



WP.No.32184/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.32184/2023
& WMP.No.31782/2023

G.Muruga Chidambaram
rep.by its Power Agent
Mr.M.Balasubramani

... Petitioner

Vs.

- 1.The Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.
- 2.The Principal Secretary/Commissioner
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 3.The Deputy Collector [Land & Estate]
Greater Chennai Corporation
No.115, Dr.Muthulakshmi Road
Baktavatsalam Nagar, Adyar, Chennai 600 020.



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- 4.The Joint Commissioner-Health
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 5.The Chairman, Standing Committee [Public Health]
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 6.The City Health Officer
Public Health Department
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 7.The Zone Chairman-Zone 13,
Greater Chennai Corporation
No.115, Dr.Muthulakshmi Road
Baktavatsalam Nagar, Adyar
Chennai 600 020.
- 8.The Zonal Officer
Greater Chennai Corporation
No.115, Dr.Muthulakshmi Road
Baktavatsalam Nagar, Adyar
Chennai 600 020.
- 9.The Chief Engineer [Planning]
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 10.The Tahsildar
No.113, VV Koil Street
Institute of Road Transport Training
Centre Complex, Tharamani 100 Feet Road
Chennai 600 113.
- 11.S.Jayashankar

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of mandamus, directing the 1 to 10 respondents herein to demolish the illegal and unauthorised construction by the 5th respondent and hand over the vacant land to the petitioner in Plot bearing No.46, at Door No.6/46, Krishnaraja Nagar, 4th Street, Velachery, Chennai 600 042, comprised in S.Nos.598/1 Part and 598/2 Part, Patta Survey No.598/7.

For Petitioner	: Mr.B.Janakiram
For RR 1 & 10	: Mr.M.Bindran, AGP
For RR 2 to 9	: Mr.D.B.R.Prabhu
	Standing Counsel
For R11	: Mr.R.Velusamy

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The present writ petition has been filed by the petitioner seeking a mandamus to direct the official respondents, namely, respondents 1 to 5 and 7 to 10, to demolish the illegal and unauthorised construction by the 5th respondent and hand over the vacant land to the petitioner in Plot bearing No.46, at Door No.6/46, Krishnaraja Nagar, 4th Street, Velachery, Chennai 600 042, comprised in S.Nos.598/1 Part and 598/2 Part, Patta Survey No.598/7.



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(2) Heard the submissions of the learned counsel for the petitioner ; learned Additional Government Pleader appearing for respondents 1 and 10 ; learned Standing counsel appearing for respondents 2 to 9 and the learned counsel appearing for the 11th respondent.

(3) The petitioner is represented by a Power of Attorney Agent. The Power of Attorney Agent has sworn to the affidavit filed in support of this writ petition.

(4) The case in brief, stated in the affidavit is as follows:-

(5) The petitioner purchased a vacant land from one Mrs. Shanthi on 03.06.2010. Originally, the property was owned by one Mrs. Kishtammal, W/o. Sri. Varadarajulu Naidu. Later, the son of Mrs. Kishtammal by name Mr. V. Dorairajulu Naidu sold the property to the vendor of the petitioner by name Mrs. Shanthi, by a document dated 20.01.1983. It appears that Mrs. Shanthi, earlier approached the Chennai Corporation for issuance of a Plan Approval and Building Approval in the year 2004. Pursuant to the Planning Approval and Building Approval granted on 29.12.2004, the petitioner's vendor Shanthi had put up a construction and it is admitted that the petitioner's vendor was also issued with a patta in respect of the



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property. The property which was purchased by the petitioner, has been admittedly a property that was shown as 60 feet road in the approved layout. Since the road is with a dead end, the plot owner of the adjoining road, has earlier sold the property to Mrs.Shanthi and Mrs.Shanthi in turn, had sold the same to the petitioner herein. Pursuant to the Sale Deed obtained by the petitioner, the petitioner also entered into an Agreement of Sale with the 9th respondent.

(6) It was from the 9th respondent, the petitioner realised that the 6th respondent had trespassed into the property and had illegally constructed a permanent structure in the property, part of which was purchased by the petitioner himself from Mrs.Shanthi. After making a few representations to respondents 2 to 5 and 7 to 9 and finding that none of them had responded to advise the 6th respondent to remove the unauthorised construction in the area which was reserved and kept as road, the petitioner has approached this Court by filing the above writ petition.

(7) The 8th respondent has filed a counter affidavit on behalf of respondents 2 to 9. In the counter affidavit, it is stated that the layout known as 'Krishnaraja Nagar Layout' No.6/76 comprised in S.No.598/1 and 2



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comes within the Chennai Corporation. All the roads which were formed inside the Layout according to the 8th respondent, are maintained by the Chennai Corporation. As per the original Layout, Plot No.46 is bounded by 24 feet road on the southern side to the depth of 60 feet and the road is dead end. It is in the said circumstances, the neighbouring/adjacent owner who purchased the plot No.46, applied for Planning Permission for construction of a residential building encroaching the road portion with a width of 24 feet and got the Planning Permission sanctioned from the Town and Country Planning Department, Chennai Corporation on 23.12.2004. After obtaining the Sanction Plan, Mrs.Shanthi, the petitioner's vendor executed a Sale Deed in favour of one Mr.Ganesan on 07.03.2005 and the said Ganesan was prevented from putting up a construction by the 8th respondent. It is the case of the 8th respondent that the petitioner had obtained Planning Permission based on fabricated documents by encroaching the road portion.

(8) Though the 8th respondent has stated in the counter that an action has been taken against Mrs.Shanthi, vendor of the petitioner by invoking power under Section 56 of Town and Country Planning Act, 1971, and



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under Section 365[4] of Chennai City Municipal Corporation Act, 1919, the 8th respondent has admitted that the Chennai Corporation has constructed a public Health and Welfare Centre under the capital fund for the welfare of the general public in the same area which forms part of road as per the approved layout.

(9) This Court, therefore finds that the petitioner, 6th respondent and the 11th respondent are trying to encroach into a public road. Even though every public road vests with Local Body, the Local Body hold the same in trust for the benefit of the public and it does not become the owner. While the petitioner and the 11th respondent claim title to the property on the basis of a Sale Deed alleged to have been executed by their predecessor in title and claim possession and enjoyment over a portion of a road pursuant to the Building Plan obtained by the petitioner's vendor, the 6th respondent equally claims absolute and exclusive right to the road portion encroached by it. The petitioner as well as the Corporation and the 11th respondent are trying to encroach a public road which is supposed to be kept for the general public.



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(10) This Court has repeatedly held that the public roads though vest with the Local Body for maintenance, the right of Local Body to hold the land is only for the benefit of public and the public cannot be deprived of their right to have access and therefore, while dismissing this writ petition, this Court is inclined to issue certain directions.

(11) Accordingly, the writ petition stands **dismissed**. However, the following directions are issued:-

- (a) The entire portion of public road which is in the occupation of either the petitioner or the 6th respondent or the 11th respondent by putting up a construction or by fencing it, shall be treated as a public road for all purposes and the Local Body is directed to maintain the same as a public road.
- (b) The public road can also be opened at the dead end if it warrants for further development giving access to the neighbouring land as may be permissible in law.
- (c) The petitioner shall surrender the portion of the road in which he has put up construction within a period of six months from the date of receipt of a copy of this order, failing which, it is open to



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the respondents 1 to 5 and 7 to 10 to initiate appropriate action for removal of encroachment by exercising power under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998.

(d) Similarly, the 6th respondent shall demolish the construction which is put up by him in the land within a period of six months from the date of receipt of a copy of this order.

(e) Both the petitioner as well as the 6th respondent and the 11th respondent shall report compliance by **10.07.2024**.

(f) In case, the petitioner or the official respondents fail to comply with the directions of this Court, this Court will initiate *suo motu* contempt against them, making them to pay heavy cost.

No costs. Consequently, connected miscellaneous petition is closed. Post on **10.07.2024 for reporting compliance**.

[S.S.S.R., J.] [N.S., J.]
30.01.2024

AP

Internet : Yes



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