



W.P(MD)No.4743 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)No.4743 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015**

M.S.Arul Amali Joseph

... Petitioner

Vs.

**1.The Commissioner,
Devakottai Municipality,
Sivagangai District.**

**2.The Superintendent of Police,
Land Grabbing,
District Crime Branch,
Sivagangai District.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent dated 30.12.2014 in Na.Ka.No. 2435/06/F1 and quash the same.

**For Petitioner : Mr.M.Vallinayagam
Senior Counsel
for Mr.D.Nallathambi**

**For Respondents : Mr.H.Mohammed Imran for R1
: Mr.D.Gandhiraj
Special Government Pleader for R2**



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ORDER

Heard the learned senior counsel appearing for the petitioner and the learned standing counsel appearing for the first respondent and the learned Special Government Pleader appearing for the second respondent.

2. The petitioner purchased an extent of land measuring 31,156 square feet comprised in T.S.No.37/2, Devakottai Town vide sale deed dated 07.10.1979 (Document No.37 of 1979 on the file of the SRO, Devakottai). The petitioner parcelled the purchased land into 9 plots. DTCP approval was obtained on 12.05.1986. The allegation of the petitioner is that the land shown as Plot No.1 in the layout was partly encroached by Devakottai Municipality and a tar road was also laid. Seeking compensation, the petitioner moved the authorities. He even gave a police complaint. The municipal authorities undertook before the second respondent that proper survey will be conducted. Survey appeared to vindicate the petitioner's allegation. However, nothing further transpired. Hence, the petitioner filed W.P.(MD)No.16651 of 2014 before this Court. The writ petition was disposed of on 30.06.2014 by directing the Commissioner, Devakottai Municipality to consider the petitioner's representation for payment of compensation. Pursuant thereto, the impugned proceedings dated 30.12.2014 was issued rejecting the petitioner's request. Challenging the same, the present writ petition came to be filed.



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3. The learned senior counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition and also the materials enclosed in the typed set of papers as well as the additional typed set of papers. He called upon this Court to set aside the impugned proceedings and grant relief as prayed for.

4. The first respondent has filed counter affidavit and the learned standing counsel reiterated its contents. According to the first respondent, the property in question was originally classified as “வண்டிப் பாதை” and that only on such pathway, road was laid. The first respondent even claims that the petitioner had erroneously shown the “பூஸ்திதி பாதை” as part of the layout. Hence, question of paying compensation does not arise. All the other allegations found in the affidavit in support of the writ petition have been controverted in the counter affidavit. The learned standing counsel called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. Copy of the sale deed dated 07.10.1979 standing in the name of the petitioner has been enclosed in the typed set of papers. The four boundaries have described as under:-



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To the east of Saraswathi Vagasalai street,

To the south of the vacant site belonging to Rama Arunachalam Chettiyar,

To the west of the vacant site belonging to Moo.Pa.Moo.Vagaira &

To the north of the land belonging to Sahayam Church.

7. It is further stated that vacant land is situated within the aforesaid four boundaries measuring an extent of 31,156 square feet is comprised in T.S.No. 37/2. The petitioner formed a layout and submitted the same for DTCP approval. DTCP approval was given on 12.05.1986. The Commissioner of Devakottai Municipality had also affixed signature indicating that the layout has the approval of Devakottai Municipality. The layout approval proceedings have not been modified or recalled till date. I therefore hold that this would operate as an estoppel.

8. Plot No.1 comprised in T.S.No.37/2 has been sub-divided as T.S.Nos.3 & 4. Copy of the layout plan has been enclosed in the typed set of papers and it is seen therefrom that Plot No.1 measures 17.84 meters east-west on the northern side. T.S.No.3 as subdivided by Devakottai Municipality measures 5.3 meters east-west on the northern side and T.S.No.4 measures 12.2 meters east-west on the northern side. If both these are added, it comes to 17.5 meters. Thus, the case of the petitioner that T.S.No.1 has been carved out of Plot No.1 stands proved. In the counter affidavit, the stand taken is that the land in



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question was originally classified as “பூஸ்திதி பாதை”. I called upon the learned standing counsel to show material justifying this. If any revenue record of the year 1970s indicates the existence of பூஸ்திதி பாதை, then ,I would have sustained the stand of the respondents notwithstanding the approval of the layout. But no such material is forthcoming.

9. On the other hand, the sale deed standing in the name of the petitioner refers to the existence of Saraswathi Vaithiya Salai street to the west of the land covered by the sale deed. There is nothing on record to show that on the land purchased by the petitioner, the pathway was already in existence. No FMB or 'A' register has been produced before me. Thus, the stand taken in the counter affidavit has not at all been established.

10. In this view of the matter, the impugned proceedings stand set aside. The first respondent shall quantify the compensation payable to the petitioner. The value of the property lost by the petitioner for formation of the road as in the year 1994 will be determined. The petitioner has given a complaint as early as on 02.11.1994. The respondents will have to pay interest at the rate of 6% per annum on the value determined by the first respondent. If the petitioner is aggrieved by valuation, whatever amount quantified by the respondents may be



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accepted by the petitioner without prejudice to her rights to seek enhancement.

The exercise of determination and disbursement shall be completed by the first respondent within a period of sixteen weeks from the date of receipt of a copy of this order.

11. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2023

Index : Yes / No
Internet : Yes/ No
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To

The Superintendent of Police,
Land Grabbing,
District Crime Branch,
Sivagangai District.



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G.R.SWAMINATHAN, J.

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