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W.P. No.28640 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2025

CORAM:
THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P. No.28640 of 2025

G. Thyagarajan

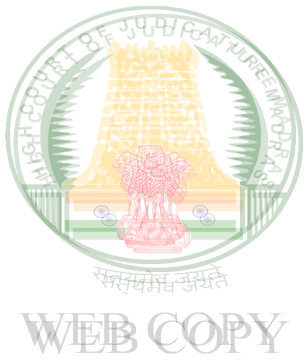
Petitioner

vs.

1. The District Collector
Chennai District
Singaravelar Maaligai Complex
Chennai 600 001
2. The District Revenue Officer
Ambattur
Chennai District
Chennai 600 053
3. The Inspector of Police
T1 Ambattur Police Station
Ambattur
Chennai 600 053
4. Mukesh
5. Guna Pandian
6. Ramani

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the first respondent to dispose of the petitioner's representation dated 30.12.2024 by directing the third respondent to take necessary action against illegal encroachments made by the fourth respondent on the petitioner's property and the 20 ft. wide public road in accordance with law within a time frame.



For petitioner

For RR 1 & 2

For F3

Mr. J. Elanjchezhen

Mr. T.K. Saravanan

Addl. Govt. Pleader

Mr. S. Santhosh

Govt. Advocate (Crl. Side)

ORDER

(made by HEMANT CHANDANGOUDAR, J.)

The captioned writ petition has been filed seeking a writ of mandamus directing the official respondents, namely respondents 1 to 3, to consider and pass orders on the petitioner's representation dated 30.12.2024 (hereinafter referred to as "the said representation"). By the said representation, the official respondents were requested to remove the alleged encroachment made by the private respondents, namely respondents 4 to 6, on a 20-foot-wide public road abutting the petitioner's property.

2. The petitioner claims to be the power of attorney holder of one Harsha D. Subramanian and his daughter, Dolly Harsha David, who purchased a vacant plot measuring 15,514 sq. ft., situated at Korattur Village (hereinafter referred to as "the said land"), under a sale deed dated 30.10.1996. The said land is situated in an unapproved layout. The petitioner further claims that a 20-foot-wide public road abuts the said land. It is his further case that Mukesh, the fourth respondent, son of Guna Pandian (fifth respondent) and Ramani (sixth respondent), has encroached upon



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the petitioner's property as well as the properties of two other persons, namely Selvaraj and Ranganathan, and has extended the encroachment onto the said 20-foot-wide public road. The petitioner contends that, despite being statutorily bound to remove the encroachment, the official respondents have failed to act on his representation, thereby compelling him to file the present writ petition.

3. Issue notice to the official respondents (respondents 1 to 3).

4. Mr. T.K. Saravanan, learned Additional Government Pleader, accepts notice for respondents 1 and 2, and Mr. S. Santhosh, learned Government Advocate (Crl. Side), accepts notice for the third respondent.

5. On instructions, Mr. T.K. Saravanan, learned Additional Government Pleader, submitted that in the sale deed executed in favour of the fourth respondent, there is no mention that his property abuts a 20-foot-wide public road. He further submitted that, as the said road in an unapproved layout has not been vested with any local authority, respondents 1 and 2 are not statutorily bound to act upon the petitioner's representation.

6. In the sale deed dated 30.10.1996, annexed by the



petitioner to the writ petition, the boundaries of the said land are described as follows:

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- ? On the North: Sr. Radhakrishnan's land
- ? On the South: Survey No. 652/4B
- ? On the East: 10-foot road
- ? On the West: Survey No. 654

7. It is thus evident that the eastern boundary of the said land is a 10-foot-wide road, and not a 20-foot-wide public road as claimed by the petitioner. Further, the petitioner has not annexed the sale deed standing in the name of the fourth respondent to establish that the said respondent, after encroaching upon the petitioner's land, has also extended the encroachment onto a 20-foot-wide public road.

8. To support his case, learned counsel for the petitioner placed reliance on the judgment of a Coordinate Bench of this Court in T.G. Naveen and Others v. The Chairman, TNEB and Others, reported in 2021 (5) CTC 648, and also on the judgment of another Coordinate Bench of this Court in M. Senthil Kumar and 37 Others v. The Commissioner, Chennai Corporation and Others.

9. In T.G. Naveen (supra), the Division Bench held that even in an unapproved layout, land earmarked as a road or for other



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public utility purposes cannot be diverted for any other use. Such land should be separated from the rest of the layout and a joint patta should be issued in the name of all the owners of the layout. It was further held that roads become common property for the use of all plot owners, and the appellants therein had no right to sub-divide the same or claim exclusive possession. The Division Bench also held that the portion of land shown as a road in a private layout is meant for all the purchasers in the layout, must be dedicated for that purpose alone, and should be handed over to the local body.

10. It is pertinent to note that the judgment in T.G. Naveen (supra) was rendered in the context of land meant for use as a road being sub-divided and claimed as private property by the developers. In that case, the Division Bench found that fraud had been committed by the appellants in registering documents without title, taking away land meant for a road, and getting the same registered illegally. In such circumstances, the Court held that it had the jurisdiction to nullify the illegal transactions, observing that fraud vitiates all actions, and that there was no necessity for the private respondent therein to approach the Civil Court to challenge the sale deed. The division bench also referred to the circular dated 02.07.2012 issued by Commissioner of Survey and Settlement which provided for common areas in unapproved layouts till they are



handed over/ taken over by the Government / Local Authority will bear a joint patta in names of all the owners of the unapproved layout and will not be labelled as roads , since this involves the jurisdiction of the local body/ other Government departments .

11. In M. Senthil Kumar (supra), the Division Bench, following the Supreme Court judgment in Association of Vasant Apartments Owners v. G. Gopinath reported in 2023 LiveLaw (SC) 105 and also the Division Bench decision in T.G. Naveen (supra), directed the respondents therein to remove all encroachments from a public road as per the layout and to maintain the road free from encroachments for the benefit of the residents of the locality.

12. In Association of Vasant Apartments Owners (supra), the Supreme Court dealt with a challenge to the validity of Rule 19 of the Development Control Rules for the Chennai Metropolitan Area. It held that a gift of land to the local body does not make the local body the absolute owner; instead, the local body becomes the trustee in place of the original owner. The Court held that transferring open space to the local authority through a gift does not violate either Article 14 or Article 300-A of the Constitution of India. It further held that local authorities are duty-bound to ensure that areas reserved as Open Space Reservation (OSR) are used strictly



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for their intended purpose and not for any other use, including as dumping yards. Directions were issued to ensure strict compliance. However, this judgment does not deal with open space/ park/ road in an unapproved layout but dealt with the duties of the local authorities in ensuring that the areas reserved as OSR which has vested with it in an approved layout.

13. At this juncture, it is pertinent to observe that a Constitution Bench of the Supreme Court, in *Padmasundara Rao (Dead) and Others v. State of Tamil Nadu and Others*, reported in (2002) 3 SCC 533, at paragraph 9, held that courts should not place reliance on decisions without discussing how the factual situation in the case at hand fits with the factual situation in the decision relied upon. Quoting Lord Morris in *Herrington v. British Railways Board*, reported in (1972) 2 WLR 537, it was also observed that there is always a peril in treating the words of a speech or judgment as though they were words in a legislative enactment, and it must be remembered that judicial utterances are made in the context of the facts of a particular case. It was further held that, owing to circumstantial flexibility, one additional or different fact may make a world of difference between the conclusions in two cases.

14. In the decisions cited and relied upon by the petitioner,



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there was no dispute that the properties in question had been specifically set apart as roads, even in an unapproved layout.

However, in the present case, the petitioner has not produced any documentary evidence to substantiate his allegation that the private respondents have not only encroached upon the petitioner's property but have also extended such encroachment onto the public road. Except for the rough layout plan, the sale deeds standing in the names of the private respondents have not been produced to establish that their plots are abutting a 20-foot-wide road. The rough layout plan indicates a 20-foot-wide road abutting the said land; however, the boundaries in the sale deed relating to the said land indicate that there is only a 10-foot-wide road on the eastern side.

15. The writ petitioner has also not placed any material to show that the said land jointly stands in the names of all the owners of the unapproved layout, as contemplated under the circular dated 02.07.2012. Furthermore, there is no material on record to establish that the alleged public road involved in this writ petition has been vested with any local authority so as to attract a statutory obligation upon respondents 1 and 2 to act on the petitioner's representation.

16. In the absence of any material to substantiate that the said land is a 20-foot-wide public road in an unapproved layout, and in the absence of any statutory duty cast upon respondents 1 and 2 to remove such alleged encroachment, and in view of the fact that a



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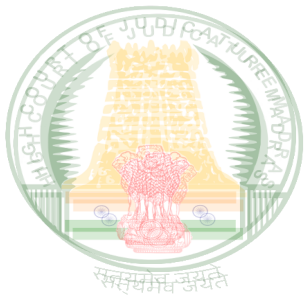
disputed question of fact arises as to whether the private respondents have indeed encroached upon the petitioner's property and the alleged public road, this Court is of the considered view that the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked to adjudicate such contentious factual disputes. Such disputes, involving examination of title, boundaries, and extent of possession, can only be adjudicated by the competent jurisdictional Civil Court upon appreciation of oral and documentary evidence.

17. Since the petitioner is relegated to agitate his rights before the jurisdictional Civil Court, issuance of notice to the private respondents is dispensed with, while preserving their rights and contentions before the said Court, in the event the petitioner approaches it for removal of the alleged encroachment.

18. With the above observations, the captioned writ petition stands closed. There shall be no order as to costs.

(M.S., J.) (H.C., J.)
11.08.2025

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Index: Yes
Internet : Yes



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HEMANT CHANDANGOUDAR, J.

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