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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 21043 of 2022

1. R.Parameshwari
2. A.Saraswathi ... Petitioners

..Vs..

1. The Commissioner
Coimbatore Corporation
Coimbatore – 641 001.
2. The Assistant Commissioner
Coimbatore Corporation
North Zone,
No.1, Dr.Balasundaram Road,
Pappanacken Palayam
Opp. To Women Polytechnic
Coimbatore – 641 037.
3. Thilagavathi ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed in Na.Ka.No. 2471/2022/Yesa.1(va) dated 01.07.2022 respondents 1 and 2 to remove the unauthorised fencing put up by the 3rd respondent



abstructing in the 30 feet wide public road which was formed in S.Nos. 85/1, 86/1, 87/1 situated at Chinnavedampatti Village, Ganapathy, Coimbatore.

For Petitioners	:: Mr. S.Doraiswamy
For RR 1 & 2	:: Mr. Najeed Usman Khan Standing counsel
For 3 rd Respondent	:: Mr. R.Suresh Kumar

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records relating to an order passed dated 01.07.2022 by the second respondent, Assistant Commissioner, Coimbatore Corporation and quash the same and direct the first and second respondents, namely, the Commissioner, Coimbatore Corporation and the Assistant Commissioner, Coimbatore Corporation, to remove the unauthorised fencing said to have been put up, according to the petitioner, by the third respondent preventing free ingress and egress to the 30 feet wide public road formed in S.Nos. 85/1, 86/1, 87/1 situated at Chinnavedampatti Village, Ganapathy, Coimbatore.



2. In the affidavit filed in support of the Writ Petition, it had been stated by the first petitioner that the lands at S.Nos. 85/1, 86/1 and 87/1 in Chinnavedampatti Village, Ganapathy, Coimbatore within Coimbatore Corporation Ltd., measuring 4.90 Acres originally belonged to Nagarajan, S/o. Ramasamy, K.Ashok Kumar, S/o. S.Kandasamy and A.Karthikeyan, S/o. Arumugam. They had purchased the same by sale deed dated 27.05.2016 registered in the office of the Sub Registrar, Gandhipuram at Coimbatore. They had then formed a lay out and divided the lands into plots and had sold them to various persons including the third respondent, Thilagavathi. It is stated that however permission had not been obtained for the formation of the lay out. However, the three person had also formed a 30 feet wide layout road on the eastern side of the plots in S.F.Nos. 85/1, 86/1 and 87/1.

3. It is stated that the third respondent had put up a fence blocking the ingress and egress of the petitioners from their lands to the road. The petitioners had given a representation to the second respondent. In the impugned order, the second respondent had stated that after due enquiry, they found out that the road was in an unauthorised plot and belonged to private parties and does not belong to the Corporation and is a mud road and that the Corporation is not



maintaining the road and that the Corporation had not put up any street light or provided any other amenity in the said road and that therefore, the Corporation is not in a position to remove the fencing.

4. A counter affidavit had been filed by the third respondent against whom the petitioners have raised allegations. The third respondent has stated that she had not put up the said fence. It had been stated that the erstwhile owners had put up the fence and that the third respondent has no objection to remove fence and the same has to be removed.

5. It is thus seen that the petitioners and the third respondent have taken the same stand, namely that the fencing could be removed. But it is a question as to who is to remove the fencing since the Assistant Commissioner, Coimbatore Corporation, have stated that since the road is a private road, they cannot step in to remove the fencing.

6. The learned counsel for the petitioner however placed reliance on the order dated 14.03.2008 of a Division Bench of this Court in **W.P.No. 31545 of 2017**. The relief sought therein was to remove the encroachment of a public road by the Official



Respondents, namely, the Greater Chennai Corporation. While examining that particular relief, the Division Bench had observed as follows:-

“13.This Court, after hearing the Learned Counsel appearing for the parties in the present case, is of the considered view that the suit property in T.S.No.105/1 is an unauthorised layout and when the Corporation of Chennai had clearly pointed out that it is a Road and further, it is maintained by them by providing streetlights etc., this Court opines that by no stretch of imagination, the Respondents 5 and 6 cannot put up any steel gates etc. or any construction and in short, they can only be termed as “Encroachers” against whom necessary action will have to be taken in the eye of Law.

14.Viewed in that perspective, this Court, in the interest of Justice, Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the 1st Respondent/Commissioner, Corporation of Chennai to ensure that the encroachment made by Respondents 5 and 6 are removed in a complete and comprehensive manner, within a period of two weeks from the date of receipt of a copy of this order. It is open to the 1st Respondent/Commissioner of Corporation of Chennai to entrust the task of removing the encroachment made by the



Respondents 5 and 6 in the subject property to any responsible officer of the Corporation of Chennai under whose personal jurisdiction, the encroachment in question shall be removed [other than the 4th Respondent]. It is abundantly made clear that the order of this Court in removing encroachment made by Respondents 5 and 6 is not carried out scrupulously, by any of the officials of Corporation that too in true letter and spirit (to whom it is entrusted), then, it is needless for this Court to make a significant mention that the departmental action for dereliction of duty or act of omission or commission shall be initiated and the said proceedings may also be taken to its logical end so as to advance the cause of Justice.”

7. The learned counsel for the petitioner also placed reliance on the order dated 30.04.2021 of another Division Bench in **W.A.Nos. 340 & 360 of 2019**. The Division Bench had examined access to a road in an unapproved layout. The Division Bench had held as follows in paragraph No. 20:-

“20. Whether it is an approved or an unapproved layout, once the piece of land has been shown as a road promising the purchasers that the access is available through those roads to reach their plots, it would get the character of



road and it should be used only for road purpose and it can neither be converted nor divested for any other purpose or claimed as private property by the developer. Admittedly, the road portions are comprised in S.No.287/1A3 and 287/1A4. As rightly pointed out by Mr.V.Jayaprakash Narayanan, learned Government Pleader relying upon the circulars dated 13.02.2006 issued by the Director of Town and Country Planning and circular dated 02.07.2012 issued by the Commissioner of Survey and Settlement, once a portion of the land in the unapproved layout is shown as common area, it should be set apart for public utility and should be separated from the rest of the lands. The relevant portion of the circular dated 13.02.2006 reads as follows:

“At any circumstances, such a road in the layout should not end at spaces earmarked as “owners use” while deprives of an access to the adjacent land owner.”

In the circular dated 02.07.2012, the following guidelines have been given with regard to the roads and other places set apart for public utility:



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“(i) In respect of unapproved layouts, roads and other places set apart for public utility should be separated and the rest of lands should be surveyed and sub divided - based on the title deeds such as sale deeds, settlement deeds, gift deeds, relinquishment deeds, etc., and assigned separate T.S./Survey/Sub division Number (both in towns and villages, i.e., Town and Cadastral Survey). Title (name of owner) should be clearly indicated in 'A' Register/Chitta, etc.,

(ii) In respect of approved layouts, each holding should be separately surveyed and sub divided – based on the title deeds such as sale deeds, settlement deeds, gift deeds, relinquishment deeds, etc., and assigned separate T.S./Survey/Sub division Number. Title (name of owner) should be clearly indicated in 'A' Register/Chitta, etc.,

(iii) In respect of both approved and unapproved layouts where space is allocated for roads and public utilities, they should be surveyed separately and assigned separate T.S./Survey/Sub



division Number. This should be in the name of Government or Local Body agencies as the case may be, in the case of approved layouts provided they have been handover and/or taken over.

(iv) In respect of unapproved layouts, the common areas till they are handed over/taken over by Government/local bodies, etc, will bear a joint Patta in the names of all the owners of the unapproved layout and will not be labelled as road, etc. since this involves the jurisdiction of the local body/other Government departments.”

Therefore, it is clear that even in an unapproved layout, the piece of land which has been shown as road and other places set apart for public utility cannot be used for any other purposes and it should be separated from the rest of the land and it will bear a joint patta in the name of all the owners of the unapproved layout.
”

8. A conjoined reading of the observations of the Division Bench in both the above orders would show that even if a road is formed in



an unapproved layout and the road is also categorised as an unapproved road or a private road, access to the same cannot be denied. The further ratio which had been laid is that even if it is an unapproved road and access is denied, the encroachment should be removed and the responsibility for removing the encroachment would be on the concerned Corporation, in this case by the Coimbatore Corporation. The petitioners and the third respondent have taken the same that the fence should be removed.

9. A direction is therefore given to the first and second respondents to ensure that the fence which had been put up in the aforementioned lands at S.Nos. 85/1, 86/1, 87/1 in Chinnavedampatti Village, Ganapathy, Coimbatore are removed. The first and second respondents may not stand on formality that the road is an unapproved layout. They still have a responsibility to ensure that there is free access to the said road. They may issue a tender for removing the said road and remove the same. The said process may be initiated within a period of three weeks from the date of this order and thereafter, after following due procedure ensure that the said fence is removed, at any rate within a outer limit of four months from this order.



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10. The petitioners and the third respondent must co-operate in the removal of the fencing. If any objections are raised, the first and second respondents are at liberty to take the assistance of the jurisdictional police to put this order into effect.

11. The Writ Petition stands disposed of. No costs.

28.11.2024

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

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