



W.P.(MD)No.8518 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.8518 of 2021

R.Jayakumar

... Petitioner

Vs.

The Commissioner,
Palani Municipality,
Palani.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent herein to remove open dumping yard causing health hazard in front of petitioner house situated in No.208, Pattali Street, Eswarapatta Kovil Arugil, Idumban Kovil Itteri Road, Adivaram, Palani – 624 601 and also to ensure ingress and egress are protected by considering the representation dated 10.03.2021 given by the writ petitioner, within the time limit fixed by this Court.

For Petitioner : Mr.V.R.Shanmuganathan
For Mr.AL.Kannan

For Respondent : Ms.L.P.Maurya
Standing Counsel

Advocate Commissioners: Ms.M.Lavanya
Ms.C.Geetha



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ORDER

When the matter came up for hearing on 10.11.2023, this Court passed the following order:

“This Writ Petition has been filed for the issue of writ of mandamus directing the respondent to remove the dumping yard that has been located in front of the house of the petitioner in order to ensure free ingress and egress to the property belonging to the petitioner by considering the representation made by the petitioner on 10.03.2021.

2. The case of the petitioner is that a layout was formed and it was granted approval through proceedings dated 27.08.1986 by the respondent Municipality. The further case of the petitioner is that he had purchased Plot No. 4, Door No.208 in the layout through a registered sale deed dated 19.11.1999. The specific case of the petitioner is that the entrance to his house is from the Southern side. The grievance of the petitioner is that the respondent Municipality had illegally put up a shed for using the same as an open dump yard and as a result, it has interfered with the petitioner's free ingress and egress to his house. Hence, the petitioner made a representation in this regard on 10.03.2021 to the respondent. Since the same did not evoke any response, the present Writ Petition has been filed before this Court.



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3. *The respondent has filed a counter affidavit. The specific stand taken by the respondent in the counter affidavit is extracted hereunder:*

6. *I respectfully submit that petitioner was originally using the land, in which the Onsite Composting Center is constructed, as a way. However, according to the petitioner's Building Plan Approval No.9/2014/F1 dated 10.03.2014, the approach road to the petitioner's building is South-West 9 Meters Road. I respectfully submit that instead of using the entrance in the SouthWest portion, the petitioner has constructed a wall therein which itself is a deviation for which a deviation notice has been issued as early as 10.06.2015.*

7. *I respectfully submit that therefore the petitioner has been using the East-West 9 Meters road through the park as way / approach road to his building which the Municipality has been objecting. Therefore, the sole aim of the petitioner knocking the doors of this Hon'ble Court is only to encroach the Municipality land in which the On-Site*



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Compositing Center is constructed and to use the same as a way to approach his building.

4. The learned Standing Counsel appearing on behalf of the respondent submitted that there is a typographical error in Paragraph No.6 of the counter and that instead of South-West, it must have been mentioned as “North-South”. The learned counsel submitted that the petitioner instead of utilising the entrance on the North-South portion, is using the East-West portion as the approach to this property. The shed that was put up by the respondent Municipality for the compost yard is on the East-West portion and hence, there was absolutely no obstruction caused to the petitioner for free ingress and egress which is only on the North-South portion.

5. Per contra, the learned counsel appearing on behalf the petitioner by producing the photographs submitted that the petitioner has been using the Southern portion as his entrance to his property and the shed for the composting yard has been put only on the Southern side by utilising his space and thereby, free ingress and egress has been interfered.

6. Considering the nature of dispute that has been raised in this case, this Court deems it fit to appoint an Advocate Commissioner to conduct an inspection and to file a report before this Court for more clarity before final orders are passed in this writ petition. Accordingly,



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Ms.M.Lavanya, practising Advocate of this Court having M.S.No.1650 of 2021 (Cell No.86376 27098) and Ms.C.Geetha, practising Advocate of this Court having E.No.4384 of 2021, Plot No.250, 4th Street, 1st Cross, Kasim Residency, Y.Othakadai, Madurai-625 107 (Cell No. 82485 65206) are appointed as Advocate Commissioners.

7. The learned Advocate Commissioners shall have the plan approval granted for the layout as the base document while conducting the inspection. The learned Advocate Commissioners shall mark the physical features and specifically ascertain the direction from which the petitioner is accessing his house property. That apart, the learned Advocate Commissioners shall also ascertain as to the direction in which the shed has been put up towards the composting yard by the respondent. During the inspection, the petitioner as well as the representative from the respondent Municipality shall be present.

8. This Court fixes the initial remuneration at Rs. 25,000/- (Rupees Twenty Five Thousand only) to the Advocate Commissioners and the petitioner and the respondent Municipality shall pay 50% each towards remuneration.

9. The Registry shall issue necessary warrant to the learned Advocate Commissioners to carry out the inspection as directed by this Court.

10. Post this case under the caption for filing report of the Advocate Commissioners on 24.11.2023.”



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2. Pursuant to the above order, the learned Advocate Commissioners inspected the property and filed a report before this Court. This Court passed the following order on 24.11.2023:

“The learned Advocate Commissioners have filed a report before this Court along with annexures and photographs and a copy of the same was also served to the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent-Municipality.

2. The learned counsel for the petitioner shall take instructions from the petitioner and make his submissions.

3. It is brought to the notice of this Court that the initial remuneration was paid to the Advocate Commissioners only on the side of the petitioner and that it is yet to be paid by the respondent Municipality.

4. The learned Standing Counsel appearing on behalf of the respondent-Municipality submitted that resolution has to be passed and thereafter, it will be immediately paid to the Advocate Commissioners. It was submitted that the meeting is slated to be held on 06.12.2023 and on passing the resolution, the amount will be paid to the learned Advocate Commissioners.

5. Post this case under the caption 'for orders' on 08.12.2023.”



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3. When the matter was taken up for hearing today, the learned Advocate Commissioners submitted that they have been paid remuneration from the side of the respondent Municipality also.

4. The relevant portions in the report filed by the learned Advocate Commissioners are extracted hereunder:

“4. We submit that the property in issue is situated in plot No.4 in the said layout. The layout is prepared by plotting at a part of Survey No.71 in Sivagiripatti Village, Adivaram, Palani. As per the layout North-South side of the plot No.4 has 9 meters wide road. On the East-West side a part of Survey No.71 is situated. However, the petitioner's building which consists of 5 housing units has its access in the East West direction. In the North South direction was the road is situated as per the layout, the petitioner has closed by putting temporary wall having a length of 38 meters.

5. We submit that in the East west portion the respondent have put up a shed by fencing the same. The fence has a gate which seems to be open all the time and the occupants of the petitioner's property are accessing the same. The shed situated inside of the fence is the compost yard.



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6. *We submit that thereafter the petitioner used the Municipality land for their ingress and egress i.e., East-west direction. In the FMB Sketch the said Municipality Land is mentioned as a Park area and it was used by the people who are living in that area. The above said Park Area is having an extent of 59x28 meters. In the said Park Area, the petitioner has planted coconut trees. The Park Area is not maintained well and due to which the insects and snakes may come into the petitioner's house. The petitioner is having a pathway in the North South direction which he has been obstructing by constructing a compound wall. Further adjacent to the petitioner's house, there is a vacant land which owns by the respondent and is allotted for park.*

7. *We submit that the Municipality has made a temporary shed and also fixed a dump yard which is having 12.3x5.7 meters and it was fixed 7 meters away from the house. The purpose of the dump yard is for Vermiculture. But it was not in use for that purpose and it was used for kept some machineries.”*

5. The petitioner has filed an additional affidavit and has raised grounds to the effect that the respondent Municipality cannot proceed further to have a compost yard since it is in violation of the Tamil Nadu Solid Waste Management Rules, 2015.



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6. In the considered view of this Court, the Writ Petition itself was filed only on the ground that the compost yard that is proposed to be made operational by the respondent Municipality will affect the ingress and egress of the petitioner to his property. However, it comes to light from the report of the learned Advocate Commissioners that there is an alternative entrance for the petitioner and the petitioner has chosen to construct a wall and has blocked that way and he is now using the East West portion to access his property. Therefore, the ground on which this Writ Petition was filed is no longer sustainable.

7. After the report of the learned Advocate Commissioners was filed, the petitioner has now come up with an additional ground to the effect that such compost yard cannot be made operational in violation of the relevant rules.

8. In reply to this, the learned Standing Counsel appearing on behalf of the respondent Municipality submitted that the compost yard will be made operational only after following the relevant rules and after getting necessary permission. It was further contended that the respondent Municipality did not



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proceed to get any permission in view of the pendency of this Writ Petition. If this Writ Petition is disposed of, the respondent Municipality will take steps to get necessary permission and to make the compost yard operational only after following the rules.

9. In the light of the specific stand that was taken by the respondent Municipality, it cannot be presumed that the Municipality will have a compost yard in violation of the rules. If at all there is any violation of rules and the compost yard is being made operational without permission as per the rules, it will be left open to the petitioner to question the same at the relevant point of time. Except giving this clarity, no further orders can be passed in this Writ Petition.

10. This Writ Petition is disposed of accordingly. No costs.

12.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To



The Commissioner,
Palani Municipality,
Palani.



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N.ANAND VENKATESH, J.

Nsr

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