

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2015

Delivered on : 18.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.22680 of 2015

1 M/S. Mark Constructions
Private Ltd. Rep. its Director Mr. Pradeep
Bhandari No.75, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034. .. petitioner

versus

1 The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building No.1 Gandhi
Irwin Road Egmore Chennai-8

2 The Commissioner
Corporation of Chennai Rippon Buildings
Park Town Chennai-3

3 The Zonal Engineer
Corporation of Chennai 29
C.P. Ramasamy Road, Alwarpet,
Chennai - 600 018

4 Ganesh

5 Parthiban

6 Saravanan

7 Saraswathy

.. respondents

Writ Petition filed under Art.226 of the Constitution of India
praying for a Writ of Mandamus Directing the Respondents-2 to take
action based on the letter No.G/20329/2014 dated 30-12-2014 Signed on
05.01-2015 and issued by First Respondent to 2nd Respondent to stop
unauthorized constructions/ deviations put up by the Respondents 4-7 in
the premises bearing Old No.71 New No.13, 5th Street, Luz Avenue,

Mylapore, Chennai-600 004, and to take action on unauthorized construction at the property bearing Old No.71 New No.13 5th Street Luz Avenue Mylapore Chennai-600 004.

For petitioner : Mr.P.Subba Reddy

For Respondents : Mr.C.Johnson for 1st respondent

Mr.K.Soundararajan, for respondents 2 and 3

Mr.T.Sundararajan, for respondents 4 to 7

O R D E R

The petitioner, who is a builder, and plaintiff in C.S.No.513 of 2013, wanted the Chennai Metropolitan Development Authority and the Corporation of Chennai, to take enforcement action against respondents 4 to 7, on account of the alleged unauthorized construction made by them.

2. The petitioner is stated to be the absolute owner of the premises bearing Old No.71, New No.13, 5th Street, Luz Avenue, Mylapore, Chennai-4. The petitioner filed C.S.No.528 of 2011 before the original side of this Court, against respondents 4 to 7, praying for a decree of recovery of possession and damages. It is the case of the petitioner that during the currency of the said suit, respondents 4 to 7 resorted to unauthorized construction. The petitioner made complaints to Chennai Metropolitan Development Authority and Chennai Corporation. The statutory authorities failed to take action in spite of repeated representations. The petitioner earlier filed a Writ Petition in W.P.No.1367 of 2015 and it was dismissed as withdrawn on 21 January 2015. The petitioner now wanted the Chennai Corporation to take appropriate action against respondents 4 to 7.

3. The 4th respondent filed a detailed counter affidavit in answer to the contentions raised in the Writ Petition. According to the 4th respondent, the subject property belongs to Mrs.Kamalammal. It is a matter of record that one Mr.Vinayagam filed a suit in C.S.No.513 of 2003, claiming that he is the absolute owner of the subject property. During the currency of the said suit, plaintiff died and his legal representatives sold the property to the petitioner. The suit is now pending before this Court. The petitioner filed a separate suit in C.S.No.528 of 2011 against respondents 4 to 7 for recovery of possession and damages. It was only during the currency of the said suit, and with a mala fide intention of taking possession, the petitioner has filed the present Writ Petition.

4. Heard the learned counsel for the petitioner, the learned Standing counsel for Chennai Metropolitan Development Authority and Chennai Corporation. We have also heard the learned counsel for respondents 4 to 7.

5. The factual matrix clearly indicates that it was only during the currency of the civil suit in C.S.No.513 of 2003, the petitioner purchased the suit property on the strength of registered Document Nos.3080 to 3083 of 2007 on the file of Sub Registrar, Mylapore. The validity of the sale deeds executed by the legal representatives of late Vinayagam in favour of the petitioner itself is an issue in C.S.No.513 of 2003. The petitioner has projected a case as if the company is in legal possession of the property and an attempt was made by respondents 4 to 7 to put up illegal construction. The counter affidavit filed by the Corporation of Chennai, clearly shows that construction was made long back. The constructions were all shown in the original plan sanctioned by the statutory authority. The inspection conducted by Chennai Corporation found that a portion has been converted as a small room with RCC roof. The Corporation appears to have issued a lock and seal notice on 10 August 2015.

6. There are two suits involving the subject property before this Court in C.S.Nos.513 of 2003 and 528 of 2011. The course of conduct adopted by the petitioner prima facie supports the plea taken by respondents 4 to 7. When there are civil suits pending between the parties, there is no question of directing the Corporation to take action. The petitioner is admittedly a party to the litigation. No direction could be issued at the instance of the petitioner to take action. The petitioner is an interested person insofar as the subject property is concerned. We therefore do not find any reason to issue a Mandamus as prayed for by the petitioner. We also make it clear that this order would not prevent the statutory authorities from taking appropriate action in the matter.

7. In the upshot, we dismiss the Writ Petition. No costs. Consequently M.P.No. Is also dismissed.
Tar

Sd/-
Assistant Registrar

सत्यमेव जयते

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Sub-Assistant Registrar

To

1 The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan, Building No.1
Gandhi Irwin Road, Egmore,
Chennai - 600 008

2 The Commissioner
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai - 600 003

3 The Zonal Engineer
Corporation of Chennai,
29, C.P. Ramasamy Road,
Alwarpet, Chennai-18

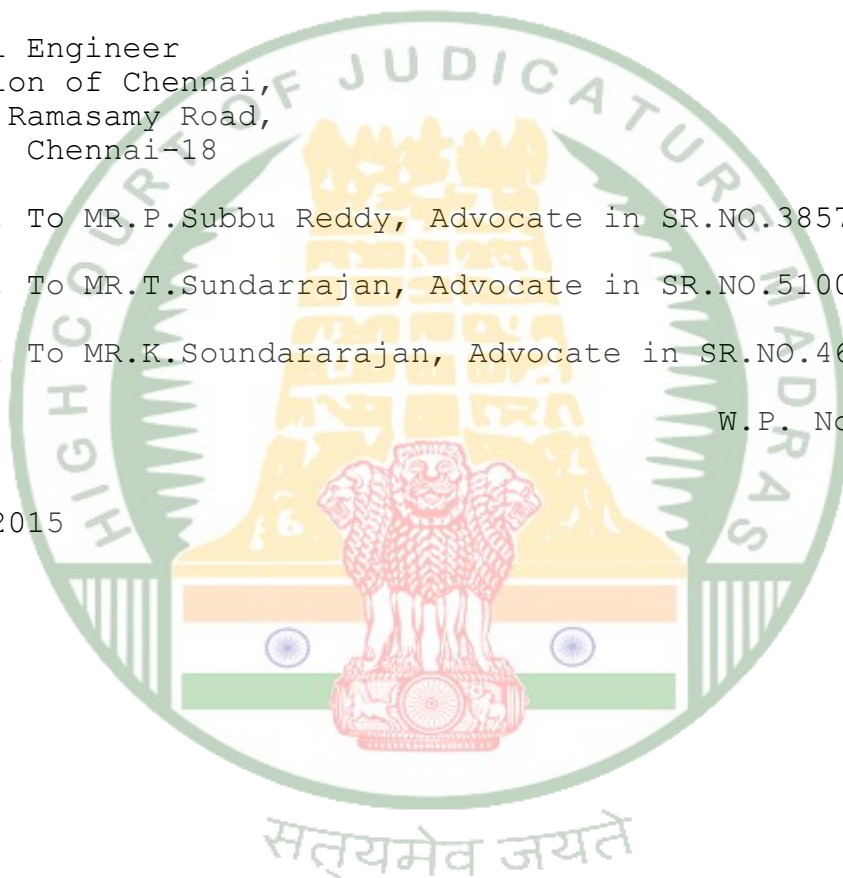
+2 C.C. To MR.P.Subbu Reddy, Advocate in SR.NO.38572 & 50999

+1 C.C. To MR.T.Sundarrajan, Advocate in SR.NO.51001

+1 C.C. To MR.K.Soundararajan, Advocate in SR.NO.46462

W.P. No.22680 of 2015

LRS (CO)
sd : 27/10/2015



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