

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.4587 of 2015

Brinder Kaur

Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 3

2. The Zonal Officer,
Zone-7, Chennai Corporation,
M.T.H.Road, Ambattur,
Chennai - 53,

3. Murugan,

4. Nallathambi

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents 1 and 2 to remove the encroachment made by the 3rd and 4th respondents on the public pathway at Anandan Street, Oragadam, Ambattur, Chennai - 600 053 which is the sole public road for ingress and egress of the petitioner based on the representation dated 5.9.2014.

For petitioner :Mr.L.Chandrakumar

For Respondents :Mrs.Karthikaa Ashok for RR.1 and 2
R3 & R4 :No Appearance

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The petitioner is stated to be a resident of property bearing Door No.18 and 18A, Anandan Street, Oragadam, Ambattur, Chennai - 53, has filed this writ petition seeking a direction to the 1st and 2nd

respondents to remove the encroachment made by the 3rd and 4th respondent on the public pathway at Anandan Street, Oragadam, Ambattur, Chennai - 600 053.

2. Notice was ordered to the respondents 3 and 4 on 23.2.2015. The 4th respondent has declined to receive the notice of this Court. The 3rd respondent has chosen not to appear after service of notice. The 1st and 2nd respondents had filed a counter affidavit dated 5.6.2015 pointing out that there was no encroachment as the pathway was only 15 feet wide. It was pointed out by the learned counsel for the petitioner that the report is not correct. Accordingly, on 17.6.2015, we directed the Tahsildar, Ambattur, Chennai to make a spot inspection of the Anandan Street, comprised in S.No.73/3 Oragadam, Ambattur, Chennai-53, in the light of the requisition letter dated 11.4.2015 sent by the Zonal Officer, Zone - & (Ambattur), Corporation of Chennai in the presence of all the concerned parties with the assistance of records and submit a comprehensive affidavit/report. The Tahsildar had submitted an affidavit report dated 3.7.2015 stating as under:

'With reference to the above letter a spot inspection was conducted on 03/07/2015 by me with a team of Zonal Deputy Tahsildar and Taluk, Deputy Surveyor. The field in S.No.73/3B2, T.S.No.56, Block No.3, was surveyed and found that as per the schedule of document owned by Thiru.Brindar Kaur, it is seen that instead of 30 feet road, only 15 feet road is in front of the petitioner's plot. There is encroachment in the road of 15 feet by way of four pucca houses. Hence as represented by the petitioner the 30 feet road has been encroached by four dwelling units. The records related to the above S.No. Block Map, sketch map, and photos taken during spot inspection is enclosed for reference.'

Thus, it is established that the 15 feet of the public pathway has been allegedly encroached by the respondents 3 and 4. Learned counsel for the 1st and 2nd respondents submitted that necessary steps would be taken to remove the encroachment at the earliest.

3. In normal course, once notice is refused, or the alleged encroacher has chosen not to appear before the Court, they i.e., the 3rd and 4th respondents herein, are not entitled to any further notice. However, in the facts of case, we direct the 1st and 2nd respondents to give one more opportunity of hearing to the 3rd and 4th respondents and also similarly situated encroachers, if any, and take consequential action on its own merit and in accordance with law. The said exercise shall be completed within a period of four weeks from the date of receipt of copy of this order.

4. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 3

2. The Zonal Officer,
Zone-7, Chennai Corporation,
M.T.H.Road, Ambattur,
Chennai - 53.

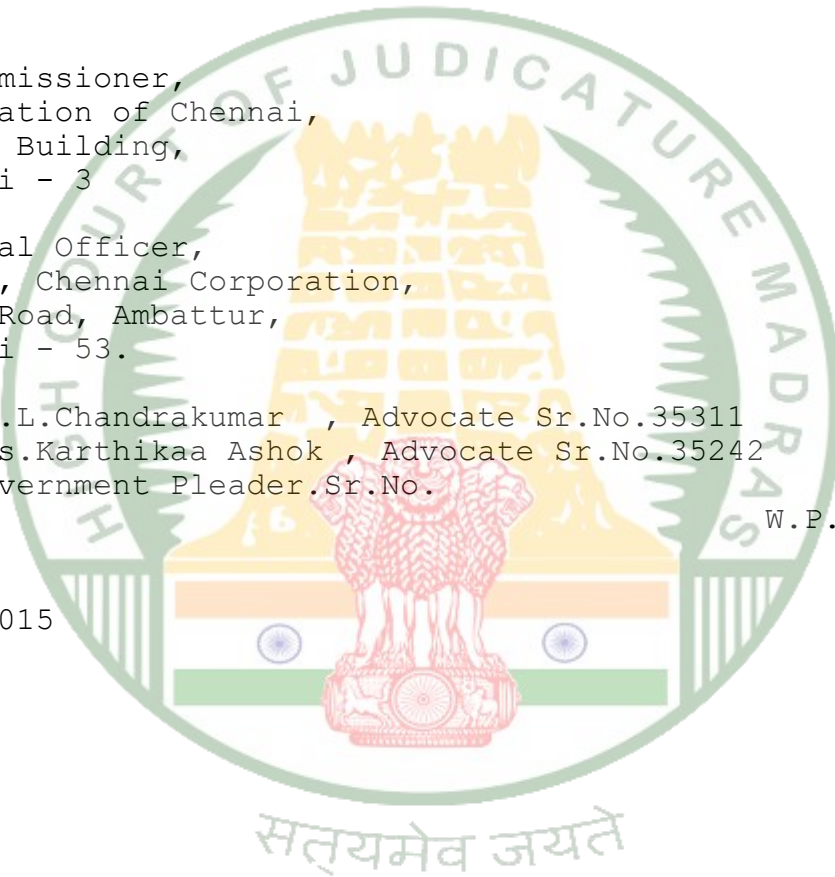
1 cc to Mr.L.Chandrakumar , Advocate Sr.No.35311

1 cc to Mrs.Karthikaa Ashok , Advocate Sr.No.35242

1 cc to Government Pleader.Sr.No.

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pmk.24.7.2015



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