

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM

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

Writ Appeal No.639 of 2016
and C.M.P.Nos.8312 and 8313 of 2016

P.A.Mangalam

..Appellant

Vs.

The Chief Executive Officer,
Office of the St.Thomas Mount
cum Pallavaram Cantonment Board,
St.Thomas Mount,
Chennai - 600 016.

..Respondent

Writ Appeal filed under Article 15 of Letters Patent against
the order dated 26.04.2016 made in W.P.No.15600 of 2016.

W.P.No.15600 of 2016:- Writ petition filed under article 226
of the constitution of India for issuance of writ of
certiorarified mandamus to call for the records on the file of the
respondent made in No. STM/Works/8/1133 dated 16-03-2016 and quash
the same and consequently direct the respondent their men agents
servants or subordinates or anybody acting on their behalf not
to demolish the petitioner's existing building and committing any
act of waste in No.9 G.S.T.Road St. Thomas Mount Chennai 16

For appellant : Mrs.Selvi George

For respondent : Mr.C.Mohan
for M/s.King and Patridge

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the appellant and the
learned counsel appearing for the respondent.

2.It appears that since the Metro Rail Authorities acquired
about 3221 sq.ft. of land and to facilitate their acquisition, they

have demolished the front side compound wall of the petitioner's building, the petitioner was forced to use the unused school building for the purpose of shops, without hampering the smooth functioning of the school. Thereafter, the petitioner submitted an application on 16.05.2011 for approval of building plan. During the pendency of the plan approval, there was an oral threat of demolition by the authorities. Hence, she filed a writ petition before this Court in W.P.No.25819 of 2012. Though initially an interim order was passed, this Court by order dated 09.11.2012 dismissed the writ petition since there was no cause of action. Subsequently, a show cause notice dated 31.07.2014 was issued by the respondent and the petitioner has also submitted a detailed reply dated 07.08.2014. But, all of a sudden, the respondent has issued the impugned notice dated 16.03.2016 under sub-section (1) of Section 248 of the Cantonments Act, 2006. Therefore, she filed an Appeal and the same was received by the respondent on 18.04.2016. Even though the appeal has been filed, the respondent is continually threatening the petitioner with demolition of the building by force. Hence, she filed another writ petition in W.P.No.15600 of 2016.

3.The learned Single Judge, by order dated 26.04.2016, observed that on perusal of the affidavit filed in support of the writ petition, it is clear that the petitioner has suppressed the fact with regard to the filing of the earlier writ petition. The learned Single Judge has further pointed out that the justification that the petitioner's counsel seeks to make is by contending that the earlier show cause notice issued in 2014 has been appended in the typed set of papers is of little avail since the earlier writ petition was dismissed. Therefore, on the short ground that the petitioner has approached this Court with unclean hands and is guilty of suppression of material facts, the learned Single Judge dismissed the writ petition with cost of Rs.5,000/- payable to the Tamil Nadu Mediation and Conciliation Centre attached to this Court.

4.The learned counsel for the respondent submitted that as per Sections 340 and 342 of the Cantonments Act, 2006, the petitioner may file an appeal before the Appellate Authority, namely, the Cantonment Board and seek appropriate relief.

5.In such view of the matter, without going into the merits of the matter we are of the view that it would be suffice to direct the petitioner to approach the Appellate Authority as per the provisions under the Cantonment Act, 2006. Accordingly, the petitioner is directed to agitate the matter by filing an appeal before the Appellate Authority, namely, the Cantonment Board as per Sections 340 and 342 of the Cantonments Act and seek for appropriate relief. The order passed by the learned Single Judge in W.P.No.15600 of 2016 dated 26.04.2016 is modified to the effect

as stated above.

6.The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

cse

To

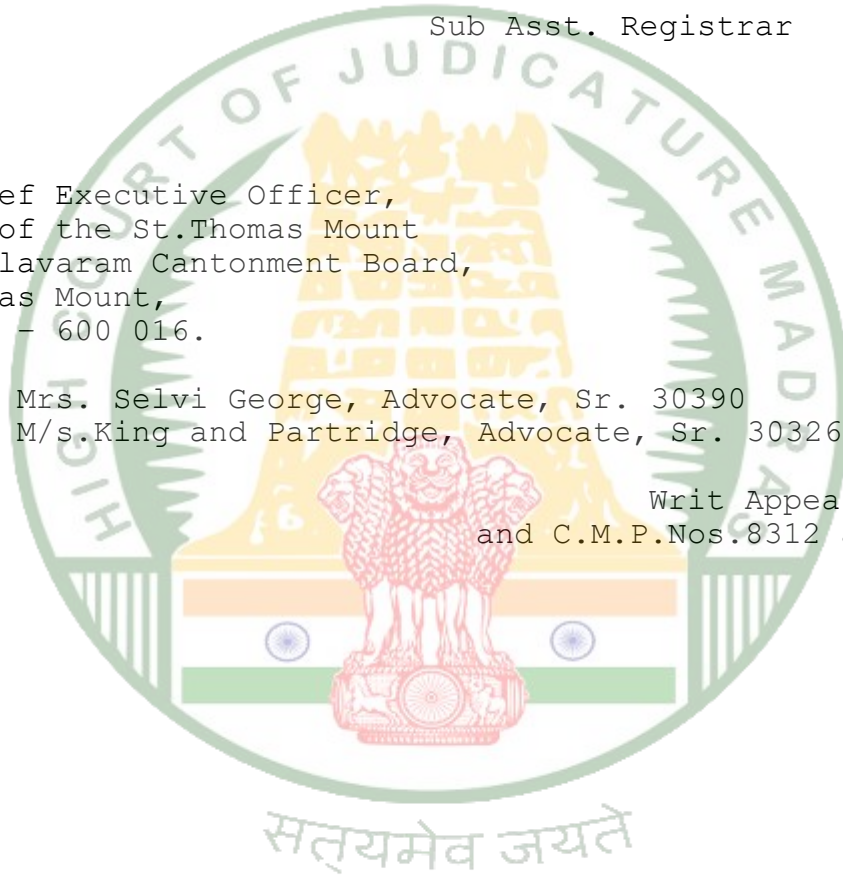
The Chief Executive Officer,
Office of the St.Thomas Mount
cum Pallavaram Cantonment Board,
St.Thomas Mount,
Chennai - 600 016.

1 cc to Mrs. Selvi George, Advocate, Sr. 30390

1 cc to M/s.King and Partridge, Advocate, Sr. 30326

Writ Appeal No.639 of 2016
and C.M.P.Nos.8312 and 8313 of 2016

PA (CO)
kk 27/6



WEB COPY