

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.11628/2017

&

WMP.No.12643/2017

R.Gajendran

...

Petitioner

VS

1.The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply
Department, St. George Fort, Chennai 600 009.

2.The Director
Directorate of Town Panchayats
Kuralagam, Chennai 600 108.

3.The Executive Officer
Gummidipoondi Town Panchayat
Tiruvallur District.

4.Mr.M.Govindan

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 3rd respondent to take immediate action on the petitioner's representation dated 13.04.2017 and forbearing the 4th respondent from putting up any construction without any building planning approval documents, trying to make encroachment in the six feet width vacant land of northern side of the petitioner's building in

respect of S.No.559/B situated at No.75, Old Gummidipoondi Village, Gummidipoondi Taluk, Tiruvallur District, which is having document in the name of the petitioner mother.

For Petitioner : Mr.V.Vadivel
For RR 1 to 3 : Mr.A.N.Thambidurai, Spl.GP
For R4 : Mr.J.Judson Samuel for
M/s.Paul and Paul

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner, in the affidavit filed in support of this writ petition would aver among other things that the land admeasuring to an extent of 0.04.00 cents out of 4.43 acres comprised in S.No.559/B, Gummidipoondi Village, Tiruvallur District, along with the buildings is the ancestral property of the petitioner's mother and through a registered Partition Deed bearing Doc.No.428/1980, dated 26.03.1980, registered on the file of the office of the Sub Registrar, Gummidipoondi, the petitioner's mother had succeeded to the said estate. The petitioner would further aver that his grandfather, at the time of putting up the construction on the said land, had kept six feet width on the Northern side of the building for the purpose of having access and also for the basic amenities like air and

light. The petitioner also aver that in the year 1993, the family of one Munusamy Naidu had tried to encroach upon the said six feet vacant land and therefore, the petitioner's mother had filed a suit in OS.No.89/1993 on the file of the Sub Court, Tiruvallur, praying for the relief of declaration and other consequential reliefs and the said suit, was transferred to the file of the District Munsif, Ponneri and re-numbered as OS.No.401/1996 and it is still pending. The grievance expressed by the petitioner is that the 4th respondent had started putting up the construction on the said width without any planning permission or authorisation and in this regard, the petitioner has submitted a representation dated 25.04.2017 to the concerned officials and in spite of receipt and acknowledgment, so far no orders have been passed and hence, the petitioner came forward to file the present writ petition.

3 The writ petition was entertained on 05.07.2017 and subsequently, it was listed on 15.09.2017 and on that date, the respective learned counsel appearing for the respondents prayed for time to file counter.

4 The 3rd respondent herein has filed the counter affidavit and as per the averments made in paragraphs No.5 and 6 of the same, the whole

land in S.NO.559/B is classified as "Chatram" and the said land belongs to the Revenue Department and as such, neither the petitioner nor the 4th respondent can claim any right or title over the same. It is further averred that the 4th respondent has also been issued with the notice dated 24.04.2017 by the 3rd respondent to stop the construction activities forthwith and another notice dated 26.04.2017 was issued to the 4th respondent under sections 56 and 57 read with 85 fo the Tamil Nadu Town and Country Planning Act, 1971, to demolish the offending construction and to bring back the land to its original position and it was also received and acknowledged.

5 The learned counsel appearing for the petitioner would submit that as per the averments made in the counter affidavit filed by the 3rd respondent, the construction put up by the 4th respondent is wholly unauthorised and therefore, it should be demolished forthwith.

6 *Per contra*, the learned counsel appearing for the 4th respondent would submit that as per the said counter affidavit, the petitioner is also an encroacher and therefore, appropriate is to be taken to remove the said encroachment also.

7 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 3 would submit that further follow-up action and monitoring will be done as to the demolition of the offending construction put up by the 4th respondent and also to remove the encroachments on the land in S.No.559/B classified as "Chatram".

8 The Court has considered the rival submissions and also perused the materials placed before this Court.

9 The 3rd respondent has already taken action against the 4th respondent by initiating proceedings under the provisions of the Tamil Nadu Town and Country Planning Act, 1971. It is also brought to the knowledge of this Court that the whole land in S.NO.559/B is classified as "Chatram" and as such, nobody can claim any right over the land which includes the petitioner and the 4th respondent herein.

10 In the light of the above facts and circumstances, the 3rd respondent is directed to initiate appropriate action in accordance with law, for removal of the encroachment in the land in Survey NO.559/B classified

as "Chatram" land, after putting on notice, the encroachers which include the petitioner as well as the 4th respondent herein. The 3rd respondent is also directed to proceed further in accordance with law in respect of the Notice dated 26.04.2017 issued to the 4th respondent for removal of the offending construction. It is made clear that the said exercise shall be carried out within a period of twelve weeks from the date of receipt of a copy of this order and the decision in that regard, shall be communicated to the petitioner, the 4th respondent herein and the other encroachers also.

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

12 List the writ petition on 02.02.2018 for filing Compliance / Status Report by the 3rd respondent.

(M.S.N.J.,) (N.S.S.J.,)
31.10.2017

Internet : Yes

AP

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To

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Municipal Administration and Water Supply
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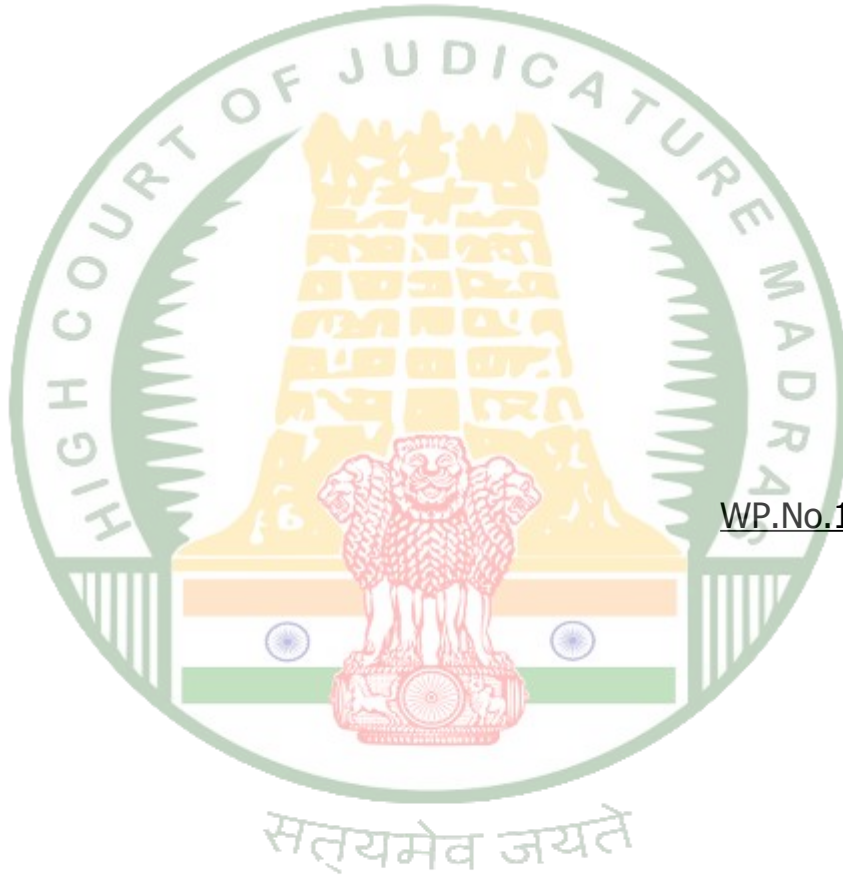
Copy to
The Section Officer
Writ Section, High Court
Madras.



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M.SATHYANARAYANAN.J
and
N.SESHASAYEE.J

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