

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.NO.9454 OF 2016 AND
W.M.P.NO.8419 OF 2016

1. M.Jayapal
2. R.Muthukumaran ..Petitioners
Vs.

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

2. The Commissioner,
Pallavaram Municipality,
Chrompet, Chennai - 44

3. D.Prema

4. J.Durai ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd Respondent to take further action against the 3rd and 4th Respondents in pursuant of the statutory notice/Order dated 29.10.2015 issued by the 2nd Respondent under Sections 199,209,216(1)(2), 313 and 317 of the Tamil Nadu District Municipalities Act, 1920 to demolish the unauthorized building / superstructure constructed in the property bearing Nos.18 and 19, M.K.Nagar 1st Street, Keelkattalai, Madipakkam III Village, Sholinganullur Taluk, Kancheepuram District comprised in Survey No.303/2 measuring an extent of 10 cents.

For Petitioners : Mr.R.Chandrasudan

For Respondents : Mr.N.Sampath for R1

O R D E R

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Petitioners have preferred the instant Writ Petition praying for passing of an Order by this Court in directing the 2nd Respondent to take further action against 3rd and 4th Respondents in pursuant to the Statutory Notice/Order dated 29.10.2015 issued by the 2nd Respondent under Sections 199, 209, 216(1)(2), 313 and 317 of the Tamil Nadu District Municipalities Act, 1920 to demolish the unauthorized building / superstructure constructed in the property bearing Nos.18 and 19, M.K.Nagar 1st Street, Keelkattalai, Madipakkam III Village, Sholinganallur Taluk, Kancheepuram District comprised in Survey No.303/2 measuring an extent of 10 cents.

2. According to the Petitioners their grand fathers, viz., Kuppan and Murugan were the absolute owners of the subject matter of the property. As a matter of fact, Patta No.1245 issued in respect of the subject matter of the property stands in the name of said Kuppan and Murugan and was also duly entered in the extract of 'A' Register. In reality, the 1st Petitioner's grand father Kuppan died intestate on 05.04.1971 leaving behind his only son Marimuthu to inherit his share. The said Kuppan's wife, M/s Amma Kannama pre-deceased Kuppan. Further, Marimuthu expired on 18.01.1983 leaving behind 1st Petitioner and his brother Egambaram as his legal heirs to inherit his share in the suit property. The 1st Petitioner's mother, Ellammal pre-deceased his father Marimuthu and was died in the year 1962. The 1st Petitioner's brother Ekambaram died on 24.01.2012, he remained as unmarried and without any heirs.

3. That apart, the 2nd Petitioner's grand father Murugan expired on 01.11.1971 leaving behind his only son Rathinam to inherit his share in the suit property. The wife of said Murugan, Mrs. Annammal expired on 16.04.1947. The said Rathinam went missing on 29.10.2008 as such an FIR in Crime No.743 of 2008 before the S5, Pallavaram Police Station, Chennai was lodged to that effect and still he is untraceable. His wife Radha expired on 05.12.2011 leaving behind her only son Muthukumaran, 2nd Petitioner as legal heir to inherit the share of his grand father Murugan in the suit property.

4. The stand of the Petitioners is that the Competent Authority namely, Urban Land Ceiling Tambaram issued Notice under Sub Section (4) of 9 of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 dated 07.09.1990 calling upon the 1st Petitioner's father Marimuthu seeking his objection to the draft settlement. When that be the fact situation, the 3rd and 4th

Respondents, who are husband and wife and complete strangers to the subject matter of the property attempted to encroach the same by piling up sand, bricks, blue metal, steel roads etc., for the purpose of putting up illegal construction in the suit property on 24.07.2015. In fact, when the Petitioners objected to the said illegal construction, 3rd and 4th Respondents along with their henchmen attempted to attack them.

5. Added further, the Petitioners filed a suit in O.S.No.702 of 2015 on the file of learned District Munsif, Alandur seeking the relief of permanent injunction and also filed an Application for Temporary injunction. The 3rd and 4th Respondents had entered their appearance in the said suit.

6. According to the Petitioners, the 3rd and 4th Respondents had raised un-authorised super structure in the subject matter of the property without obtaining approved building plan from the 2nd Respondent and further, the 2nd Respondent passed an Interim Order on 29.10.2015 under Sections 199, 209, 216(1)(2) 313 and 317 of the Tamil Nadu District Municipalities Act, 1920 directing the 3rd and 4th Respondents to demolish the un-authorised super structure within 7 days from the date of passing of the order. Further the 3rd and 4th Respondents were directed to stop the work immediately on receipt of the order etc.,

7. At this stage it is to be noted that the 3rd and 4th Respondents filed a suit in O.S.No.765 of 2015 on the file of learned District Munsif, Alandur (as a counter blast) against the Petitioners even without disclosing the relevant materials relating to the suit filed by the Petitioners and obtained an exparte Order of Injunction. The real grievance of the Petitioners is that the 3rd and 4th respondents are proceeding with the construction activities in the subject matter of the property in haste to complete the same inspite of the Stop Work Notice issued by the 2nd Respondent/ the Commissioner, Pallavaram Municipality, Chrompet, Chennai. In reality, the actions of the 3rd and 4th Respondents are in violation of Law restraining the construction without license and building plan from the Competent Authority.

8. It comes to be known that the Petitioners filed O.S.No.702 of 2015 on the file of learned District Munsif, Alandur against the Defendants therein (4th and 3rd Respondents in Writ Petition) seeking a relief of permanent injunction restraining the defendants their Men, agents etc., from interfering with the peaceful possession and enjoyment of the suit property.

9. In fact, the Respondents 3 and 4 (Defendants in O.S.No.702 of 2015) filed a suit in O.S.No.765 of 2015 on the

file of learned District Munsif, Alandur against the Respondents / Petitioners seeking a relief of permanent injunction restraining the defendants, their men, their agents etc., from in manner interfering with Plaintiffs peaceful possession and enjoyment of suit properties or in any manner tress-passing into the suit properties.

10. As on date, the suit filed by the Writ petitioners in O.S.No.702 of 2015 and the suit in O.S.No.765 of 2015 filed by the Petitioners / Defendants are pending on the file of learned Principal District Munsif, Alandur. Suffice it for this Court to pertinently point out that the respective parties, in the suits filed as stated supra on the file of Trial Court had sought for a relief of permanent injunction, as on date, the said Civil Suits are pending for final determination. Moreover in both the suits, 1st and 2nd Respondents, namely, the Chennai Metropolitan Development Authority, Chennai - 8 and the Commissioner, Pallavaram Municipality, Chennai - 44 are not parties.

11. It is to be pointed out that Section 199 of Tamil Nadu District Municipalities Act, 1920 speaks of "Prohibition against Commencement of Work without permission". Section 209 of the Act refers to "Prohibition against Commencement of Work without permission". Section 216 of the Act deals with "Demolition or alteration of Building Work unlawfully commenced, carried on or completed". Section 313 of the Act speaks of "General Provisions regarding penalties specified in the Schedule". As a matter of fact Section 317 of the Act enjoins that "Penalty for unlawful building".

12. It cannot be forgotten that Section 317 of Tamil Nadu District Municipalities Act, 1920 specifies that a notice under Section 205 or 215 of the Act has to be issued and inspite of such notice and direction is given to alter or demolish the portion of the building, for non-compliance an Order under Section 216 shall be made and inspite of such Order passed if the Petitioner failed to follow such order, then only prosecution can be launched as per Section 317 of the Act, as opined by this Court.

13. Be that as it may, on a careful consideration of the respective contentions and also this Court bearing in mind a very significant fact that O.S.No.702 of 2015 and O.S.No.765 of 2015 filed by the parties are pending on the file of Trial Court and also this Court, taking note of the facts and circumstances of the present case which float on the surface, comes to an resultant conclusion, in Law, the parties are to wait for the outcome of the Judgment to be delivered in the pending suits. Before that, it is not open to the Petitioners to seek a relief against the Respondents 3 and 4 seeking for issuance of

direction by this Court in directing the 2nd Respondent to take further action pursuant to the Statutory Notice/ Order dated 29.10.2015 issued under various Sections of Tamil Nadu District Municipalities Act, 1920 to demolish un-authorised building / structure constructed in the property bearing Nos.18 and 19, M.K.Nagar 1st Street, Keelkattalai, Madipakkam III Village, Sholinganullur Taluk, Kancheepuram District comprised in Survey No.303/2 measuring an extent of 10 cents.

14. To put it succinctly, when the suits filed by the respective parties are pending, the filing of the present Writ Petition by the Writ Petitioners (Plaintiffs in O.S.No.702 of 2015 on the file of Trial court) is a pre-mature and Otiose one. Continuing further , the Petitioners are not to file the present Writ Petition as a parallel remedy when they have already filed O.S.No.702 of 2015 on the file of the trial court.

Viewed in that perspective, the Writ Petition fails.

In the result the Writ Petition is dismissed leaving the parties to bear their own costs. It is abundantly made clear that the dismissal of the present Writ Petition by this Court will not preclude the respective parties to raise all factual and legal pleas before the Trial Court in O.S.Nos.702 of 2015 and 765 of 2015 on the file of learned District Munsif, Alandur and seek appropriate remedy in the manner known to law and in accordance with law, if they so desire/advised. Consequently, the connected Miscellaneous Petition No. 8419 of 2016 is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Gandhi-Irwin Road,
Egmore, Chennai - 600 008
2. The Commissioner,
Pallavaram Municipality,
Chrompet, Chennai - 44.

+1cc to M/S.N.Sampath, Advocate, S.R.No.15995
+1cc to Mr.R.Chandra Sudan, Advocate, S.R.No.15957

W.P.No.9454 of 2016 and
W.M.P.No.8419 of 2016

msm(CO)
srg(23/03/2016)



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