

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18871 of 2016

R.Geetha

.. Petitioner

Vs.

1. The Commissioner
Greater Corporation of Chennai
Rippon Building, Madras 600 003.
 2. The Regional Deputy Commissioner
North Region, Greater Chennai Corporation
Door No.61, Basin Bridge Road
Chennai 600 021.
 3. The District Collector
Greater Chennai, Singaravelan Maaligai
Chennai 600 001.
 4. The Assistant Director (Drawings)
Central Land Survey Office
Ground Floor, Chepauk
Chennai 600 005.
 5. The Tahsildar
Perambur Taluk, Chennai 600 011.
 6. N.Mynavathy
- .. Respondents

Petition under Article 226 of the Constitution of India
praying for a writ of Certiorari to call for the records in
Z.O.IV.C.No.6980 of 2016 dated 07.5.2016 on the file of the
second respondent and quash the same.

For Petitioner : Mr.V.Bhiman
For Mr.S.Lokesh

For Respondents 1 & 2 : Mr.A.Nagarajan
For Respondents 3 to 5 : Mrs.A.Srijayanthi, Spl.G.P.
For Respondent-6 : Mr.Mohanamurali

O R D E R
(Made by Huluvadi G.Ramesh,J)

The petitioner has come up with the above writ petition challenging the proceedings of the second respondent calling upon him to remove the encroachment, failing which eviction proceedings will be initiated.

2. Heard Mr.V.Bhiman, learned counsel for the petitioner, Mr.A.Nagarajan, learned Standing Counsel for the respondents 1 and 2, Mrs.A.Srijayanthi, learned Special Government Pleader for the respondents 3 to 5 and Mr.Mohanamurali, learned counsel for the sixth respondent.

3. The property of an extent of 4206 sq.ft. in Block No.48, T.S.No.77 in Old survey Nos.189/1 and 189/2, adjacent to Tondaiyarpur High Road, Kodungaiyur, Chennai 118, was originally owned and possessed by one Chengammal, W/o. Narasimalu. In 2004, Chengammal executed Settlement Deed in favour of her son Sundaraj, vide document No.10093 of 2014 and from then on, Sundaraj and his wife Balakottammal were in possession of the property. Sundaraj obtained an order of injunction in respect of the land and building on 27.3.2003 in O.S.No.7136 of 1997 on the file of the XI City Civil Court, Chennai. When the first respondent attempted to interfere with his peaceful possession and enjoyment of the said property, Sundaraj filed O.S.No.3660 of 2015 on the file of XI City Civil Court, and obtained an ex parte order of permanent injunction on 28.12.2005 and the said order has attained finality, since no appeal was preferred by the first respondent.

4. Sundaraj executed a registered general Power of Attorney in favour of one N.Sankaralingam in the year 2007. On 28.01.2011, he sold the land of an extent of 1224 sq.ft., from out of the total extent of 4206 sq.ft., to the petitioner herein, vide document No.690 of 2011 on the file of the Sub Registrar Office, Sembiam and thereafter, the petitioner is in possession of the property.

5. The sixth respondent filed W.P.No.4121 of 2015 seeking a direction to remove the encroachment in Block No.48 in Old Survey Nos.181/1, 181/2, 189/2, 73/1A1 and 208. A counter was filed by the Assistant Executive Engineer, Zone 4, Chennai Corporation stating that they would remove the encroachment with the help of the Tahsildar and Police after demarking the encroached portion, within a short period. The Tahsildar also filed a counter affidavit stating that the property in question

is classified as Battai and therefore, if any encroachment is made, it has to be removed by the Corporation. Recording the statements of the Assistant Executive Engineer and the Tahsildar, a Division Bench of this Court, by order dated 05.3.2015, directed the Corporation to remove the encroachment, after affording opportunity of hearing to the encroachers and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

6. On 10.4.2015, the Assistant Executive Engineer, Zone 4, Chennai Corporation, issued notice of hearing. The petitioner appeared before the Assistant Executive Engineer and submitted the documents with respect to the ownership of her property. By proceedings dated 29.4.2015, the Assistant Executive Engineer directed the petitioner to remove the encroachment within a period of one week, failing which, the same would be done at the cost of the petitioner.

7. The proceedings dated 29.4.2015 was challenged by the petitioner in W.P.No.14763 of 2015 and the same was disposed of by order dated 13.8.2015, directing the petitioner to submit her objections and thereafter, directing the Joint Commissioner In charge of Zone IX to consider the same and pass orders within a period of two months from the date of such objections.

8. On 25.9.2015, the Zonal Officer directed the petitioner to appear before him for enquiry on 01.10.2015. Accordingly, the petitioner appeared before him with relevant records. The fourth respondent produced an extract copy of Town Survey Land Register stating that the land in question is Grama Natham. On 15.10.2015, the fourth respondent, found that the petitioner has encroached upon the Corporation land and they are liable to be evicted. It was observed in the said order that after demarking and identifying the encroached land by the Tahsildar, a notice was issued under Section 220 read with 222 of the CCMC Act, for removing the encroachment after the statutory period. Challenging the said order, the petitioner filed W.P.No.37160 of 2015 and the same was disposed of by a Division Bench, on 18.12.2015, directing the respondents to complete the entire exercise within a period of six weeks.

9. In the meanwhile, the petitioner made a representation on 12.10.2015 to respondents 1 and 2 and others stating that as per the High Court's order, the Joint Commissioner In charge of Zone IX alone should conduct the enquiry. However, on 04.4.2016, the second respondent directed the petitioner to appear before him for enquiry on 11.4.2016. Accordingly, the petitioner appeared

before him and submitted the relevant documents. However, the second respondent, by the impugned order, directed the petitioner to remove the encroachments, failing which, the same would be done at the cost of the petitioner. Hence, the petitioner has come up with the above writ petition.

10. A counter affidavit has been filed by the Corporation stating that the Regional Deputy Commissioner (North) conducted an enquiry on 14.12.2015. As insisted by the encroachers to verify the records, the Tahsildar, Perambur Taluk was requested to furnish the present status of ownership of the land in question. The Tahsildar by his letter dated 12.02.2016, stated that the land in question is classified as "Sarkar poramboke" and as per Adangal, it is meant for "battai", usage of road and it is the name of the Corporation. Accordingly, notice under Section 220 read with 222, Chennai City Municipal Corporation Act, 1919, was issued to all the encroachers. It is also submitted that as per the revenue records, the petitioner is an encroacher and is liable to evicted.

11. The sixth respondent also filed a counter affidavit stating that the petitioner is a trespasser as per the order of the fourth respondent dated 11.6.2010 and that the petitioner claims property based on forged documents and therefore, he should be evicted.

12. It is contended by the learned Special Government Pleader that the land in question is a Sarkar Poramboke land and therefore, a notice was issued to the encroachers under Section 220 read with 222 of the Chennai City Municipal Corporation Act and an opportunity was given to the encroachers for submitting their objections and the same was considered and therefore, the petitioner cannot complain that he has not been given any opportunity.

13. It is further contended by the learned Special Government Pleader that due to the conduct of the petitioner in dragging on the proceedings by making repeated representations, the Corporation could not evict the petitioner and therefore, contempt proceedings were initiated and in the second contempt proceedings, Corporation was directed to pay a sum of Rs.20,000/- for the grant of one week time to comply with the order. Hence, the learned Special Government Pleader submits that the writ petition is liable to be dismissed.

14. From the facts elaborately narrated above, it is clear that the land in question is classified as Battai, which means that it is road. Section 2 of the Tamil Nadu Land Encroachment Act, 1905 provides that all public roads, streets, lanes, paths, etc., are the property of the State Government. Therefore, it is clear that the said land belongs to the Corporation.

15. Section 220 of the Chennai City Municipal Corporation Act deals with prohibition against obstruction in streets. The said provision stipulates that no one shall build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street or any public place, the control of which is vested in the Corporation. Section 222 empowers the Commissioner to remove encroachments by following certain procedures.

16. In the case on hand, the Corporation has given notice to the petitioner and other encroachers and also heard their objections. After verifying with the revenue records and confirming that the land in question belongs to Corporation, earmarked the portion encroached by the petitioner with the help of the Tahsildar, in the presence of the petitioner. Therefore, it cannot be said that the procedure prescribed under Section 220 read with Section 222 has not been complied with.

17. In view of the act of the petitioner in making repeated representations, the Corporation could not remove the encroachment as directed by this Court. Therefore, the Corporation had to face contempt proceedings in Contempt Petition No.1391 of 2015, which was closed after recording the submission of the Corporation that they would remove the same within a period of two weeks. Again, since the the encroachment could not removed due to the attempts made by the petitioner and other encroachers, the Corporation faced another contempt proceedings in Contempt Petition No.13 of 2016. In that matter, the Corporation sought one week time to comply with the order and the same was granted on depositing a sum of Rs.20,000/- within a week.

18. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan [(1997) 11 SCC 123], the Supreme Court after referring to the earlier decisions, has observed thus:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or

convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

19. In view of the decision cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner and others were given notice and their objections were also heard and considered, in accordance with law. Therefore, this writ petition is disposed of, with a direction to the Corporation to demolish the encroachment, in the presence of the petitioner on 13.7.2016 and also with a direction to the petitioner to pay a fine of Rs.1,000/- (Rupees one thousand only) to the credit of the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of one week from the date of receipt of a copy of this order. This order shall be treated as notice to the petitioner for demolishing the encroachment made in the land in question. There shall be no order as to costs. Consequently, WMP No.16465 of 2016 is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Commissioner, Greater Corporation of Chennai
Rippon Building, Madras 600 003.
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Ground Floor, Chepauk, Chennai 600 005.
5. The Tahsildar, Perambur Taluk, Chennai 600 011.
6. The Mediation & Conciliation Centre, Chennai.

+1cc to Mr.V. Bhiman, Advocate, S.R.No.31629

+1cc to Mr.K. Mohanamuruli, Advocate, S.R.No.31621

+1cc to A. Nagarajan, S.R.No.31661

SSK(CO)

EU(27/06/2016)

W.P.No.18871 of 2016.