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W.P. No. 31255 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 31255 of 2023
and
W.M.P. No. 30869 of 2023**

M/s. Besmak Components Pvt. Ltd.,
Rep. By Mr.G. Manikumar
S/o. Late P.Ganesan
Plot No.A-45, Sipcot Industrial Growth Centre,
Oragadam, Sriperumbudur Taluk,
Kancheepuram District 602 105.

... Petitioner

-VS-

1. The Principal Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai 600 009.

2. The Municipal Commissioner,
Thiruverkadu Municipality,
No.1, Sivan Koil Street,
Thiruverkadu,
Chennai 600 077.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the 1st and 2nd respondents to initiate appropriate action on petitioner's representation dated 11.10.2023 and 13.10.2023 and to stop the process of laying road in petitioner's land.



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For Petitioner : Mr. M. Deivanandam
For Respondents : Mr. B. Vijay (for R1)
Additional Government Pleader
Mr. U. Baranidaran (for R2)
Additional Government Pleader

ORDER

Heard Mr. M. Deivanandam, Learned Counsel for the Petitioner and Mr. B. Vijay, Learned Additional Government Pleader appearing for the First Respondent and Mr. U. Baranidaran, Learned Additional Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner is that he had made a representation dated 13.10.2023 to the First Respondent that the Second Respondent without any authority of law is high-handedly laying road in its private land in Survey No. 394/2 in Ayanambakkam Village, Poonamallee Taluk, Tiruvallur District, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.



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3. This Court during the earlier hearing on 02.11.2023 had directed the Tahsildar, Poonamallee along with Surveyor to inspect the property to ascertain whether any portion of the property of the Petitioner is encroached while laying road and file report. In furtherance to the said order, a status report has been filed on 08.01.2024 by the Tahsildar, Poonamalle, which reads as follows:-

2. All boundaries in the plots in S.No. 394/2, the Road have been measured as per the FMB and the layout plan. The plots numbering from 1 to 23 have been laid out combining the S.No. 394 & 396. In the middle of the layout a road measuring North South 165.6 m length and 90 m breadth is shown as per layout. This road is in FMB in S.No. 396 as detailed below.

North East Corner 9 m breadth and South in Road in S.No. 396 as 4.4 m. The measurment in road $9\text{ m} - 4.4\text{ m} = 4.6\text{ m}$. The extent of 4.6 m ought to be in S.No. 394/2A1 as per enclosed drawing.

3. At the time of issuing patta to the applicant as per ground, the western boundary in S.No. 394 ought to be 009 m of the Northwest and 1.2 m on as gap. But in FMB there is no such gap.



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4. The Petitioner is claiming in S.No. 396 as 8 m. As shown in FMB as per account and the remaining extent of road 1 m has not taken into account by the Petitioner.

5. The Road in plot no. 1 to 4 and 6 to 23 is 9 m (30 Feet) as per layout and the road in plot no.4 and 5 could be like that and not as 8.0 m. as Road.

6. Moreover, as per the documents and EC produced by the Petitioner reveals that the road in Plot No. 5 & 6 western side is 30 feet.

7. As on ground, FMB and (unapproved) layout i.e., M.R.Nagar, the width of the Road 9.1 m. (30 feet) and length of 165.6 mt. The entire road in northern side passes through S.No. 396 and 394/2A1 part. The above company has encroached and extent of 26 sq. mt. north west 0.9 mt. and south west 1.1 mt. in the above road.



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4. Having regard to the rival contentions, it is evident that the claim of the Petitioners fall within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in ***Roshina T. -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid remedy and there is no acceptable explanation from the Petitioner for not having availed it. In that view of the matter, this Court is not inclined to entertain this Writ Petition or delve into the merits of the controversy involved.

5. At the same time, it is made clear that nothing said in this order shall be construed as creating any fetter on the powers of the concerned authorities to take action against the Petitioner in accordance with law if it has encroached upon any public property.



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In the result, the Writ Petition is disposed with the aforesaid observations.

Consequently, the connected Miscellaneous Petition is closed. No costs.

08.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

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To

1. The Principal Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai 600 009.
2. The Municipal Commissioner,
Thiruverkadu Municipality,
No.1, Sivan Koil Street,
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P.D. AUDIKESAVALU, J.

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