

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WP.No.40016/2016 & WMP.No.34079/2016

Mr.A.Jayavelu

..

Petitioner

Versus

- 1.The Collector of Chennai
O/o.The Collector of Chennai,
Singaravellar Maaligai
Kamarajar Salai
Chennai 600 001.
 - 2.The Tahsildar
Mylapore Taluk,
Revenue Department
Government of Tamil Nadu.
 - 3.The Assistant Commissioner of Police
Royapettah Circle, Royapettah,
Chennai 600 014.
 - 4.The Muthavalli/President
M/a.Nawab Khairunnissa Begum
Sahiba Endowment and Hazrath
Pappu Masthan Dargha, Dr.GSMP Khadri
No.31, Big Street, Triplicane,
Chennai 600 005.
 - 5.The Inspector of Police [Crime]
E2 Royapettah Police Station
Royapettah, Chennai 600 014.
 - 6.The Managing Director
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chennai 600 005.
- ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to implement the order passed in J2/34585/11 dated 09.12.2011 consequential proceedings of the Assistant Commissioner of

Police, Royapettah Circle, Chennai, Mylapore District in Na.Ka.No.05/Oo.Aa/Royapettah/camp.2012 dated 10.01.2012 thereby provide 10 feet passage in the land comprised in Survey No.1055/2 in Lloyds Road belonging to Md.Faiz Hussain, Muthavalli of Burial Ground leading from Lloyds Road to Bharathidasan Nagar on the petitioner's representation dated 13.03.2014 and 18.03.2014.

For Petitioner	:	Mr.A.P.Suryaprakasam
For RR 1 to 3 & 5	:	Mr.A.Kumar, Spl.GP
		For R6
For R6	:	Mr.S.Prabhu, Standing Counsel

ORDER

Heard the learned counsel for the petitioner ; Mr.A.Kumar, learned Special Government Pleader who accepts notice on behalf of the respondents 1, 3 and 5 and Mr.S.Prabhu, learned Standing Counsel who accepts notice on behalf of the 6th respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 The present writ petition is filed by the petitioner, alleging to be a resident of Bharathidasan Nagar. According to him, the 4th respondent has filed a suit in OS.N.1100/2014 seeking right/claim over the use of passage by general public in S.No.1055/2 and in the said suit, the 5th defendant therein, viz., the 5th respondent herein, has filed a statement duly attested by the Tahsildar, Mylapore Taluk, Chennai, that the suit land is not owned by the Government ; whereas, according to the petitioner, the property does not belong to the 4th respondent and it belongs to the Slum Clearance Board/6th respondent herein. It is the further contention of the petitioner that by obtaining a false order from the Civil Court and after getting a direction from this Court to implement the Civil Court order, the 4th respondent has put up a compound wall, stopping the ingress and egress of the residents of the Bharathidasan Nagar. The 4th respondent herein has filed WP.No.9446/2012 seeking police protection to construct a compound wall and when the matter was taken up for hearing on 26.04.2012, this Court after making certain observations and issuing directions, adjourned the matter to 12.06.2012 and again when the matter was taken up on 12.06.2012, the 4th respondent herein has misled, misrepresented and suppressed all the material facts and raised a different plea that a civil suit in OS.No.3954/2009 is pending before the Wakf Tribunal and also obtained interim injunction against the alleged encroachments. Hence, this Court, vide order dated 05.09.2012, has passed a common order in WP.Nos.9446/2012 and 16693/2012, has observed that if the petitioner therein/4th respondent herein is in need

of any police protection, it can very well approach the civil court and file an interlocutory application seeking police protection. Accordingly, the 4th respondent has also filed IA.No.17525/2012 in IA.No/7491/2009 in OS.No.3954/2009 seeking police protection and the learned I Assistant Judge, City Civil Court, Chennai, vide order dated 19.02.2014, directed the petitioner therein/4th respondent herein to put up a temporary structure around the suit property with police protection. It is the case of the petitioner that the said land does not belong to the 4th respondent. Even the Deputy Tahsildar, has clearly stated under the Right to Information Act, that the property is not owned by the Wakf Board and when that being the case, the petitioner submitted a representation to the respondents 1 to 3 dated 13.03.2014 which was received by them on 14.03.2014, requesting them to remove the temporary structure put up by the 4th respondent on the southern side of the compound wall and also prayed for implementation of the order of the District Collector 09.12.2011 as well as the resolution of the Peace Committee Meeting dated 10.01.2012 and the subsequent writ petition filed was withdrawn and after exhausting all the available remedies, the petitioner is before this Court.

3 The learned counsel for the petitioner submits that it is only the 6th respondent who has to take action in accordance with law and in that process, he seeks the implementation of the original order of the Peace Committee Meeting held during the year 2011.

4 The learned Special Government Pleader appearing for the respondents 1, 3 and 5 would submit that the petitioner is the Deputy Secretary of an Association and he is not an aggrieved person and the land in dispute is owned by the Government and that they are ready and willing to initiate action in accordance with law. It is also his further submission that if any illegal construction/superstructure is put up in the disputed property, the same will be dealt with in accordance with law and that the petitioner, not being an aggrieved person, cannot challenge the same nor seek any direction for implementation of the order or create any law and order problem in that area in the name of the Association. It is the submission of the learned Special Government Pleader that the parties will abide by the Civil Court proceedings and if the petitioner is aggrieved in any manner, the remedy available to him is only to approach the appropriate Civil Forum and not to come before this Court by filing a writ petition.

5 This Court heard the rival submissions and also perused the materials placed before this Court.

6 Upon perusal of the documents including the

affidavit filed in support of this writ petition and upon hearing the arguments advanced on either side, this Court is of the considered view that the petitioner, being the Deputy Secretary of an Association, is not an aggrieved person and the fact that he is one of the residents of Bharathidasan Nagar, is not established. Further, the question of implementation of the resolutions of the Peace Committee Meeting dated 10.01.2012, as sought for by the petitioner, does not arise for consideration at this stage. As rightly pointed out, if the property belongs to the Government, viz., the 6th respondent, it is for the 6th respondent to take necessary action to safeguard its property against any encroachment and if there is any encroachment, it is for them to remove the same.

7 The writ petition stands disposed of with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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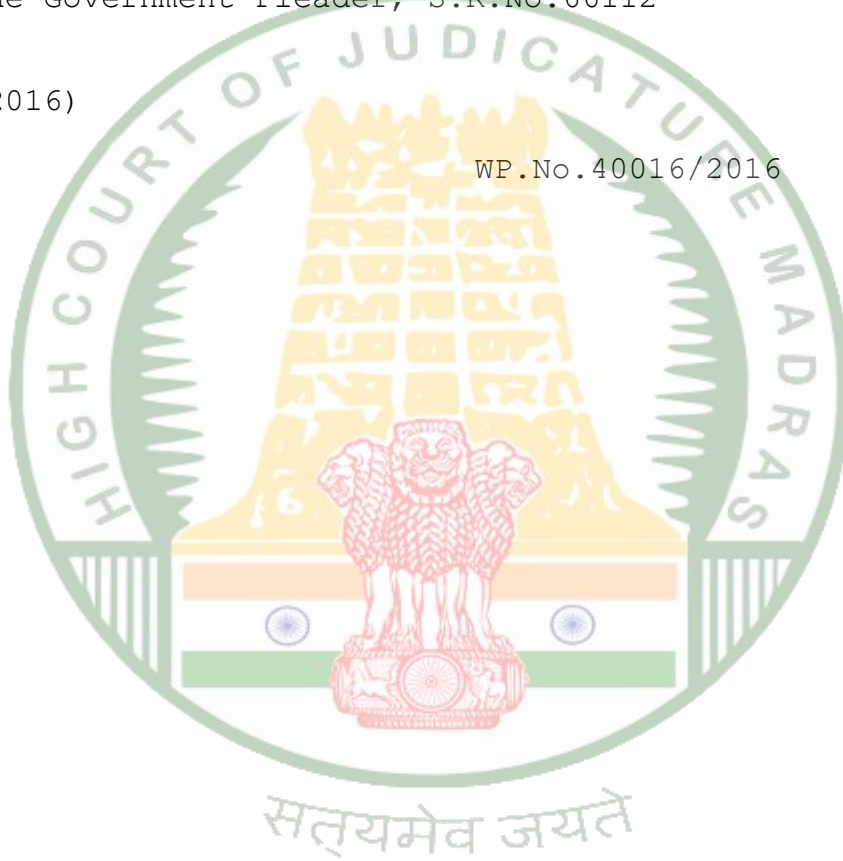
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Tamil Nadu Slum Clearance Board
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+lcc to Mr.A.P. Suryaprakasam, Advocate, S.R.No.66571
+lcc to Mr. S. Prabhu, Advocate, Sr.No.65745
+lcc to the Government Pleader, S.R.No.66112

gj (CO)
md(02/12/2016)

WP.No.40016/2016



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