

In the High Court of Judicature at Madras

Dated : 29.02.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.7384 of 2016

S.Neelavathi

.. Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town,
Chennai-3.

2.The Regional Commissioner,
Central Region-cum-Zone-VIII,
Pulla Avenue, Shenoy Nagar,
Chennai-30.

3.A.Santhanam

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the First and Second Respondents to consider the representation dated 06.10.2015 seeking initiation of appropriate action against illegal/unauthorised construction without any proper planning permission by the Third Respondent on merits and within a stipulated time as fixed by this Court.

For Petitioner : Mr.L.Chandrakumar
For Respondent : Mr.A.Nagarajan
Nos.1 & 2

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has filed the instant Writ Petition praying for passing of an order by this Court in directing the Respondents 1 and 2 to consider her representation dated

06.10.2015, praying for initialisation of appropriate action against an illegal/unauthorised construction put up by the Third Respondent, without obtaining any proper planning permission.

2. According to the Petitioner, the property is situated at 14, No.14, Pillayarkoil Street, Vandiamman Koil Road, Padikuppam Village, Chennai-107, devolved on herself, four sisters and the Third Respondent. The property in issue is yet to be partitioned and because of certain misunderstanding as regards the allocation of land, a Partition Suit in O.S.No.195 of 2009 on the file of Poonamallee Court is pending for adjudication.

3. The main grievance of the Petitioner is that when the suit in O.S.No.195 of 2009 on the file of the trial Court is very much pending and when the rights of the parties are not crystallised in the form of Preliminary Decree and in the absence of any settlement or compromise arrived at between the legal heirs of one Annamalai, the Third Respondent is said to have commenced putting up of construction by digging foundation without submitting any building plan or planning permission to the First Respondent/Corporation of Chennai. The said commencement of construction by the Third Respondent is without any basis and also infraction to the Rules and Regulations that are in force from time to time.

4. The Learned counsel for the Petitioner submits that the Petitioner submitted her representation dated 09.07.2014 and another representation on 04.12.2014 and that the First Respondent/Corporation Authorities warned the Third Respondent from putting up any construction. But the Third Respondent, after keeping quiet for some time, during October 2015 had again started construction activities and on coming to know of the same, the Petitioner submitted a representation dated 06.10.2015 addressed to the Deputy Commissioner, Regional Office, Central Region-VIII, Corporation of Chennai, Chennai-30/Second Respondent (enclosing her earlier representations) and sought for taking action against the Third Respondent (her brother).

5. The Learned counsel for the Petitioner projects an argument that the Official Respondents 1 & 2 have not initiated any action inspite of the fact that the Third Respondent has flagrantly violated the Chennai City Municipal Corporation Act, its Rules and that of the Town and Country Planning Act, 1971.

6. At this stage, this Court aptly points out the decision of Laila Bibi and others V. Asha Bibi and others reported in 1998 All India High Court Cases at page 1585 and at special pages 1587 & 1588 (Orissa High Court) whereby and whereunder at Paragraphs 10 and 11, it is observed and held as follows:

"10. Learned Subordinate Judge though reproduced the three well-known principles as aforesaid for granting or refusing injunction, but unfortunately, he failed to apply the same to the facts and circumstances of the present case. It may be reiterated, the parties to the suit are the descendents of the common ancestor Sk.Md.Azim which fact has not been denied or disputed by the defendants and the property involved in the suit is most valuable property situated in the heart of State Capital, Bhubaneswar. From the narration of the pleadings of the plaintiffs, a 'prima facie' case has been made out, inasmuch as they being admittedly the successors of Sk.Md.Azim, the lessee, have sought for partition of their share in the suit land. On the other hand, the defendants-respondents assert that they are the sole owners of the suit land having obtained the same by virtue of 'Hebs' from the lessee. No 'Mahanama', if any, was brought to the notice of the Court below, when the impugned order was passed. Admittedly, the defendants have built up some shop rooms abutting the main road and have let out the same. According to the plaintiffs, in order to deny them their legitimate share in the suit land, the defendants hurriedly took up construction of the second storey for which they prayed for Court's intervention to restrain them from putting up further construction or altering the existing construction till disposal of the suit. So far as other two ingredients viz., 'balance of convenience' and 'irreparable injury' are concerned, in the facts and circumstances these are satisfied, inasmuch as if ultimately plaintiffs' suit is decreed and prayer for partition is granted, then the defendants may lay a claim that the newly constructed building abutting the main road be allotted to their share. If their such prayer is accepted, it may cause great hardship to the plaintiffs and loss caused to them cannot be compensated for in damages.

11. In view of discussions made above and on consideration of the facts and circumstances of the case, I am of the considered opinion that this is a fit case where injunction should be granted. Resultantly, the impugned order rejecting part of the plaintiffs' prayer for

injunction is set aside. Consequently, the defendants are restrained from proceeding with any construction and/or altering the nature and character of the suit land till disposal of the suit. It is further ordered that rent collected by the defendants, from the tenanted premises shall be deposited every month in the trial Court without any deduction therefrom. Withdrawal of the deposited amount can only be made on the basis of the ultimate findings in the suit. If defendants fail to deposit the rent on any month the plaintiff shall be free to move the trial Court for appointment of receiver. Before concluding I may observe that anything said in this judgment will not influence the mind of the trial Court while disposing of the suit on merits."

7. On a careful consideration of the submissions advanced on behalf of the Writ Petitioner and this Court bearing in mind a very pivotal fact that a Partition Suit in O.S.No.195 of 2009 is pending on the file of the trial Court and also, this Court considering the facts and circumstances of the instant case, in the interest of Justice, Fair Play, Equity, Good Conscience and even as a matter of Prudence, directs the Petitioner to file a necessary application, seeking the relief of interim injunction in the pending suit in O.S.No.195 of 2009, within a period of one week from the date of receipt of a copy of this order. If the petitioner projects such an application seeking interim relief as aforesaid, then, the trial Court is directed to take up the said Interlocutory Application on file and to dispose of the same on merits (ofcourse, after providing adequate opportunities to the concerned parties by following the Principles of Natural Justice) in the manner known to Law and in accordance with Law as expeditiously as possible.

8. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town,
Chennai-3.

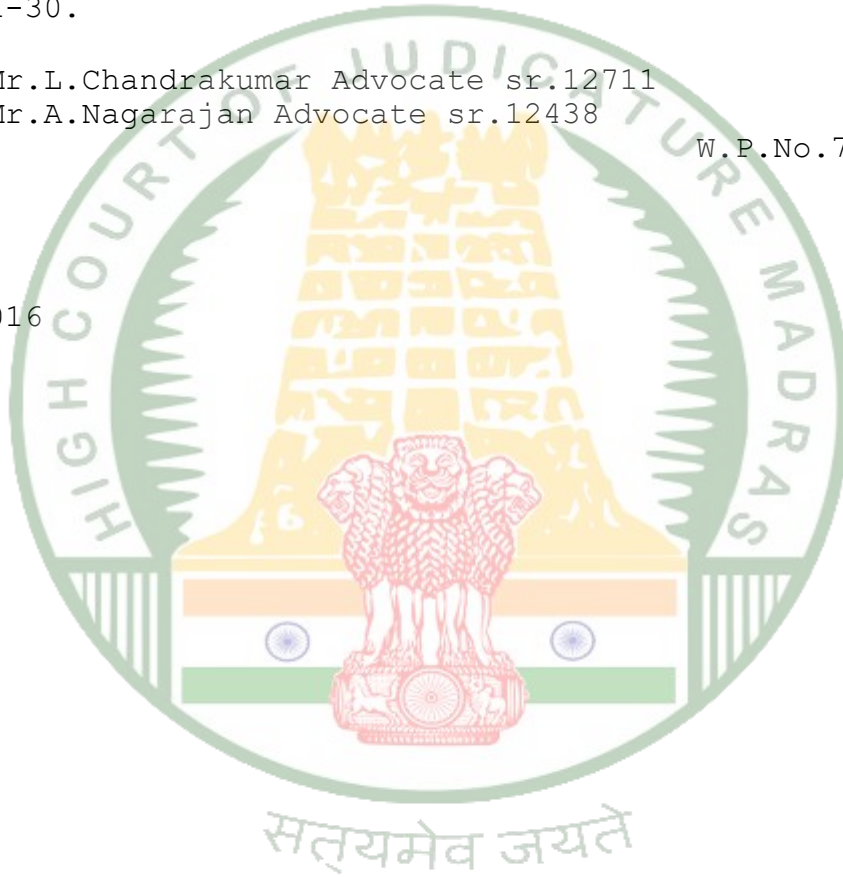
2.The Regional Commissioner,
Central Region-cum-Zone-VIII,
Pulla Avenue, Shenoy Nagar,
Chennai-30.

+1 cc to Mr.L.Chandrakumar Advocate sr.12711

+1 cc to Mr.A.Nagarajan Advocate sr.12438

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