



WEB COPY



W.P.No.7760 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2024

Pronounced on : 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7760 of 2023 and
WMP.No.7964 of 2023

L.Muruganantham
Petitioner

...

Vs.

- 1.The State of Tamilnadu, represented by its
Secretary to the Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai 600 009
Email: hud@tn.gov.in
- 2.The Director of Town and Country Planning,
Directorate of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building, Fourth Floor,
807, Anna Salai,
Chennai 600 002
- 3.The Deputy Director of Town and
Country Planning Salem Region,
6, Sannathi Street, Subramani Nagar,
Salem – 636 005
Email: ddslmregion@gmail.com
- 4.Deputy Director, District Town and Country Planning Office,
Ist Floor, Kumaran Commercial Complex,
Tiruppur 641 601
Email: tiruppur.rdd@gmail.com
- 5.The Commissioner,
Dharapuram Municipality,



W.P.No.7760 of 2023

Dharapuram, Tiruppur District 638 656,

Email: commr.dharapuram@tn.gov.in

6.The Sub Registrar,
Dharapuram Sub Registrar Office,
Dharapuram,
Tiruppur District 638 656,
Email: srodharapuram@tnreginet.net

7.R.Dhandapani

8.D.Karthikeyan

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing respondents 1 to 5 to a) obtain a gift deed as per Town Planning Regulation and Rules framed under Tamilnadu Town and Country Planning Act, 1971 from 7th Respondent dedicating to the public, the alleged rights of 7th Respondent in the main access principal 40 feet width north-south Road with length of about 240 metres leading from Pollachi Road at Dharapuram Town to the entire width of 7th Respondent's Thenmallar School at Dharapuram in Tiruppur District till it touches the north end of the undivided land of Petitioner and 8th Respondent in TS No.21/1B1 of Ward 7 Block 7 of Dharapuram Town in Tiruppur District which 7th Respondent and authorities notified but failed to gift as per said Regulations and Rules while having obtained building plan approval for said Thenmallar School located in the north end of above said undivided land of Petitioner and 8th Respondent and further (b) permanently provide connectivity and access from said 40 feet width north-south road with length of about 240 metres leading from Pollachi Road at Dharapuram Town in Tiruppur District to



W.P.No.7760 of 2023

the undivided land of Petitioner and 8th Respondent in TS No.21/1B1 of Ward 7 Block 7 of Dharapuram in Tiruppur District as permanent public road as per Regulation and Rules framed under Tamilnadu Town and Country Planning Act, 1971 and to remove blockage made by 7th Respondent and permanently prevent 7th Respondent from making any form of blockage for said access from said Road and to obtain affidavit from 7th Respondent in all this regard.

For Petitioner	: Mr.L.Muruganantham (petitioner in person)
For Respondents	
For R1 to 4, 6	: Mr.V.Manoharan, Additional Government Pleader
For R5	: Mr.P.Srinivas, Standing Counsel
For R7	: Mr.S.Parthasarathy, Senior Counsel for Mr.P.Dinesh Kumar

ORDER

This writ petition has been filed for direction to respondents 1 to 5 to obtain gift deed as per the Town Planning Regulation and Rules framed under Tamilnadu Town and Country Planning Act, 1971 from the seventh respondent in respect of 40 feet width north-south road with the length of 240 meters leading from Pollachi Road at Dharapuram Town to



W.P.No.7760 of 2023

the entire width of the seventh respondent's School at Dharapuram in Tiruppur District till it touches the north end of the undivided land of the petitioner and the eighth respondent comprised in TS.No.21/1B1 of Ward 7 Block 7 of Dharapuram Town, Tiruppur District as per the approved building plan.

2. The seventh respondent obtained building plan approval for its school violating the provisions and rules under the Tamil Nadu Town and Country Planning Act, 1971. The petitioner owns 2.25 acres out of undivided land to an extent of 4.5 acres comprised in TS.No.21/1B1 of Ward 7, Block 7 of Dharapuram Town (old SF.No.372/2A of Chitravuthanpalayam Village along with the right of 40 feet width east west road and also entitled to easement rights in 40 feet width north south road from Pollachi road. The eighth respondent who is the son of the seventh respondent, filed suit against the petitioner for partition in the subject property along with rights in the said road. In the said suit, the petitioner agreed for preliminary decree as all purchasers of the subject land in the 40 feet road with north south road from Pollachi road has



W.P.No.7760 of 2023

their easement rights. While being so, the seventh respondent obtained building plan approval for construction of school in the year 2005, 2011, 2017 showing 40 feet width north to south road from Pollachi road as main principal access for connectivity to the subject land. As per the building plan, the seventh respondent constructed school with the extent of 1.5 acres in the subject property. However, the seventh respondent obtained building plan approval without gifting the said road for public purpose with collusion of the authorities. Therefore, the seventh respondent claiming absolute ownership of the said road and blocked the said road in the north end of the property.

2.1 As per the approved plan granted by the fifth respondent and the third respondent, the 40 feet width north to south road from Pollachi was notified in the drawing, key plan and site plan provided by the seventh respondent. The said road ends with the undivided property of the petitioner and the eighth respondent herein. Further, as per the proceedings dated 06.02.2018 on the file of the third respondent, the said road was notified in the drawing and key plan of the seventh respondent



W.P.No.7760 of 2023

and also it continues even for further few feet after north end of the subject property. In fact, partition suit was filed by the eighth respondent, who is the son of the seventh respondent. In the suit in OS.No.233 of 2021 on the file of the III Additional District Judge, Tiruppur, the petitioner agreed for preliminary decree for his share along with the road access and easementary right by the preliminary decree dated 05.08.2022 before the Lok Adalat. Now the seventh respondent in order to prevent the access in the 40 feet width north south road from Pollachi Road, put up construction thereby obstructed ingress and egress of the petitioner. Therefore, the petitioner submitted complaint for taking appropriate action as against the seventh respondent alleging that the seventh respondent is claiming absolute right over the said road as if the petitioner has no rights in the said road.

2.2 In fact, the said 40 feet width north south road is also part of scheme road 'C' in Detailed Development Scheme 8 in Dharapuram Town which is notified in the proceedings dated 17.08.2017. Only on the said basis, the seventh respondent obtained building plan approval for its



W.P.No.7760 of 2023

school. As per the provision, the said road has to be gifted in favour of the authorities concerned and the seventh respondent cannot claim exclusive right over the said road. The said road also connects the Municipal road with State Highways, by-pass road, and bus stand. It is used by larger public of Dharapuram Municipality and to reduce the traffic of Main Road and further also to provide freeflow of vehicles movement. Therefore, the petitioner lodged several complaints before all the authorities as against the seventh respondent. Though preliminary enquiry was conducted, thereafter, no fulfilled enquiry was conducted by the authorities concerned and the complaint is pending.

3. The seventh respondent filed counter and *Mr.S.Parthasarathy*, the learned Senior Counsel appearing for the seventh respondent submitted that the petitioner is in possession and enjoyment of the land admeasuring 2.25 acres out of 4.5 acres comprised in TS.No.21/1B1 and the remaining land belongs to the eighth respondent. The petitioner is not entitled for easementary right in the 40 feet north south road (from Pollachi road). Even in the document and



W.P.No.7760 of 2023

other parent documents, there is no mentioning about the easementary right in 40 feet road. The petitioner has access to his land by existing 40 feet road and no necessity for the petitioner to claim any easementary right in the disputed road. In fact, the said 40 feet road stands in the name of various persons and no relief can be asked as against seventh respondent. Even in the suit for specific performance, there is no mentioning about the disputed 40 feet road. The seventh respondent already approached the District Revenue Officer for transfer of patta in his name in respect of the land situated adjacent to the subject road in which petitioner objected as if the said road is a public road and the same was rejected while transferring the patta. As against the said order, the petitioner also preferred an appeal and the same was also dismissed by the appellate authority. In fact, in the partition suit filed by the eighth respondent, the petitioner did not even whisper about the said road and as such he is estopped from raising the issue before this Court.

4. On perusal of the counter filed by the fourth and fifth respondents revealed that the application dated 07.03.2011 submitted by



W.P.No.7760 of 2023

the seventh respondent before the fifth respondent was forwarded by the fifth respondent by its communication dated 07.03.2011 to the fourth respondent. Accordingly, the seventh respondent sought for building permission for the proposed construction of RCC roof, ground +2 floors of school building with an FSI area of 1618.26 sq.mtrs in Ward 7, Block 7, TS.No.20/19A3 and 20/21 of Dharapuram Municipality and Taluk, Tiruppur District.

5. The report submitted by the fifth respondent, revealed that the said land is vacant and falls under the public purpose as per Consented Detailed Development Plan No.8 and Mixed Residential, Public and Semi Public as per the Master Plan of Dharapuram. It also has access from 40 feet wide Municipality Road as per the certificate issued by the Town Surveyor of Dharapuram Municipality. Based on the said remarks, after scrutiny and also following the course of rules and regulations enacted there in the Tamilnadu Town and Country Planning Act, 1971, the third respondent granted technical clearance by the communication dated 31.03.2011 vide ROC.No.763 of 2011. It was



W.P.No.7760 of 2023

forwarded to Local Body for final approval. As forwarded by its communication dated 17.08.2017 as per the application submitted by the seventh respondent for the proposed construction, also on the remarks of the fifth respondent, the proposed site is vacant and falls under the public purpose as per the consented Detailed Development Plan. No.8 and mixed residential, public, semi public use as per the Dharapuram Master plan and gains access from C C 40 feet scheme road of the Detailed Development Plan No.8, it is maintained by Dharapuram Municipality. Based on the said remarks, technical clearance was issued by the fourth respondent dated 06.02.2018 for issuance of final approval. Therefore, it is clear that the seventh respondent has shown 40 feet road to the west of his site in the plan and obtained planning permission for construction of school consisting ground+2 floors.

6. The seventh respondent himself acknowledged that the road is public road. Only based on the existence of the said road, planning permission and building permission was granted in favour of the seventh respondent. While being so, the seventh respondent managed to retain the



W.P.No.7760 of 2023

said land in the revenue records as his absolute property and also obtained separate sub divisions in his favour.

7. As stated supra, the disputed 40 feet road was clearly shown as public road . Thereafter the petitioner has occupied a part of the 40 feet road shown by him as road and put up fencing around the same. The petitioner is being joint owner of the entire property admeasuring 4.5 acres comprised in survey No.20/1B1 has been now affected due to obstruction put up by the seventh respondent, that too in the public road. In fact, on the complaint lodged by the petitioner, the fifth respondent served notice to the seventh respondent under Section 129 of the Tamilnadu Urban Local Bodies Act for removal of encroachment put up by the seventh respondent in the public road. As per the planning approval, the seventh respondent categorically admitted and acknowledged 40 feet road as public road and having been obtained planning permission by leaving the said road, he cannot use the said road as private property. The road was shown in the plan as access to the Pollachi road. Only based on the said road, the petitioner was granted



W.P.No.7760 of 2023

building permission. Therefore the seventh respondent cannot deny the road for general public and also to the petitioner. The length of the north to south road running 40 feet with the width of 40 feet is 240 meters from the junction of 40 feet road with east west running Dharapuram to Pollachi Road to the southern end of the property that is now encroached by the seventh respondent.

8. In fact, the fifth respondent already laid tar road from the Pollachi road junction till 208 meters which is just touching the boundary of the seventh respondent school. But the fifth respondent could not able to continue the said road for the reason that the seventh respondent has fenced off the road portion by putting up fencing on the boundary of the lands where the same meets the lands of the petitioner.

9. On perusal of the Town Planning Scheme also revealed that the 40 feet road has been acknowledged by the seventh respondent by showing the road as his frontage for the building while obtaining building permission dated 31.03.2011 from the fourth and fifth respondents



W.P.No.7760 of 2023

herein. Therefore, the seventh respondent cannot retain the same as his private land as per the survey records. Even though the seventh respondent did not execute any gift deed in respect of the 40 feet road in favour of the fifth respondent, once it was shown in the plan as road, he cannot claim ownership over the said land. Therefore, the fifth respondent is the custodian of the said road though revenue records stand in the name of the seventh respondent.

10. Further, as the seventh respondent while obtaining building permission and approval had shown the 40 feet road as public road and thereafter he cannot use it as his private property and cannot prevent others to use as road. In view of the law laid down by the Hon'ble Supreme Court of India, the original owner of the layout land on reservation of portion of the layout land for public purpose ceased to be its owner and becomes the trustee of the said portion of the land reserved for public purpose and he is expected to hold it for the benefit of other plot owners in the lay out. Therefore, for the road which was shown as public road, the petitioner ceased to be its owner and he cannot claim exclusive right over the road.



W.P.No.7760 of 2023

WEB COPY

11. In view of the above, the fifth respondent is directed to remove the fencing put up by the seventh respondent and lay tar road till it touches the north end of the petitioner's property comprised in TS.No.21/1B1 of Ward 7, Block 7 of Dharapuram (SF No.372/2A of Chitravuthanpalayam Village) and allow all the general public including the petitioner to use the road, within a period of two weeks from the date of receipt of copy of this order.

12. With the above direction, this writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

04.10.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok



W.P.No.7760 of 2023

WEB COPY

To

1. Secretary to the Government,
The State of Tamilnadu, represented by its
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009
2. The Director of Town and Country Planning,
Directorate of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building, Fourth Floor,
807, Anna Salai,
Chennai 600 002
3. The Deputy Director of Town and
Country Planning Salem Region,
6, Sannathi Street, Subramani Nagar,
Email: ddslmregion@gmail.com
4. Deputy Director,
District Town and Country Planning Office,
Ist Floor, Kumaran Commercial Complex,
Tiruppur 641 601
5. The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District 638 656,
6. The Sub Registrar,
Dharapuram Sub Registrar Office,
Dharapuram,
Tiruppur District 638 656



WEB COPY



W.P.No.7760 of 2023

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.7760 of 2023

04.10.2024