeopardized and hence, they have approached this Court to forbear respondent Nos.5 and 6 from in any way dealing or claiming the right over the space in between the plots and the road.

4. The sixth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:



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“5. It is respectfully submitted that this A 2317 Tiruvalluvar Weavers Society is a Registered Society governed by the Provisions of Tamilnadu Cooperative Societies Act for the welfare of the Members of the society to form Weavers colony. This society has purchased 13.09 acres of land and out of 13.09 acres, the society sold 3.09 acres of land to Madurai District Central Cooperative Bank, Madurai, for the purpose of forming a Bank Colony. The remaining 10.00 acres of land was kept in idle for the Members Welfare.

6. It is respectfully submitted that the Tamil Nadu Government has sanctioned for construction of 94 houses in order to form Weavers Colony for the Members of the Society. Therefore, 9.40 acres of land was allotted to form Colony and the remaining land was kept in idlw for the society exclusive possession.

7. It is submitted that the 4 respondent has permitted 2400 Square Feet of land i.e., 60' x 40' for each Member and built houses for each member based on the allotted sq.ft. The members who are going to occupy the built houses has to



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pay 300 Equally monthly installment I.e. for 25 years. After completion of their EMI dues, from the year 1990 onwards the 5 respondent got approval from the 6 respondent to execute sale deed for 2400 sq.ft ie. 60' x 40'. From the 9.40 acres of land, 5.18 acres of land was utilized for the forming 94 plots which were later allotted to 94 members which was measuring 40' x 60 - 2400 Sq.ft of land and 2.16 acres of land of that was utilized for forming of roads kept with the 3rd respondent as per the Resolution of our Society Resolution dated 29.11.1974 and it was approved by the 4 respondent's order dated 08.07.1975 and the remaining 1.54 acres of lands were allotted for the purpose of Park, School, Office, Over Head Tank etc. and the remaining piece of lands were left which were adjacent to the plots allotted to some of the Members. The said piece of lands were fully owned by the Society and the said 19 Members became non-title holder of the said piece of land.

8. It is respectfully submitted that those 19 members were making claim over the said piece of land adjacent to their respective plots. One of the Members by name Nagaiyan who was allotted



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*Plot No.93 had laid a dispute u/s 90 of the Tamilnadu Co-operative Societies Act 1983. The said claim was negatived by proceedings dated 25.10.2002 by the Assistant Director of Hand Loom. It is submitted that S.N.Vairamani W/o (Late) Nagaiyan made a request letter dated 18.08.2023 to the Special Officer of our Society stated that she is willing to abide the order of the Assistant Director of Hand loom & Textiles dated 25.10.2002 in A.O Proceedings No.205 of 2001 and as per their request letter dated 18.08.2003, 2400 sq.ft of land executed by the society and in respect of Plot No.93 to the said S.N.Vairamani W/o (Late) Nagaiyan and in the said sale dated 01.10.2003, it was clearly mentioned that 60' * 10' i.e., 600 Square Feet owner by the Society as her Southern boundary. But now this petitioner has suppressed the true facts and come forward with this petition with wrong particulars."*

5. Heard the learned counsel on either side.

6. The short issue that arises for consideration in these writ petitions is as to whether the fifth and sixth respondents are attempting to



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violate the lay out approval and claim the right over the portions of the property which has been earmarked as a road while granting sanction.

7. The specific case of the petitioners is that their plots are near the road margin and the space in between their plots and the road is the only access to the petitioners to the road and that is sought to be taken away by the fifth and sixth respondents. The petitioners allege that the fifth and sixth respondents do not have any right over this in between space and it has to be considered only as a part of the road margin.

8. Per contra, the fifth and sixth respondents have taken a stand that totally 19 plots were identified and it was seen that the owners of those plots were attempting to retain excess area than what was sold to them. In view of the same, a general notice was issued by way of a publication in Daily Thanthi and those 19 plot owners were informed that they cannot encroach upon the vacant site that belongs to the Society. The fifth and sixth respondents have taken a very specific stand that they are not attempting to change the character of the road as was earmarked while granting the sanction for the layout and what is actually attempted to be



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done by the Society is to retain the portion of 600 Square Feet that is owned by the Society and which is attempted to be encroached upon by 19 plot owners. Two of the plots belonging to the petitioners viz., 93 and 50 also falls within the 19 plots which have been identified by the Society.

9. The petitioners have admittedly purchased only 2400 Square Feet. That apart, there is an in between vacant space between the plots belonging to the petitioners and the road. This space is nearly an extent of 600 Square feet which the Society claims to retain within its rights. This in between space seems to have been used by the petitioners as an access to the roads.

10. Now, since the Society has claimed ownership to this portion of the property, the petitioners are apprehending that in between space may be closed and thereby, the petitioners will be prevented from using the road. Even the title deed that was executed while conveying the plots, clearly shows that the southern boundary to the plot is the portion measuring an extent of 60 feet by 10 feet belonging to the Society insofar as Plot No.93 and 40 Feet by 10 Feet insofar as Plot No.50.



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11. In view of the same, the petitioners were aware of the fact that small in between portion actually belongs to the Society. It is one thing to say that the vacant portion belongs to the Society, but, it takes a different dimension when petitioners claim that they cannot have access to the road, if this portion is not allowed to be utilized by the petitioners. In such an event, the petitioners are claiming for an easementary right to access the main road and in which event they cannot be allowed to take a stand that the Society do not have any right over this in between space. The petitioners certainly cannot question the right of the Society with respect to the in between space that is available between the plots and the road.

12. In view of the above, the relief as sought for by the petitioners cannot be granted by this Court. Either the petitioners, in order to purchase peace, can purchase the remaining in between portion from the Society and thereby have a free access to the road or the petitioners can go before the Civil Court and agitate their rights by claiming a right of access to the in between space between the plots and the road. In such an event,



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the Civil Court will deal with the same on its own merits and in accordance with law. Except giving this clarity, no further orders can be passed in these writ petitions.

13. These writ petitions are disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

17.10.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg

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