

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.27791 of 2016

N.Durai

...Petitioner

Vs.

1.The Member-Secretary,
CMDA, No.1,
Gandhi Erwin Road,
Egmore, Chennai- 600 008.

2.The Senior Planner,
CMDA, No.1,
Gandhi Erwin Road,
Egmore, Chennai- 600 008.

3.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R. Salai,
Chennai- 600 003.

4.The Regional Joint Commissioner,
Corporation of Chennai,
Zone (South)
No.118, Dr.Muthulakshmi Salai,
Adyar, Chennai- 600 020.

5.The Executive Engineer-II
Zone - XIII,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai- 600 020.

6.R.Usha Rani

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 3 and 5 to remove the illegal construction constructed by the sixth respondent in S.No.438/1, Old No.24, New No.34, Mettu Street, Velachery Village, Chennai- 600 042 as

per the letter issued by the fifth respondent dated 13.07.2015.

For Petitioner : Mr.D.Saikumaran

For R1 & R2 : Mr.K.Raja Shrinivas

For R3 to R5 : Mr.V.C.Selvasekaran

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Mr.K.Raja Shrinivas, learned counsel accepts notice on behalf of respondents 1 and 2. Mr.V.C.Selvasekaran, learned counsel accepts notice on behalf of respondents 3 to 5. Notice to the sixth respondent is dispensed with. With the consent of both the parties, the writ petition is taken up for final disposal at the stage of admission itself.

2. This Writ Petition is filed praying to issue a Writ of Mandamus, directing respondents 3 and 5 to remove the illegal construction constructed by the sixth respondent in S.No.438/1, Old No.24, New No.34, Mettu Street, Velachery Village, Chennai-600 042 as per the letter issued by the fifth respondent dated 13.07.2015.

3. It is the case of the petitioner that after the death of his father, he had acquired his father's share in the property situated at S.No.438/1, Old No.24, New No.34, Mettu Street, Velachery Village, Mambalam-Guindy Taluk, which he got through partition. He also got the share of one Ponnusamy Naicker, who was the brother of his father, by way of settlement deed dated 30.08.1965, which was registered as Doc.No.2709 of 1965 on the file of the Sub Registrar, Saidapet. Insofar as the share of his father's another brother Arumuga Naicker is concerned, a Will was executed in favour his son A.Chellan, who, after the demise of his father, along with his sister Chitra and his minor son C.Ezhumalai, executed a sale deed in favour of the sixth respondent and the same was registered as Document No.2285 of 2013 dated 17.04.2013 on the file of the Sub Registrar, Velachery. After the purchase of the property, the sixth respondent is encroaching and disturbing the petitioner's peaceful possession of the property, which compelled the petitioner to file a suit in O.S. No.7129 of 2014 before the XIV Assistant City Civil Court, Chennai for permanent injunction not to disturb his peaceful possession and enjoyment of the property.

4. It is the further case of the petitioner that pending the

said suit, the sixth respondent constructed a building by encroaching the petitioner's property to an extent of 100 sq.ft. Hence, the petitioner made a representation dated 16.06.2015 to the official respondents to remove the illegal construction put up by the sixth respondent. In the mean while, he sought for certain informations under the Right to Information Act. Accordingly, he came to know that the sixth respondent has not obtained any planning permission from the Corporation of Chennai for such construction. However, during the course of enquiry by the Assistant Engineer, the sixth respondent herself admitted the violation in the construction of the building and she accepted to remove the ramp projecting over the petitioner's property within 10 days, but, till date, she has not removed the said ramp. Therefore, the petitioner sent a legal notice through his counsel to respondents 1 to 3 and 5 requesting to take action to remove the illegal construction put up by the sixth respondent. On 30.11.2015, the first respondent forwarded the petitioner's representation to the fourth respondent to take necessary enforcement action. Even thereafter, there was no response, which compelled the petitioner to approach this Court with the present writ petition for the above stated relief.

5. Heard both sides and perused the available materials.

6. The facts as narrated above would disclose the case of the petitioner that the sixth respondent has encroached a portion of the petitioner's property in S.No.438/1, Old No.24, New No.34, Mettu Street, Velachery Village by putting up the construction, which, according to the petitioner, is illegal and is liable to be removed. In this regard, the petitioner made a representation to the official respondents requesting to take action to remove the illegal construction put up by the sixth respondent and the same is pending. Hence, this writ petition.

7. However, as per the communication bearing No. Z.O.XIII/C.No.5493/2015 dated 13.07.2015 sent by the Corporation of Chennai to the petitioner under the Right to Information Act, it is revealed that based on the request made by the petitioner with regard to legal action against the illegal construction raised by the sixth respondent in New No.34, Old No.24, Mettu Street, Velachery, Chennai-42, the building in question has been inspected by the Assistant Engineer, Division 178, who, after inspection, informed that for the said construction, planning permission has been obtained vide PPA/WDC N13/12412/2013 & BA/WDC N13/01458/2014. It is further revealed in the said communication that on enquiry with the petitioner and the sixth respondent, the sixth respondent has been advised to remove the ramp by herself and she has also accepted to remove the ramp within 10 days. Thereafter, on the basis of the complaint dated

23.09.2015 received from the petitioner, the first respondent, by his communication in Letter No.ES/S-II/16314/2015 dated 30.11.2015, directed the fourth respondent to take enforcement action on the construction, which is said to be an unauthorised/deviated construction by the sixth respondent, by exercising the powers delegated by the Chennai Metropolitan Development Authority and also as per the Chennai City Municipal Corporation Act, 1919.

8. In such view of the matter, we are of the opinion that nothing survives in this writ petition for consideration, except directing the authority concerned to do the needful at the earliest.

9. With the above observation, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rk

1 cc to Mr.D.Saikumaran, Advocate, sr.45503

1 cc to Mr.K.Raja Srinivas, Advocate, sr.45542

W.P.No.27791 of 2016

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kra 01.09.2016

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