



W.P.No.32961 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.32961 of 2024

Rukmani
W/o.Mr.R.Padmanabhan

... Petitioner

Vs.

1. The Commissioner
Thiruverkadu Municipality
Thiruverkadu, Chennai-600 077.
2. The Tahsildar
Poonamallee Taluk
Poonamallee
Chennai-600 077.
3. The Chief Executive Officer
Central Government Employees
Welfare Housing Organization
and the Special Grade Town Panchayat
Thiruverkadu.
4. The Central Government Residential Complex Society
Rep. by its President Society
No.123, Poonamallee High Road

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Velappansavadi, Kendriya Vihar
Chennai-600 077.

... Respondents

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Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct the 3rd respondent to take steps to implement the representation to verify the revenue records and to measure the boundaries of the lands with the assistance of Taluk Surveyor comprised in S.No.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 and 85/1 situated at Numbal Village, Velapanchavadi, Thriuverkadu, Chennai-600 077 and to remove the obstructing wall so as to have ingress and egress to the petitioner in case of encroachment.

For Petitioner : Mr.S.Rajesh Kumar
M/s.Nathan and Associates (Law Firm)
For Respondents : Mr.T.K.Saravanan
Government Advocate, for R1
Mr.M.S.Arasa Kumar
Government Advocate, for R2

ORDER

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

When the matter was taken up, Mr.S.Rajesh Kumar, learned counsel of M/s.Nathan and Associates (Law Firm) on behalf of writ petitioner submitted that there is an obstruction in the form of wall in seven survey



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numbers namely, S.Nos.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 and 85/1 situate at Numbal Village, Velapanchavadi, Thriuverkadu, Chennai-600 077.

2. Issue notice to official respondents i.e., respondents 1 and 2.

3. Mr.T.K.Saravanan, learned Government Advocate accepts notice for R1 and Mr.M.S.Arasa Kumar, learned Government Advocate accepts notice for R2.

4. Learned State Counsel, on instructions submits that another writ petition namely, WP No.21694 of 2017 was filed with the same prayer and that was dismissed on 08.04.2024 (after appointment of an Advocate Commissioner and after getting a report from Advocate Commissioner) by a Hon'ble single Judge *inter alia* relying on another Division Bench order in W.P.No.20791 of 2017 with regard to the same survey number.

5. Owing to the limited scope of captioned WP and considering the acute angle on which the captioned matter turns, main WP was taken up with the consent of both sides preserving all rights and contentions of R3 and R4.

6. A scanned reproduction of afore-referred order dated 08.04.2024 in W.P.No.21694 of 2017 is as follows:



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W.P.No.21694 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.21694 of 2017

and

W.M.P. No.22688 of 2017

R.Panimala

..... Petitioner

-Versus-

1.The Central Government Employees
Residential Complex Society
rep. By its President M.L.Perumal,
No.123, Poonamallee High Road,
Velappansavadi, Kendriya Vihar,
Chennai – 600 077.

2.Thiruverkadu Municipality
rep. By its Commissioner,
Thiruverkadu, Chennai – 600 077.

3.The Tahsildar,
Maduravoyal Taluk, Maduravoyal,
Chennai – 600 095.

4.The Superintendent of Police,
Thiruvallur.

..... Respondents

(R4 suo motu impleaded vide order
dated 12.02.2024 in W.P. No.21694 of 2017)

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W.P.No.21694 of 2017

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus directing the 3rd respondent to verify the revenue records with the assistance of Taluk Surveyor, Thiruverkadu and specify the land mark to connect the public roads in S.Nos.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 and 85/1 situated at Numbal Village, Velapanchavadi, Thiruverkadu, Chennai – 600 077 with the road in S.No.83/3A by removing the obstructing wall so as to have ingress and egress to the petitioner's land in terms of the communications made in Na.Ka.No.1047/2016/F1 dated 07.12.2016 and 20.02.2017 by the 2nd respondent respectively.

For Petitioner : Mr.T.E.Ekambaram
For Respondent(s) : Mr.Avinash Wadhwani
for Ms.V.Srinathi for R1
Mr.A.Selvendran,
Spl. Government Pleader for R2 &
R3
Mr.S.Sugendaran
Addl. Public Prosecutor for R4

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus directing the 3rd respondent to verify the revenue records with the assistance of Taluk Surveyor, Thiruverkadu and to specify the land mark to connect the public roads in S.Nos.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 and 85/1 situated at Numbal Village, Velapanchavadi, Thiruverkadu, Chennai – 600 077 with the road in S.No.83/3A by removing the obstructing wall so as to have

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ingress and egress to the petitioner's land in terms of the communications made in Na.Ka.No.1047/2016/F1 dated 07.12.2016 and 20.02.2017 by the 2nd respondent respectively.

2. It is the case of the petitioner that his father S.T.Venugopal Naidu acquired the land in S.No.83/3A (old S.No.42/8 to 10) comprised in Numbal village, Velapanchavadi, Thiruverkadu, Chennai on 25.03.1973 through a family koorchit. He died intestate on 13.12.1987 leaving his wife-Radhammal, sons Janakiraman and Parthasarathy, daughters R.Parimala (petitioner) and Miss.Vedavalli as his legal heirs. In a preliminary decree dated 07.07.2015 that was passed in O.S.NO.63 of 2012 on the file of the III Additional District Judge, Thiruvallur at Poonamalee, the petitioner was declared to be entitled to 6/10th share in the said property. Now, application filed for passing final decree is pending.

2. The Central Government Employees Welfare Housing Organization, for the purpose of providing house sites to the Central Government employees, purchased the adjacent land of the petitioner comprised in S.Nos.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 and 85/1 at Numbal village, Velapanchavadi, Thiruverkadu, Chennai 600 077. Thereafter, the land was laid out into plots and after getting planning approval and building permit from authorities concerned, the society put up residential buildings and sold UDS to several employees of

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W.P.No.21694 of 2017

the central government. As a condition precedent they have formed inner roads connecting the main road. After formation of inner roads, the same was also gifted to the Executive Officer, Special Grade Town Panchayat, Thiruverkadu through a registered gift deed dated 27.07.1995 registered as Doc.No.3331 of 1995 on the file of the Sub Registrar, Kundrathur thereby handing over the roads formed in the layout to the then Executive Officer, Special Grade Town Panchayat, Thiruverkadu and the gift was accepted.

4. While so, to the shock and surprise, the 2nd respondent closed the western side roads in the point connecting the eastern side of the petitioner's land comprised in S.No.83/3A. It is the only access available to the petitioner and others to connect the main road, but it was permanently obstructed by the 1st respondent despite the said roads were declared as public road belongs to the Government. Despite earlier orders of this court dated 18.10.2016 made in W.P.No.36283 of 2016 to consider the representation of the petitioner for the removal of the compound wall erected on the western side of the land comprised in S.No.77/9, 78/4, 83/1, 83/2, 84/1, 84/2 & 85/1 at Numbal village, nothing was done. Hence, this writ petition.

5. A counter affidavit has been filed by the 1st respondent *inter-alia* contending that after completion of the entire project, the same was handed over to the 1st respondent Society represented by its president for maintenance

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and for all other purposes and that since it is a gated community, CGEWHO built compound wall around the lands as per the approval obtained from Thiruverkadu Town Panchayat. It is not a thorough fare for all persons to pas through.

6. A separate counter affidavit has been filed by the 3rd respondent inter-alia contending that gifted road ends at S.No.83/1 and from that point of the gifted road in S.No.83/1, a 6 meter width road, which was not gifted, runs towards west and ends in S.No.83/1 at the distance of a few meters from the land of the petitioner in S.No.83/3A. The compound wall is constructed on the western side of S.No.83/2 by the 1st respondent.

7. Heard both sides.

8. The learned counsel for the petitioner would submit that the subject land was gifted to the local body for the purpose of connecting the eastern side of the petitioner's land in S.No.83/3A. However, the same has now been closed. Hence, he would seek a direction to survey the subject land.

9. Earlier this court by order dated 21.12.2023 appointed Mr.Saravana Kumar, Advocate as Commissioner to inspect the subject property and to measure the property after giving due notice to the petitioner and the 1st respondent. Accordingly, the Advocate Commissioner inspected the subject property on 06.01.2024 and submitted his report along with rough sketch.

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10. The report filed by the Advocate Commissioner would indicate that the distance between the petitioner's land and the compound wall built by the gated community is 53.8 meters and there is no connection between the compound wall and the petitioner's land.

11. Earlier, a Division Bench of this Court, while disposing of the writ petition in W.P.No.20791 of 20177 filed by petitioner by one J.Rajendra Prasad in respect of the land in very same survey for the removal of encroachments, on the cart track held as under:-

"7. If the encroachments are unidentifiable, then the High Court in exercise of powers of judicial review cannot issue any direction with reference to patta lands. Only if the encroachers are identified with reference to the revenue records and the evidences available, then alone the writ of mandamus would lie to remove the encroachers by following the procedures as contemplated under the relevant Statutes and Rules in force.

8. The learned counsel for the petitioner would contend that there was a Cart Track even as per the revenue records and the petitioner is possessing records to establish that the Cart Track is in existence.

9. However, Mr.A.Selvendran, learned Special Government Pleader appearing on behalf of the respondents 1 and 2 would oppose the contentions made by the petitioner by stating that the Revenue Authorities

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verified the records and found that the subject properties referred in the present writ proceedings are patta lands and there are no encroachments.

10. In view of the disputed facts regarding the identification of the encroachment in a property, direction as such sought for cannot be granted and consequently, this Writ Petition fails and stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.”

12. On perusal of the available records, particularly, FMB relied on by the petitioner and the approved plan, this court is of the view that the petitioner makes an attempt to establish his right through the road laid was earmarked for the public purpose and handed over to the local body. The said road is within the gated community and the gated community is surrounded by compound wall. The petitioner's land is comprised in S.No.83/3A situated in the same locality behind the gated community. Now, the petitioner tries to have access through the gated community through existing road handed over to the local body. Such attempt can easily be discernible from the available records. If the petitioner asserts that it is the only access available to him and there is no other alternative access available, it is well open for him to establish such a right in the manner known to law in a civil court and not in the writ petition. In fact, the petitioner tries to establish the alleged easementary right over the land

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earmarked as public road in the gated community and put in use in 1995 itself.

13. For all the above reasons, this court do 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
kmk

08.04.2024

To

1.The Commissioner,
Thiruverkadu Municipality,
Thiruverkadu, Chennai – 600 077.

2.The Tahsildar,
Maduravoyal Taluk, Maduravoyal,
Chennai – 600 095.

3.The Superintendent of Police,
Thiruvallur.

7. The aforementioned order speaks for itself. In paragraph No.11 of aforementioned order, there is a clear mention about earlier Division Bench order with regard to the same survey numbers. The aforementioned order also makes it clear that it has been made after appointing an Advocate Commissioner and getting a report from Advocate Commissioner.

8. Be that as it may, another interesting point comes to light. Paragraph No.2 of the aforementioned order makes it clear that writ petitioner in the earlier writ petition (W.P.No.21694 of 2017) namely

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Ms.R.Parimala is daughter of one Mr.S.T.Venugopal Naidu. A careful perusal of support affidavit in the captioned WP, more particularly paragraph No.3 thereof brings to light that writ petitioner Ms.Rukmani is also daughter of Mr.S.T.Venugopal Naidu. This means that writ petitioner in the earlier writ petition and writ petitioner before us in the captioned WP are siblings. To be noted, paragraph No.3 of support affidavit of captioned WP reads as follows:

'3. I most respectfully submit that the property comprised in S.No.83/3A, corresponding to Old S.No.42/8 to 10, situated in Numbal Village, Velappanchavadi, Thiruverkadu, Chennai. This property belonged to my late father Mr.S.T.Venugopal Naidu, who acquired it through a family partition deed (Koorchit) dated 25.03.1973, under Patta No.334. My father passed away in state on 13.12.1987, leaving behind his wife, Mrs.Radhammal, his sons Mr.Janakiraman, Mr.V.Parthasarathy, myself and five other daughters as his legal heirs. Consequently, each of us is entitled to a 1/10th share in this and other properties.'

9. In the light of the narrative thus far, we find no reason to entertain the captioned WP.

10. Before we conclude, we make it clear that filing of multiple writ petitions with regard to the same relief is definitely a practice which



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deserves to be avoided.

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11. Ergo, the sequitur is, captioned WP is dismissed. Owing to the fair nature of submissions made, we refrain ourselves from imposing costs.

(M.S.,J.)

(K.R.S.,J.)

12.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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To

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1. The Commissioner
Thiruverkadu Municipality
Thiruverkadu, Chennai-600 077.
2. The Tahsildar
Poonamallee Taluk
Poonamallee
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M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

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