

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24252/2017 and WMP.No.25641 of 2017

1.Yamuna Kumar

2.J. Vasantha

.. Petitioners

VS

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai-600 003.

2.The Zonal Commissioner,
Zone XIII
No.115, Dr. Muthulakshmi Salai,
LB Road, Adyar, Chennai-600 020.

3.The Executive Engineer,
Zone XIII
No.115, Dr. Muthulakshmi Salai,
LB Road, Adyar, Chennai-600 020.

4.Mr. N. Ekambaram
S/o. Nataraja Pillai (Late),
Door No.3A-3B,

Srinivasan Street, Seethapathi Nagar,
Velachery, Chennai-600 042

5.Mr. N. Prabhakaran
S/o. Nataraja Pillai (Late),
Door No.3A-3B,
Srinivasan Street, Seethapathi Nagar,
Velachery, Chennai-600 042

6.Mr. N. Yogasekar
S/o. Nataraja Pillai (Late),
No. 6A/2, New No.21, Karanam Street,
Velachery, Chennai-600 042. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate Writ of direction in the nature of a writ directing the Respondents 1 and 2 to consider and initiate appropriate action on the representation dated 29.07.2017 given by the Petitioners as against the illegal construction which is taking place in the property situated at Door No.3A/3B, Srinivasan Street, Seethapathi Nagar, Velachery, Chennai-600 042 through the Respondents 4 to 6.

For Petitioner : Mr. Ganesh

For Respondents : Mr.K. Soundararajan for RR1 to RR3

ORDER

By consent, the writ petition is taken up for final disposal.
Mr.K.Soundararajan, learned Standing counsel accepts notice on behalf of the respondents 1 to 3.

2. The petitioners in the affidavit filed in support of this writ petition would further aver among other things that the 1st petitioner is residing in the said address for the past forty years. The property totally admeasuring to an extent of 27.5 cents or 11,977 square feet at Door No.3A/3B, Srinivasan Street, Seethapathi Nagar, Velachery, Chennai-600 042, originally belonged to his father late Nataraja Pillai. He died intestate and the petitioners are entitled to 1/7th share each. The brothers of the petitioners viz., the respondents 4 to 6 started denying the request for share in the property and therefore, the petitioners along with three sisters namely Tmt. Vijayakumari, Mrs.Rajeswari alias Gowri and Mrs.Vasantha have filed a suit in C.S.No.128 of 2000, originally on this Court for partition and thereafter, it was transferred to the file of the City Civil Court, Chennai and renumbered as O.S.No.7241 of 2010. The Petitioners would further submit that at the time of pendency of Civil Suit, they have filed O.A. Nos.246 and 247 of 2000, praying for an order of ad-Interim injunction restraining the private respondents therein from alienating the property and also putting up the construction in the said property. Insofar as the O.A.No.247 of 2000 filed for restraining the private respondents from constructing the superstructure, it was dismissed on 20.11.2000.

3. The Petitioners after transfer of the suit on the file of the VI Additional City Civil Court, Chennai in O.S.No.7241 of 2010, filed I.A.No.4411 of 2017 prayed for an order of ad-interim injunction restraining the private respondents herein from putting up any further or new construction in the scheduled property and the private respondents have filed their counter and took a stand that they are not carrying out any new construction in the suit property and they are doing only small repair works on the damaged portion and due to heavy cyclone of Wardha, some portion of the suit property was collapsed and as such, they are undertaking the repair work.

4. The learned counsel appearing for the petitioners would submit that the private respondents under the guise of doing repair works, started putting up new construction. In this regard, he submitted a representation dated 29.07.2017 to the respondents 1 to 3 and despite receipt and acknowledgment, no orders have been passed and hence, came forward to file this writ petition. The learned counsel appearing for the petitioner has also drawn the attention of this Court to the photographs filed along with the typed set of papers.

5. Per contra, Mr.K.Soundararajan, learned Standing counsel appearing for the respondents 1 to 3 would submit that since the petitioners had invoked the jurisdiction of the Civil Court, the writ petition is not maintainable and seeks the indulgence of this Court so as to get interim injunction order before the Civil Court and prays for the dismissal of this writ petition.

6. This Court has considered the rival submission and also peruse the materials placed before it.

7. Though the petitioners prays for larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the writ petitioners in the writ petition, directs the 2nd respondent to put the respondents 4 and 6 on notice and thereafter, consider and dispose of the representation dated 29.07.2017 submitted by the writ petitioners on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as to the respondents 4 to 6.

M.SATHYANARAYANAN,J.
and
N.SESHASAYEE,J.

Sk/rpl

8. Accordingly, the writ petition stands disposed of. Consequently connected miscellaneous petition is closed. No Costs.

[M.S.N.,J] [N.S.S.,J]

11.09.2017

To

- 1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai-600 003.
- 2.The Zonal Commissioner,
Zone XIII
No.115, Dr. Muthulakshmi Salai,
LB Road, Adyar, Chennai-600 020.
- 3.The Executive Engineer,
Zone XIII
No.115, Dr. Muthulakshmi Salai,
LB Road, Adyar, Chennai-600 020.

WP.No.24252/2017
and WMP.No.25641 of 2017