

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.29128 of 2013

and

M.P.No.1 of 2013

S.D.John Britto Chandra Bose .. Petitioner

-vs-

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road, Egmore,
Chennai-600 008.

2.The Commissioner/Town Planning Officer,
Town Planning Department,
Tambaram Municipality,
No.28, Muthuranga Mudali Street,
Tambaram West,
Chennai-600 045.

3.Ganapathy

4.Muniyandi ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the second respondent to forthwith remove the illegal construction put up on Avvai Nagar 2nd and 3rd street by the 4th and 3rd respondents respectively and restore the public road to its previous condition.

For Petitioners	:	Mr.Muthuswamy
For Respondents	:	Mr.C.Johnson for R1 Mr.P.Srinivas for R2
R3	:	No Appearance

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

A writ of mandamus is prayed seeking direction against respondent No.2/Municipality to remove the alleged illegal construction put up on Avvai Nagar second and third street by respondent Nos.4 and 3 respectively.

2. Respondent No.3 has been served. But none has put in appearance. The petitioner has not cared to serve respondent No.4, despite lapse of three years.

3. The relevant aspect is that respondent No.2 has filed the counter-affidavit, wherein, it is stated that the petitioners' grandmothers made a representation on 17.07.2012 of illegal construction and on inspection, it was found that the wife of respondent No.3 has started construction of 10 x 20 feet structure without permission from respondent No.2. Notice for unauthorised construction was issued on 11.10.2012, after survey of the area. On the question of the land on which the construction was being made, it was found that it was a patta land belonging to one Lakshmiammal and the same has been entered as private patta land in Avvai Nagar third street and was not part of the third street, as alleged by the petitioner. On issue of the notice, further construction was stopped and that is the position stated to be still existing.

4. The allegation of the petitioner of construction on the street has thus been found to be incorrect and in so far as the construction being unauthorised is concerned, the learned counsel states that action in accordance with law will be taken.

5. It is the stand of respondent No.2 that actually the petitioner has sought to get a right of way from his private property by seeking access through the patta land calling it street. No such land as alleged by the petitioner was ever handed over to the Municipality, nor the said streets are found in the Property Registers of respondent No.2. Thus, there is no question of removal of any construction from the street.

6. In view of the aforesaid stand of respondent No.2, no direction as prayed for by the petitioner can be issued.

7. The writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2013 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road, Egmore,
Chennai-600 008.
- 2.The Commissioner/Town Planning Officer,
Town Planning Department,
Tambaram Municipality,
No.28, Muthuranga Mudali Street,
Tambaram West,
Chennai-600 045.

+lcc to Mr.I. Muthusamy, Advocate, S.R.No.72901
+lcc to Mr.P. Srinivas, Advocate, S.R.No.73232
+lcc to Mr. C. Johnson, Advocate Sr.No.72962

sv(CO)
md(23/12/2016)

W.P.No.29128 of 2013

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