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W.P.No.1478 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..04..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.1478 of 2018
and
W.M.P. No.1880 of 2018

R.Sivabakyam

-Versus-

..... Petitioner

1.The State of Tamilnadu
rep. By its Secretary,
Revenue Department,
Fort St. George, Chennai – 9.

2.The Secretary,
Highways Department,
Fort St. George, Chennai – 9.

3.The Collector,
Collectorate Office,
Kancheepuram.

4.The Revenue Divisional Officer,
Tambaram, Chennai.

5.The Special Tahsildar,
Revenue Department,
Pallavaram, Chennai.

..... Respondents



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Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents or their subordinates from entering into the petitioner's land in S.No.267/9A3 in Keelkattalai Village on the eastern side facing Medavakkam Main Road for the purpose of road widening or any other purpose.

For Petitioner : *Mr.Mohamood Aslam*

For Respondent (s) : *Mr.A.Selvendran,*
Special Government Pleader

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus, forbearing the respondents or their subordinates from entering into the petitioner's land in S.No.267/9A3 in Keelkattalai Village on the eastern side facing Medavakkam Main Road for the purpose of road widening or any other purpose.

2. It is the case of the petitioner that she is the owner of land measuring an extent of 0.04.0 Hectares comprised in S.No.267/9A3 situated at Keelkattalai village by virtue of sale deed dated 15.03.2022 executed in her favour by one Andal Ammal and five others. She has been in possession and enjoyment of the property ever since the date of purchase.



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3. While so, the Highways Department had made a mark as if it was acquired by the department. She was never served with any notice by the competent authority. Her land was included in the road widening project. If at all, a portion of the land of the petitioner is required for road widening purpose, without acquiring the same under the law and paying adequate compensation, the Highways Department cannot enter into the land of the petitioner.

4. A counter affidavit has been filed by the 2nd respondent inter alia contending that the petitioner's land is not covered under the Land Acquisition Proceedings. Storm Water Drain Work has been completed on the highways boundary adjacent to the petitioner's land on both sides. The petitioner has occupied a portion of the road in front of his property and raised objection for the construction of drain on Government road. It is the specific stand of the 2nd respondent that the land of the petitioner is not covered under the Land Acquisition Proceedings and it was the petitioner who encroached a portion of the road.

5. Heard both sides.

6. Since it was the specific stand of the respondents, more particularly, the 2nd respondent that they had not acquired any land of the petitioner and there was no proposal to acquire the land of the petitioner for the purpose of



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road widening, this court, earlier, by order dated 10.07.2019, appointed

Mr.P.Ganesan, District Judge (Retd.), as Commissioner to inspect the property in the presence of the Tahsildar, Local Surveyor and the concerned officials of the Highways Department, conduct survey of the property by noting down the physical features with measurements and file a report with rough sketch and photographs and also video recording of proceedings.

7. Accordingly, the Advocate Commissioner filed his report dated 20.08.2019 along with rough sketch and photographs as directed by this court. The Advocate Commissioner's report would indicate that as per the present Town Survey records, the petitioner owns only 8.25 cents (334.4 square meters) of land and as the document of the petitioner did not indicate measurements of four boundaries, boundaries alone will prevail over the extent of land. The Advocate Commissioner has further stated in his report that Town Survey Register (Flag No.11) area adjacent to the road belongs to the Highways Department and not belonged to the petitioner.

8. When the petitioner is not able to establish the ownership over the extent claimed by him and this court does not find any encroachment as alleged by the petitioner in the writ petition, this court cannot forbear the respondents from discharging their official duties. Since the stand of the respondent is that



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the petitioner's land is no longer required for any public purpose much less for the construction of storm water drain channel, this court is of the view that no positive direction as sought in the writ petition can be given. This court does not find any merit in the writ petition and the same deserves only to be dismissed.

In the result, the writ petition is dismissed. No costs. Consequently, connected WMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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03..04..2024

To

- 1.The Secretary to Government, Revenue Department, Fort St. George, Chennai – 9.
- 2.The Secretary, Highways Department, Fort St. George, Chennai – 9.
- 3.The Collector, Collectorate Office, Kancheepuram.
- 4.The Revenue Divisional Officer, Tambaram, Chennai.
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N.SATHISH KUMAR.J.,

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