



W.P.No.28948 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR
and
THE HONOURABLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P.No.28948 of 2022
&
W.M.P.No.32402 of 2023

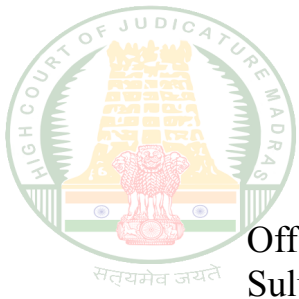
M.Eswaran

... Petitioner

VS.

1. The Executive Officer
Pallapalayam Town Panchayat
Pallapalayam
Coimbatore District
2. The District Collector
Office of the District Collector
Coimbatore District
Coimbatore
3. The Revenue Divisional Officer
Office of the Revenue Divisional Officer
Coimbatore South District
Coimbatore
4. The Tahsildar

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Office of the Tahsildar
Sulur Taluk
Coimbatore District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned letter vide Na.Ka.No.393/2019 dated 07.07.2022 from the file of the first respondent and quash the same as illegal and consequently direct all the respondents to take legal action to remove the encroachments in the street leading to Thulasidasar Street in the land comprised in S.No.136 of Ottarpalayam Village, Pallapalayam Town Panchayat, Coimbatore District.

For petitioner : Dr.C.Ravichandran
for Mr.S.B.Viswanathan

For Respondents : Mr.T.K.Saravanan
Additional Government Pleader

ORDER

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

Subject matter of captioned main 'Writ Petition' ['WP' for the sake of brevity] is 'land comprised in S.No.136 in Ottarpalayam Village, Pallapalayam Town Panchayat, Coimbatore District' [hereinafter 'said land' for the sake of brevity and convenience].

2. The case of the writ petitioner is that he purchased vacant house site admeasuring 7 cents and 133 sq.ft or thereabouts from and out of said



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land in and vide a sale deed dated 04.07.1991 from a private individual by name M.Natarajan. Further case of the writ petitioner is that after obtaining permission from Pallapalayam Town Panchayat, he constructed a house and he is residing there.

3. Dr.C.Ravichandran, learned counsel representing the counsel on record for writ petitioner submits that when the writ petitioner purchased afore-referred housing site, a 13 feet wide street leading to Thulasidasar Street was shown as access to said property in an unapproved layout but it has now been encroached upon.

4. Writ petitioner came to this Court earlier vide W.P.No.1205 of 2020 with a 'RoE' [Removal of Encroachment] prayer qua the afore-referred purported 13 feet wide street leading to Thulasidasar Street situate in said land. This WP was disposed of by a Division Bench in and by an order dated 23.01.2020 permitting the writ petitioner to give a fresh representation to R5 (The Executive Officer, Pallapalayam Town Panchayat, Pallapalayam, Coimbatore District) thereat and directed R5 to consider the fresh representation and make orders within a period of six weeks. Pursuant to this earlier order, the writ petitioner gave a representation dated



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24.03.2020 and R5 thereat (R1 in captioned WP) made a detailed 'order dated 07.07.2022 bearing reference ந.க.எண்.393/2019' [hereinafter 'impugned order' for the sake of convenience]. Assailing the impugned order, captioned WP has been filed.

5. A careful perusal of the impugned order brings to light that R1 in captioned WP has examined all the relevant records, documents and returned a factual finding that neither the writ petitioner's title deed nor the title deeds of other plot owners show a 13 feet wide road and that the title deeds only make a generic reference to a track running south to north. Thereafter, R1 has concluded that it is private civil rights and R1 does not have any jurisdiction.

6. Adverting to a certificate dated 30.07.2022 bearing reference ஒ.மு.எண்.432/ 2002-2003 issued by R1, learned counsel for writ petitioner submits that road situate in S.No.136 are being 'maintained' by R1.

7. Learned State counsel for all the respondents adverting to a counter affidavit of R1 dated 03.06.2023, more particularly Paragraph 10 thereat submits that the streets said to have been formed in the unapproved layout were not handed over to the Town Panchayat and the statement that



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they are being maintained by Town Panchayat is incorrect. This no doubt runs contrary to the 30.07.2022 certificate issued by R1 but no sketch or layout has been placed before us and there is nothing to demonstrate that there is a 13 feet wide street. Learned counsel for writ petitioner pressed into service a judgment of another Division Bench of this Court in ***T.G.Naveen*** case [***T.G.Naveen Vs. Chairman, Tamil Nadu Electricity Board*** reported in ***2021 (5) CTC 648***] for the proposition that even in unapproved layout if land is shown as road, it loses its private character irrespective of whether it is gifted to local body or not.

8. A careful perusal of ***T.G.Naveen*** case brings to light that in that case there were no disputed questions of facts and it was a case of fraudulently sub-dividing (illegally) lands set apart for roads and the appellants selling into themselves. Most relevant paragraph in this regard is paragraph 35 and relevant portion of paragraph 35 reads as follows:

'35. In the instant case, there is no disputed questions of facts. As already explained supra, the land which has been shown as Road portion has been fraudulently subdivided by the Appellants and illegally registered in their favour by themselves in violation of the Rules and Regulations.....'



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9. After taking leave of this Court to place before us a judgment rendered by a Hon'ble single Judge in ***M.Rajagopal*** case, learned counsel placed before us a judgment in ***M.Rajagopal Vs. Suresh and Ors.*** reported in ***MANU/TN/5357/2022*** rendered by Hon'ble single Judge for the same afore-referred proposition.

10. ***M.Rajagopal*** case does not come to the aid of the writ petitioner for at least two reasons:

(i) ***M.Rajagopal*** judgment was rendered in a second appeal which in turn obviously arise out of a civil suit where disputed questions were gone into. Paragraph 30 of ***M.Rajagopal*** case reads as follows:

'30. Once a layout has been created and a particular property is shown as a road, thereafter, the developer will not have any right or title over the property which is shown as a road in the layout. This proposition is applicable even if the layout is an unapproved layout. Otherwise after showing a particular property as a road, the developer will turn around and make a claim of title over a road in an unapproved layout. Therefore, viewed from different dimension also, the 30 feet created by the first defendant and his brother under Exhibit B2 can never be considered to be a private property of the first defendant.'

In the case on hand, as already alluded to supra, no sketch or



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lay out is before us.

(ii) The second reason is, *M.Rajagopal* case in turn relies on *T.G.Naveen* case, which is evident from paragraph 32 of *M.Rajagopal* case.

11. Therefore, we have no hesitation in writing factual disputation as to which part of said land has been set up as road for public/common use and if yes, what is the breadth and length of such road and further question is as to whether the same has been encroached upon and these are all matters which turn heavily on facts. Considering the unique nature of the facts and circumstances of the case on hand, we find that this is a fit case to not to interfere with the impugned order and leave it open to the writ petitioner to approach jurisdictional civil Court, if so advised and if so desired. We hasten to add that if the writ petitioner approaches the civil Court, all the rights and contentions of the writ petitioner, including points raised in the case on hand are left open. Equally, the impugned order will also be tested by the civil Court though we have not interfered with the impugned order only on the ground that there are disputed questions of facts and the matter needs to be gone into by the civil Court. To put it



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differently or to put it conversely, we have not sustained the impugned order on merits. For the self-same reason WMP No.32402 of 2023 becomes unnecessary and the same is closed albeit preserving all the rights and contentions of writ petitioner to add the parties sought to be added as defendants in a civil suit, if filed (if so advised or if so desired).

Captioned WP and captioned WMP thereat are disposed of as closed in the aforesaid manner. There shall be no order as to costs.

[M.S., J.]

[H.C., J.]

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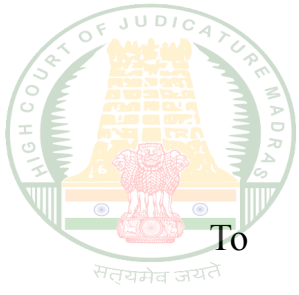
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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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HEMANT CHANDANGOUDAR, J.

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