



W.P.(MD)No.16282 of 2016 & 18566 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)Nos.16282 of 2016 & 18566 of 2022
and W.M.P.(MD)Nos.11912 & 11913 of 2016
and W.M.P.(MD)No.13494 of 2022

W.P.(MD)No.16282 of 2016

AL – Ansaar Trust,
Rep. By its Secretary,
Karamath Nagar,
70 Feet Road,
New Ellis Nagar,
Madurai – 16.

... Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The District Revenue Officer,
Madurai District,
Madurai.
- 3.The Tahsildar,
Madurai West Taluk,
Madurai – 16.



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4.The Commissioner,
Madurai Corporation,
Madurai.

5.N.Krishnan

6.The Deputy Director of Town and
Country Planning,
4, Hakkim Amalkhan Road,
Chinna Chokkikulam,
Madurai – 625 002.

7.The Deputy Director and
PA to District Collector (Land Survey),
District Land Survey Office,
Madurai – 625 020.

8.A.P.V.Nagallochani

9.The Director,
Town and Country Planning Department,
Chennai.

(R6 to R8 are impleaded vide Court order
dated 22.02.2018 in W.M.P.(MD)Nos.3797 & 3832/2018)

(R9 is *suo-motu* impleaded vide Court order
dated 28.08.2024 in W.P.(MD)Nos.16282/2016 & 18566/2022)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records pertaining to the impugned order made in Ni.Mu.No.60129/2015/G5 dated 31.12.2015 passed by the 2nd respondent as well as the consequential order made in R.T.R.No. 223/2016 TK/8A/121/1425 dated 08.02.2016 issued by the 3rd respondent and quash the same.



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For Petitioner : Mr.M.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.D.Gandhiraj,
Spl. Govt. Pleader for R1 to R3,
R6, R7 & R9
Mr.K.Manisekaran for R4
Mr.N.Anantha Padmanabhan,
Senior Counsel for
Ms.P.Krishnaveni for R5
Mr.K.Muralisankar for R8

W.P.(MD)No.18566 of 2022

N.Krishnan

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Secretary,
AL – Ansaar Trust,
Karamath Nagar, 70 Feet Road,
New Ellis Nagar, Madurai – 625 016

3.The Director,
Town and Country Planning Department,
Chennai.

.... Respondent

(R9 is *suo-motu* impleaded vide Court order
dated 28.08.2024 in W.P.(MD)Nos.16282/2016 & 18566/2022)



W.P.(MD)No.16282 of 2016 & 18566 of 2022

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents from encroaching or carrying out any work whatsoever nature and further to remove the illegal underground drainage from the property of the petitioner in T.S.No.16, Ward No.5, Block No.85, in New Ellis Nagar, Madurai – 625 016.

For Petitioner : Mr.N.Anantha Padmanabhan,
Senior Counsel for
Ms.P.Krishnaveni

For Respondents : Mr.K.K.Kannan,
Standing Counsel for R1
Mr.M.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates for R2
Mr.D.Gandhiraj,
Spl. Govt. Pleader for R3

COMMON ORDER

W.P.(MD)No.16282 of 2016 has been filed seeking for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order made in Ni.Mu.No.60129/2015/G5 dated 31.12.2015 passed by the 2nd respondent as well as the consequential order made in R.T.R.No.223/2016 TK/8A/121/1425 dated 08.02.2016 issued by the 3rd respondent and quash the same.



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2. W.P.(MD)No.18566 of 2022 has been filed seeking for issuance of a Writ of Mandamus, forbearing the respondents from encroaching or carrying out any work whatsoever nature and further to remove the illegal underground drainage from the property of the petitioner in T.S.No.16, Ward No.5, Block No.85, in New Ellis Nagar, Madurai – 625 016.

3. Since the issues involved in both the Writ Petitions are one and the same, both the Writ Petitions are taken up together, heard and disposed of by way of this common order.

4. The brief facts leading to the filing of W.P.(MD)No.16282 of 2016, are as follows:

It is the case of the Writ petitioner that one Sundaresapattar, who is the original owner of the subject property, converted the land into house site plots and got plan approval from the 4th respondent vide M.O.12/75, W.Roc.685/75. In the plan, there are two scheme roads viz., 70 feet scheme road and 50 feet scheme road. 50 feet scheme road in the layout plan is a connecting road for 20 feet and 70 feet scheme roads. The Petitioner Trust has purchased Plot Nos.10 and 11 from one Subramanian and Mangalam respectively through registered sale deed,



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wherein also the eastern boundary is referred as 50 feet scheme road. The petitioner Trust constructed a Mosque in the said plots and hundreds of devotees using the 50 feet road as pathway.

4.1. After the death of Sundaresapattar, his wife Gomathi Ammal and his adopted son Chellappa @ Kalyanasundharam, sold the 50 feet road as plots to one Lakshmi and her son Krishnan viz., the 5th respondent. By virtue of the said sale deed, the 5th respondent put up a thatched shed in the Southern boundary of 70 feet scheme road. Thus, the entire pathway of 50 feet scheme road was completely blocked by the 5th respondent. Hence, one of the plot owners namely Subramanian filed a Writ Petition before this Court in W.P.(MD)No.3668 of 2009 for the relief of removing encroachment made by the 5th respondent. This Court, by order dated 11.06.2013, disposed of the said Writ Petition with a direction to the Commissioner, Madurai Corporation herein to consider the representation of Subramanian. It is the further case of the petitioner that the 50 feet scheme road has been notified under Section 9(2) of “the Tamil Nadu Survey and Boundaries Act, 1923” (hereinafter referred to as “the Act”). The 5th respondent has also gave a representation dated 06.03.2013, seeking to issue patta, which has been rejected by the authorities, by memorundam dated 05.07.2013, stating that 50 feet scheme



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road has been notified as road as per Section 9(2) of the Act. Thereafter, the District Revenue Officer, Madurai through the impugned order dated 31.12.2015 has passed an order stating that an entry has been wrongly made in the Town Survey number and the same has to be rectified. Based on the said order, the Tahsildar, Madurai West Taluk, Madurai has passed a consequential impugned order dated 08.02.2016, whereby patta was transferred to the name of the 5th respondent. Challenging the same, the petitioner has filed this Writ Petition.

5. The Commissioner, Madurai Corporation viz., the fourth respondent has filed a counter affidavit in W.P.(MD)No.16282 of 2016, wherein it is stated that the Corporation is formal party and the impugned order was passed by the District Revenue Officer, Madurai regarding patta transfer. Further, it is stated that this matter is purely civil dispute between the petitioner and the 5th respondent. The other respondents have also filed their counter affidavit.

6. The brief facts, leading to the filing of W.P.(MD)No.18566 of 2022, are as follows:

It is the case of the Writ Petitioner that the larger extent of properties comprised in T.S.No.1606, 1607, 1608/2A and 1608/2C comes within New Ward



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No.17 (Old Ward No.29) in Melmadurai Village, Madurai West Taluk, Madurai originally belonged to one Sundaresapattar. After his death, the properties devolved upon his son by name Chellappa @ Sundaharam Pattar. In the year 1975, the said Chellappa @ Sundharam Pattar prepared a layout of the said land comprised within several house sites. In preparing such layout, a portion of the property on the eastern side, measuring about 32 cents was left out for the reason that the same fell within a scheme road. Since the Government did not take any steps to acquire the land for scheme road, the said Chellappa @ Sundharam Pattar has sold the said lands to the petitioner and his mother. The petitioner's mother thereafter, conveyed these properties to the petitioner and therefore, the petitioner has become the owner of the entire extent of land comprised in T.S.No.16. Thereafter, the petitioner was decided to construct a hotel in the said property and the petitioner submitted a necessary plan to the Commissioner, Madurai Corporation, Madurai and after getting approval, the petitioner obtained electricity connection and constructed a building. Thereafter, the Commissioner, initiated proceedings to demolish the said building on the premise that it was constructed in a scheme road and the petitioner was an encroacher.



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6.1. Admittedly, the property in T.S.No.16 is a private land and the same was never acquired by the Government for the purpose of laying any scheme road and neither the same was gifted to the Government or the Madurai Corporation. Therefore, the petitioner has made an application to the District Revenue Officer, Madurai and after verifying all the documents, the District Revenue Officer passed an order dated 31.12.2015, directing to enter the name of the petitioner in the patta of the said property. Consequently, the Tahsildar, Madurai South entered the name of the petitioner in the patta by order dated 08.02.2016. In the said circumstances, the Commissioner, Madurai Corporation has illegally entered into the petitioner's land in a high handed manner and constructed a underground drainage in the entire extent of subject property. Hence, the petitioner has filed this Writ Petition.

7. The Commissioner, Madurai Corporation has filed a counter affidavit, wherein it is stated that the property in question was inspected by the Ward Engineer and the intended land for laying drainage pipes are found to be in two different properties in two difference places on inspection. Further, it is stated that the petitioner himself has admitted that the property in T.S.No.16 is part of a scheme road by another Department other than Madurai Corporation and



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therefore, only the appropriate department can release the property from its scheme plan and until then, it will remain a part of the scheme road. Further, it is stated that the Corporation did not install any underground drainage system in the property claimed by the petitioner in T.S.No.16. Hence, the petitioner's prayer to remove the encroachments has no basis and same is liable to be dismissed.

8. During the pendency of these Writ Petitions, the Director, Town and Country Planning Department, Chennai was *suo-motu* impleaded by this Court and he has filed a common counter affidavit in both the Writ Petitions. According to them, the Ref.No.T.P./Dy.DTP MR.No.12/75 denotes the Town Planning/Deputy Director of Town Planning (Madurai Region) and the approval itself has been given by the erstwhile office of the Deputy Director of Town and Country Planning, Madurai, which has subsequently been merged with the Assistant Director of Local Planning Authority, Madurai in 2020. Further, it is stated that the allegation of the petitioner that the plan approved by the Madurai Corporation, has also been approved by the Director of Town Planning is incorrect. According to them, the availability of the plan relating to MR.No.12/75 is concerned, even in the corresponding Register viz., Layout approval register, entries for L.T.GTS/DY.D.T.P.(MR)No.12/75 and L.P.H/Dy.D.T.P. (MR)No.12/75



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are available, which pertains to the property in S.Nos.347/2A and 348/2B in Avaniyapuram Town Panchayat, but there are no entry for TP/Dy.DTP (MD)No. 12/75, in any of the registers handed over by the erstwhile Deputy Director's office. There is no scanned plan also available in respect of MR No.12/75 in the office of the Assistant Director, LPA.

9. The parties are referred to as per their rank in W.P.(MD)No.16282 of 2016.

10. The main contention of the learned Senior counsel appearing for the petitioner is that on the basis of the application given by the 5th respondent, the impugned order has been passed by the District Revenue Officer, Madurai. The said order cannot be sustained in the eye of law, because, the District Revenue Officer has no jurisdiction to decide the matter. He further submitted that as per G.O.(MS)No.385, Revenue (Pothu-3) Department, dated 17.08.2004, the District Revenue Officer is competent to rectify the mistake crept in the UDR survey. Whereas, now the impugned order has been passed rectifying the mistake crept in the Town Survey number. Therefore, the impugned order is without jurisdiction. It is the contention of the learned Senior Counsel that the 50 feet road has been



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shown in all the sale deeds executed by the original owner Sundaresa Pattar right from 1975. Further, it is the contention of the learned Senior Counsel appearing for the petitioner that the Assistant Director of District Land Survey Officer, Madurai, vide memorandum dated 05.07.2013, made it clear that the 50 feet scheme road has been notified as road as per Section 9(2) of the said Act and the same has not been challenged in any manner. Therefore, it is his contention that after allotting the 50 feet land, shown as a road in all the parent document, while obtaining the layouts, the owner has subsequently allotted the said area in a partition deed to the wife of the petitioner and thereafter, the property has been sold. Hence, according to him, once the area has been shown as a road and vested with the Corporation, any sale deed will not bind on the parties. Therefore, the impugned order passed by the District Revenue Officer cannot be sustained in the eye of law and therefore, the impugned order passed by the second respondent and the consequential order passed by the 3rd respondent are liable to be set aside.

11. The learned Senior Counsel appearing for the 5th respondent would vehemently contend that there was no vesting of 50 feet road and there are separate road available to the petitioner. Though there was a reference to the DTCP approval and one of the boundary has been shown as 50 feet road in all the



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previous documents executed by the owner of the property, it is his contention that the said property has never vested with the Government at any point of time. In the counter filed by the 1st respondent, it is the stand of the Corporation that T.S.No.16 is part of a Scheme Road by another Department other than Madurai Corporation. It is the further contention of the learned Senior Counsel appearing for the 5th respondent that the subject property and other properties are subject matter of acquisition and Section 4(1) notification was issued for the purpose of acquiring the lands for the Housing Board in G.O.M.S.No.1793, Housing and Urban Development, dated 30.11.1978. The said notification has already been quashed by this Court in W.P.No.8985 of 1995, by an order dated 04.03.1998 and in W.P.No.649 of 1991, dated 07.08.1992. Therefore, merely there is some reference to DTP approval, as long as, the property has not been vested with the Government, it cannot be said that it is a public road.

12. It is his further contention of the learned Senior Counsel appearing for the 5th respondent that the Corporation has not claiming any right and it is stated by the Corporation that the encroachment said to have been removed on that road. Hence, it is his contention that even while publishing a notification under the said Act, no notice whatsoever has been given to the petitioner and further, the



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said Act will apply only in respect of the Government land. In the absence of any evidence to show that the particular property has been handed over to the Government, the said proceedings cannot be put against the petitioner.

13. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

14. It is the case of the Writ Petitioner that the 50 feet scheme road shown in the subject matter is originally vested with the Corporation while granting approval in TP/DT DTP MR No.12/75 in ROC.No.685/75, dated 15.02.1975. The sale deed, executed by the original owner dated 31.07.1975, shows the 20 feet road in the western side of plot Nos.8 and 10. Similarly, Plot Nos.11 and 12 when sold on 31.07.1975, the eastern boundary shown the 50 feet scheme road. However, the said area has been allotted to the wife of Sundaresa Pattar in a partition deed entered on 10.03.1977.

15. The main crux of the issue is whether the 50 feet road has been handed over to the Corporation or local authority. Absolutely, there is no evidence available on record. Though in the sale deed, the original owner has referred the



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DTCP approval, when this Court directed the Director of Town and Country Planning Department to produce the said copy of the plan, it is stated that the particular approval layout register is not available in the office. Whereas, in the counter affidavit, it is stated that the said approval relates to Avaniyapuram Town Panchayat. In the counter affidavit filed in W.P.(MD)No.18566 of 2022, it is the stand of the Corporation that the Corporation does not intend to lay the drainage pipes in T.S.No.16. It is not the case of the Corporation that the road has vested with them at any point of time. Whereas, a notification under the Survey and Boundaries Act was issued in the Tamil Nadu Government Gazette in the year 2007, which includes the Town Survey Nos.1 to 20, including the subject property.

16. Section 5 of the said Act, deals with survey of Government lands, State Government may direct the survey of Government land or any boundary of such land, the State Government, or, subject to the control of the State Government, any officer or authority to whom this power may be delegated by it, may by notification order a survey of any Government land or of any boundary of such land or of the boundary forming the common limit of Government land and land that is not Government land. Further, as per Section 14 of the said Act, any person deeming himself aggrieved by the determination of any boundary under



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Sections 9, 10, 11, 12-A or 12-B, may subject to the provisions of Parts II and III of the Indian Limitation Act, 1963 (Central Act 36 of 1963) institute a suit within three years from the date of the notification under Section 13 to set aside or modify the said determination and the survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration if any, shall be noted in the record. Whether notice has been properly served under Section 15(2) of the said Act or not has not been established.

17. Be that as it may. It is not the case of the Corporation that the subject land belonging to them at any point of time. Therefore, this Court is of the view that even a notification issued under the said Act with regard to the Town Survey Nos.1 to 20 in Block No.85, it must be only relate to the Government land. Therefore, the said notification itself cannot be assumed that the property has already been vested with the Government, in the absence of any document evidencing the transfer of property to the Government.

18. An Advocate Commissioner has been appointed by this Court, vide order dated 19.08.2024 and he has filed a report with photographs. In the said report, it is stated that the subject land remained vacant land and to the Western



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side of the property in dispute, in the southern end, a Mosque are situated and to the North of the petitioner's property, there was a dental clinic in the name of 'Smile Multi Speciality Dental Care and a travel agency namely 'Lucky Translink'. To the North of the said travel agency, there was a thar road which starts from the Western boundary of the disputed property and the said thar road runs toward west. To the Northern side of the said thar road, the lands were vacant. Be that as it may. The order passed by this Court in the earlier occasion in W.P.Nos.8985 of 1995 and 649 of 1991 also shows that the subject property and other areas are subject matter of Section 4(1) notification of the Land Acquisition Act and the said notification was challenged in those writ petitions and said Writ Petitions were allowed by this Court. These facts clearly shows that the property is only appears to be private properties. Now the impugned order has been passed by the District Revenue Officer, on the basis of the application given by the 5th respondent. The District Revenue Officer has passed the impugned order stating that there is a mistake crept in the Town Survey proceedings. Hence, directed to set right the same and change the name of the petitioner.

19. According to the third respondent, the impugned order has been passed, based on the recommendation made by the Tahsildar, all the documents



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produced by the Commissioner Office and sketch obtained from the DTCP etc.

However, none of the documents have been discussed and revealed except stating that considering those documents, the order came to be passed. As per G.O.Ms.No.385, Revenue (Pothu-3) Department, dated 17.08.2004, the District Revenue Officer is competent to rectify the mistake crept in the UDR survey number, however, the impugned order has been passed stating that an entry has been wrongly made in the Town Survey number and the same has to be rectified. Therefore, the very impugned order passed by the District Revenue Officer cannot be sustained. That apart, it is also relevant to note that the Corporation of Madurai has also issued a communication to the 5th respondent to the effect that there were no entries in the office with regard to the approval of layout viz., TP/DY DTP MR No.12/75 in ROC No.685/75 in the office.

20. Therefore, this Court is of the view that when the Government has not claimed that the property vested with the Government at any point of time, merely on the basis of some reference in the earlier documents to the effect that there was a scheme road of 50 feet, it cannot be assumed that the entire property is vested with the Government and the property still remains as a vacant land. The entire dispute is only with regard to claiming the title issue. Therefore, this Court



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is of the view that only on proper evidence produced by summoning the necessary officials and examining them with relevant documents. In a competent civil Court, the issue can be addressed properly and title can be decided.

21. In such view of the matter, the impugned orders in W.P.(MD)No. 16282 of 2016 shall stand quashed and the Writ Petition is allowed. The parties are relegated to the civil Court to file a comprehensive civil suit to establish their title. It is made clear that as per the Advocate Commissioner's report, the subject land remains a vacant land and therefore, the petitioner and the 5th respondent are restrained from making any encroachment or any further alienation, till their rights have been completely adjudicated in the civil Court.

1. As far as the W.P.(MD)No.18566 of 2022 is concerned, it is stated by the Madurai Corporation in their counter affidavit that the Corporation does not intend to lay drainage pipes on the subject property in T.S.No.16. Therefore, no further order is required in this Writ Petition. However, it is made clear that as admitted in the counter affidavit, there shall not be any further activities by the Corporation in the disputed land until their rights have been conclusively determined in the civil Court.

2.



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23. With the above observation, W.P.(MD)No.18566 of 2022 is allowed.

Consequently, connected miscellaneous petitions in both the Writ Petitions are closed. No costs.

19.10.2024

NCC : Yes/No
Index : Yes/No

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To
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