

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.1309 of 2013
and M.P.No.1 of 2013

1.M.H.Mohideen Bhava
2.M.A.Shahul Hameed
3.M.A.Syed Ali
Appellants 1 and 3 are represented
by their Power Agent
Mr.M.A.Shahul Hameed ... Appellants/3rd Parties

vs.

1.Rasool Moideen
2.The Executive Engineer
Chennai Metropolitan Water
and Sewerage Board
Chintadripet
Chennai-600 002
3.The Area Engineer
Zone IX
Chennai Metropolitan Water
and Sewerage Board
No.1, Dr.Ranga Road
Abiramapuram
Chennai-600 018 ... Respondents

Writ Appeal filed as against the order passed in
W.P.No.18522 of 2012 dated 14.12.2012 preferred Under Article
226 of the Constitution of India praying to issue a Writ of
Mandamus directing the 2nd respondent to restore the water and
sewerage connections without insisting NOC in the petitioner
address Old No.57 New No.76 Soorappa Mudali Street Triplicane
Chennai-5

For Appellants : Mr.S.Senthil Nathan

For Respondents: No appearance for R1
Mr.V.Janakiraman for R2 and R3

ORDER

(Order of the Court was made by R.SUDHAKAR,J.)

We have heard Mr.S.Senthil Nathan, learned counsel for the appellants. None appears for the first respondent. Mr.V.Janakiraman, appears for the second and third respondents.

2. According to the first respondent herein/Writ Petitioner in W.P.No.18522 of 2012, he is the owner of the property bearing Old No.57, New Door No.76, Soorappa Mudali street, Triplicane, Chennai-600 005, measuring an extent of 784 sq ft., along with common passage. He applied for demolition of the building for construction of new one. After obtaining permission, he demolished the old building and constructed a new building by the end of January, 2012 itself. When there was demolition of old building, the respondents 2 and 3 disconnected the water and sewerage connections. Thereafter, the first respondent/Writ Petitioner paid necessary fees before the respondents 2 and 3 on 07.06.2012 for restoration of water and sewerage connections. But, the third respondent refused to restore the said connections by passing a proceedings dated 26.06.2012 stating that he should get No Objection Certificate from the co-owners of the common passage. Thereafter, in the Writ Petition filed before this Court, the learned Single Judge observed that since the petitioner was in enjoyment of water and sewerage connections before the demolition, the Chennai Metropolitan Water and Sewerage Board was not justified in stating that the petitioner should get No Objection Certificate from the co-owners of the common passage. While observing so, the learned Single Judge disposed of the Writ Petition by directing the 3rd respondent herein to restore the water and sewerage connections within four weeks from the date of the said order. As against the said order of the learned Single Judge dated 14.12.2012, this Writ Appeal is filed by the 3rd parties/appellants herein.

3. Despite notice served on the first respondent, the first respondent/Writ Petitioner has not chosen to make his appearance before this Court.

4. Today when the matter is listed for hearing, the Area Engineer-Zone IX, the third respondent herein filed a status report on this issue and the same read thus:-

"1. Water Applicant No.2045 and Sewer Application No.1940 have been registered on 07.06.2012 to provide water and sewer connections to the premises No.57, Surappa Mudali St, Triplicane, Chennai-600 005.

2. The site was inspected by the competent authority and requested the applicant to get NOC from the co-owner of the common passage to effect water and sewer connections to this premises.

3. The applicant was unable to get NOC from the co-owners and approached the Honourable Court and as per the court order dated 14.12.2012 water and sewer connections have been effected to this premises on December 2012 and the consumer is paying tax and water charges regularly and there is no arrears till date vide CMC No.09/115/03726/000."

5. It is the plea of the present appellants herein that they are the co-owners of the common passage and they have exclusive right over the said common passage. However, no material document is produced before this court to substantiate the said argument.

6. It is a matter of record that the first respondent herein as Plaintiff filed O.S.No.1357 of 2011 before the City Civil Court, Chennai against the appellants herein praying for permanent injunction restraining the defendants/appellants herein, from encroaching, by putting fence on the common pathway which the plaintiff is using as ingress and egress for the plaintiff's property. The plaint averments are to the effect that the plaintiff/1st respondent herein, derived $\frac{1}{2}$ undivided share of the suit schedule common passage whereas defendants/appellants derived their share viz., $\frac{1}{2}$ undivided share of suit schedule common passage. Hence, when the right of the appellants herein in the common passage is an issue before civil court, we have to state that in a writ proceeding, it is not possible for this Court to go into either the disputed questions of fact or mixed questions of fact and law. In this case, whether both the appellants and first respondent have right over the common passage and whether the water and sewerage connection restored to the first respondent herein would affect the appellants herein are all disputed questions of fact and the dispute has to be resolved only based on evidence to be let in by the parties before the Civil Court. The said course is not available before this Court. The learned Single Judge in the

Writ Petition has only granted the benefit of water and sewerage connection and there is no adjudication of any right between the rival parties. Therefore, there is absolutely no reason as to why we should interfere with the order of the learned Single Judge. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Executive Engineer
Chennai Metropolitan Water
and Sewerage Board
Chintadripet
Chennai-600 002

2.The Area Engineer
Zone IX
Chennai Metropolitan Water
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No.1, Dr.Ranga Road
Abiramapuram
Chennai-600 018

W.A.No.1309 of 2013

msm(CO)
srg(10/03/2016)

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