

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25602 of 2014 and 17062 of 2015
and

M.P.Nos.1 to 3 of 2014 in W.P.No.25602 of 2014

W.P.No.25062 of 2014:

Fathima Masjid & Madrasa,
rep. by Secretary Mustafa Sheriff,
No.127/19, Jayanthi Colony,
20th Main Road,
Anna Nagar West,
Chennai-600 040.

... Petitioner

-Vs-

1.Assistant Engineer,
Corporation of Chennai,
Division - 95,
Zone-8,
Chennai-40.

2.Assistant Engineer,
O & M/Anna Nagar/North,
TAGEDCO,
CEDC/West,
Chennai-600 040.

3.The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.1, Jafar Sarang street,
Seethakathi Nagar,
Chennai-600 001.

4.The Superintendent of Wakf,
The Tamil Nadu Wakf Board,
No.822, Mecca Mosque,
Anna Salai, Chennai-600 002.

... Respondents

W.P.No.17062 of 2015:

V.K.Radhakrishnan

... Petitioner

Vs.

1. Corporation of Chennai,
rep. by its Commissioner,
Rippon Building,
Park Town, Chennai-600 003.
2. The District Collector,
Chennai District.
3. The Tahsildar,
Aminjikarai Taluk,
Chennai-600 107.
4. The Zonal Officer,
Zone VIII, Division 95, Part 21,
Corporation of Chennai,
Shenoy Nagar,
Chennai-600 030.
5. The Assistant Electricity Engineer,
(Distribution and Maintenance),
TANGEDCO, Anna Nagar West,
Chennai-600 040.
6. The Superintendent of Wakf,
Tamil Nadu Wakf Board,
Mecca Mosque, Anna Salai,
Chennai-600 002.
7. Abbas
8. Mustafa Sheriff
9. The Executive Engineer-Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Chennai-40.
(9th respondent impleaded as per
order of the Court, dt. 20.07.2015)

... Respondents

Writ Petition No.25602 of 2014 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in

Na.Ka.No./Special/Zonal95/2014 dated 8.9.2014 and the consequential order of the 2nd respondent in Letter No.E.Nee.Po/E.P/A.Nagar/North/Ko.Kattu/A.No.239/2014 dated 12.9.2014 and quash the same and forbearing the respondents from interfering with the peaceful possession of the property situated at No.127/19, Jayanthi Colony, 20th Main Road, Anna Nagar West, Chennai-600 040 and from disconnection of the electricity supply connection in respect of the service connection No.169-008-712.

Writ Petition No.17062 of 2015 filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 and 2 to demolish the encroachment made by the respondents 7 and 8 in the canal road, Jayanthi Colony, Anna Nagar West, Chennai-600 040 by assigning false address as Masjid & Madarsa situated in Door No.127/19, Jayanthi Colony, 20th Main Road, Anna Nagar West, Chennai and consequently forbear the respondents 7 and 8 from making any encroachment in the canal road (Jayanthi-Vasantham Colony), Anna Nagar West, Chennai-600 040.

For Petitioner : No Appearance
In W.P.25602/2014
& respondent Nos.
7 & 8 in
W.P.17062/2015

For Respondent No.1 : Mr.K.Soundararajan
in W.P.25602/2014 and
respondent Nos.1&4
in W.P.17062/2015

For Respondent No.2 : Mr.P.R.Dhilip Kumar
in W.P.25602/2014 &
respondent No.5 in
W.P.17062/2015

For Respondent Nos.3&4 : Mr.V.Lakshminarayanan
in W.P.25602/2014 and
respondent No.6 in
W.P.17062/2015

For Respondent Nos.2&3 : Mr.S.T.S.Moorthy
in W.P.17062/2015 Govt. Pleader
assisted by
Mr.V.R.Kamalanathan
Addl. Govt. Pleader for R2&R3

For 9th Respondent : Mr.V.Ananthamurthy

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

W.P.No.25602 of 2014 is filed for quashing the orders passed by the first respondent and forbear him from interfering with the peaceful possession of the property situated at No.127/19, Jayanthi colony, 20th Main Road, Anna Nagar West, Chennai-600 040 or disconnecting the electricity supply connection in respect of Service Connection No.169-008-712.

2. The aforesaid writ petition has been listed before this Court, in view of the earlier Public Interest Litigation pending being W.P.No.17062 of 2015, where action was sought against the Masjid & Madrasa which is alleged to have made an unauthorised construction on the road.

3. It is contended on behalf of the petitioner in W.P.No.25602 of 2014 that the Fathima Masjid and Madrasa has been run for the past 30 years by the family of late Fathima and it came under the control of the Tamil Nadu Wakf Board. It is the communication of the Chief Executive Officer, Tamil Nadu Wakf Board dated 03.03.2014 addressed to the Tamil Nadu Electricity Board for providing electricity connection, coupled with the No Objection Certificate dated 18.06.2014 issued by the Tahsildar, Aminjikarai which is stated to have resulted in the electricity connection being provided. It is further alleged that one of the neighbours sought to prevent the electricity connection and being given to them, they had filed a civil suit in O.S.No.3612 of 2014 on the file of I Assistant Judge, City Civil Court at Chennai and interim orders are granted against the third party from interfering with the cable line being laid by the Tamil Nadu Electricity Board.

4. The petitioner claimed that they have been now threatened by the Assistant Engineer, TANGEDCO, CEDC/West, Chennai-40 by issuance of a letter dated 12.09.2014 on the basis of the communication of the Corporation of Chennai dated 08.09.2014 that the construction is on the land belonging to the Corporation. A seven day notice was given.

5. The District Collector, Chennai (Respondent No.2 in W.P.No.17062 of 2015) has filed the counter-affidavit stating that the interim orders obtained from the City Civil Court, Chennai were without impleading the District Collector, Chennai nor the Tahsildar, Aminjikarai as parties. On inspection of the site, it has been found that at Door No.127/19, there are brick side walls in 285 sq. ft. of the land with a thatched roof and it appears like a hut.

6. The District Collector, Chennai has categorically averred in paragraph 8 of the counter-affidavit that in respect of the alleged No Objection Certificate issued by the Tahsildar, Aminjikarai, no such Certificate has ever been issued by the office of the Tahsildar, Aminjikarai and the said Certificate is alleged to be a false and fabricated one, where there is neither Survey Number nor boundaries mentioned. The seal affixed on the Certificate is also stated to be fabricated and the signature is also forged. In view thereof, the Tahsildar, Aminjikarai has lodged a complaint to find out the source of the forged Certificate in K11-Koyambedu Police Station on 01.7.2015 and the F.I.R. Number is 176/CSR/K11 Police Station.

7. We may notice that the prayer made in W.P.No.17062 of 2015 is for removal of what is stated to be encroachments made by respondent Nos.7 and 8 in that petition (viz. the petitioner in W.P.No.25602 of 2014) as the encroachment is on the Canal Road, Jayanthi Colony, Anna Nagar West, Chennai-40 by assigning false address as Masjid & Madrasa situated at Door No.127/19. At present, the land measures 0.33.00 square meters, which is under encroachment, where the mosque Masjid & Madrasa is stated to have been set up.

8. The Tamil Nadu Wakf Board has also filed their counter-affidavit and either parties are said to have acted only on account of the No Objection Certificate referred to aforesaid. It has been said that the logical consequences would follow if the Certificate is found to be false. A reference has also been made to the orders passed by the Hon'ble Supreme Court in S.L.P. (Civil) No.8519 of 2006 (Union of India v. State of Gujarat and others), decided on 29.09.2009 calling upon the steps to be taken qua religious institutions sought to be established on poramboke lands. The Hon'ble Supreme Court has directed that henceforth, no unauthorised construction shall be carried out or permitted in the name of religious institutions.

9. In view of the aforesaid position, we have no doubt that the criminal investigation must proceed expeditiously into the forgery of the document. However, that could not imply that there is impediment in enforcement of the civil consequences. In fact, the thatched hut is now stated to have been air conditioned also. We are, thus, of the view that no impediment can be created in any way of the concerned authorities from proceeding against the unauthorised structure through interdict by this and thus, we find no merit in W.P.No.25602 of 2014 and the same is dismissed.

10. In so far as W.P.No.17602 of 2015 is concerned, in view of the aforesaid findings, there is no impediment in the respondent authorities proceeding against the unauthorised structure in accordance with law and take appropriate action within a maximum period of one month from the date of receipt of a copy of this order.

11. W.P.No.25602 of 2014 is dismissed. No costs. Consequently, all connected miscellaneous petitions are closed.

W.P.No.17062 of 2015, accordingly, stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

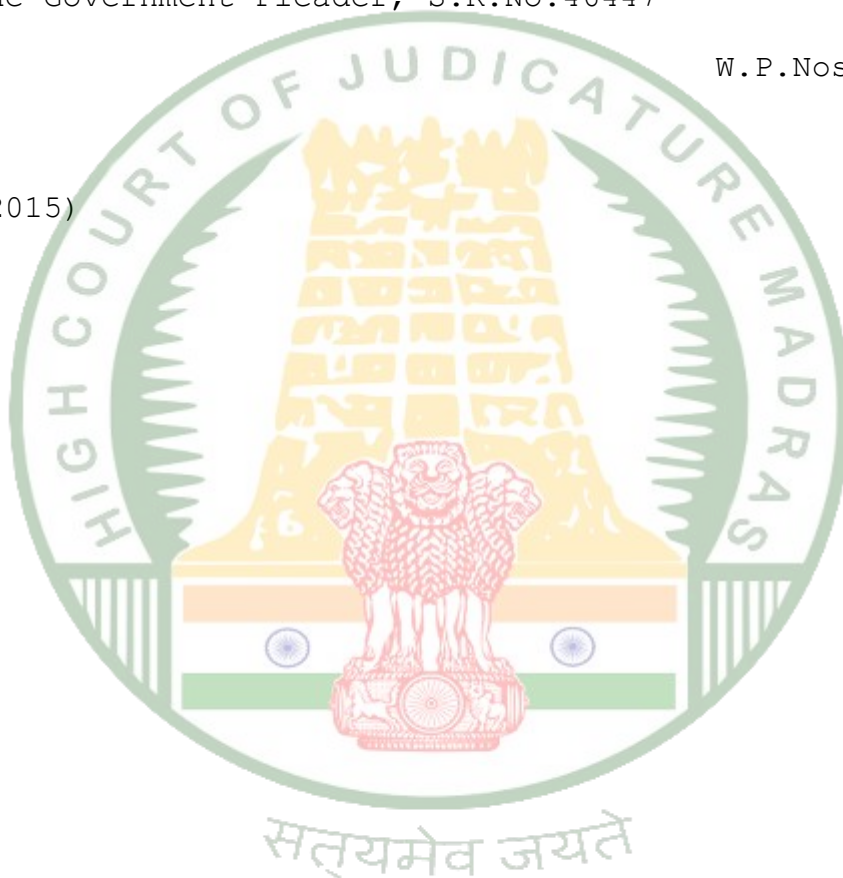
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Chennai-600 002.

+1cc to M/s.G.Ethirajulu, Advocate, S.R.No.46391
+1cc to M/s.V.Raghavachari, Advocate, S.R.No.46179
+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.46412
+1cc to Mr.K.Soundararajan, Advocate, S.R.No.46461
+1cc to the Government Pleader, S.R.No.46447

W.P.Nos.25602 of 2014 &
17062 of 2015

GP(CO)
CA(18/09/2015)



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