

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.14567/2017

N.Prabhakaran

.. Petitioner

VS

1.The Regional Deputy Commissioner (South),
Zone-13, Corporation of Chennai,
Dr.Muthulakshmi Salai,
Adayar, Chennai.

2.The Assistant Engineer,
Division No.179, Zone-13,
Corporation of Chennai,
Velachery, Chennai-600 042.

3.N.Yogasekaran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to dispose of my representation dated 22.05.2015 abd 04.01.2017 under various provisions of the Town and Country Planning Act, 1971 in order to remove the entire unauthorized construction put up by the 3rd respondent.

For Petitioner : Mr.P.Arulselvan

For Respondents : Mr.V.C.Selvaekaran
Standing counsel (Corporation) for RR 1&2
Mr.I.Arokiaraj for R3

ORDER

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

2. Admittedly, the petitioner and the 3rd respondent are blood brothers and it is the case of the petitioner that he is residing at No.3, Srinivasan Street, Dr.Seethapathi Nagar, Velachery, Chennai-42 for the past 20 years and pursuant to the registered Partition Deed dated 19.03.1999 (Doc.No.942/1999) on the file of the Sub Registrar, Velachery, Chennai, he along with the brothers had partitioned of the said property. As per the partition, the property of the 3rd respondent is located on the Northern side of the property. The petitioner would state that the 3rd respondent, during May 2015, has started constructing a wall without any planning approval and without leaving any setback and in this regard, a representation dated 22.05.2017 was submitted before the 1st respondent praying for appropriate

action. The petitioner would further aver that due to his illness, he got admitted in Kamatchi Hospital between 27.12.2016 and 31.12.2016 as inpatient and taking advantage of his absence, the 3rd respondent proceeded with the construction and hence, he came forward to file this writ petition.

3. The writ petition was entertained on 14.06.2017 and when it was listed on 11.08.2017, this Court is directed to list the matter on 19.09.2017 and granted interim orders restraining the 3rd respondent from proceeding further with the alleged offending construction.

4. The learned counsel appearing for the petitioner would submit that in utter disregard and violation of the interim order dated 11.08.2017, the 3rd respondent proceeded further and completed the construction and evidencing the said fact, the petitioner has also filed photographs. This Court has also directed the petitioner to file additional affidavit as to whether the construction put up by him is authorized or not and accordingly, the petitioner has filed an

additional affidavit, admitting the fact that his construction is also unauthorised and therefore, applied under Regularisation Scheme, 2002 in the form of application bearing Regularisation No.28502 and also paid the requisite and necessary fees as early as on 29.06.2002 and the said application is pending.

5. In sum and substance, it is the submission of the learned counsel appearing for the petitioner that since the 3rd respondent, without any planning permission and approval, has started construction and in utter disregard and violation of the interim order passed by this Court, has completed the construction which should be demolished forthwith.

6. Mr.V.C.Selvasekaran, learned Standing counsel appearing for the Chennai Corporation has drawn the attention of this Court to the counter affidavit of the 1st respondent and would submit that the notice dated 14.06.2017 was issued to the 3rd respondent calling for the approved plan and despite receipt of the notice, the 3rd

respondent did not stall the construction and proceeded further and completed the construction and further action has been taken by issuing Lock and Seal and Demolition notice dated 21.07.2017. The learned counsel appearing for the 3rd respondent would submit that he has also sought for regularization of the unauthorized construction. It is the submission of the learned Standing Counsel appearing for the Chennai Corporation that the sister of the petitioner and the 3rd respondent had also filed WP.No.24252 of 2012 against the Corporation officials as well as against their brothers namely N.Prabakaran and N.Yogasekaran (petitioner and 3rd respondent respectively) praying for appropriate action to consider and dispose of the representation dated 29.07.2017 with regard to the legal construction which has taken place in property in door No.3A/3B, Srinivasan Street, Seethapathi Nagar, Velachery, Chennai-600 042 and the said writ petition also been disposed of.

7. This Court has considered the rival submission and also perused the materials placed before it.

8. The facts remains that the construction / superstructure put up by the petitioner as well as the 3rd respondent, appears to be unauthorized. It is the specific case of the petitioner that the said construction came to be completed prior during the year 1999 and he has also submitted Regularization application and it has been entertained bearing Regularization application No.28502 and the same is pending consideration. On perusal of the photograph filed along with the typed set of papers made in writ petition as well as additional affidavit would *prima facie* disclose that the 3rd respondent has proceeded further and completed the construction. It is also stand of the 1st respondent in the counter affidavit that despite calling upon the petitioner to submit the approved planning permission, he did not furnish the same and proceeded with the construction and subsequently, Lock and Seal and demolition notice have also been issued.

9. In the light of the above facts and circumstances, the petitioner and the 3rd respondent have also been inspected, it is for the respondents 1 and 2 to take proper action with regard to the alleged offending construction put up by the petitioner and the 3rd respondent in accordance with law, subject to any legal interdict. The said exercise shall be carried out and completed by the respondents 1 and 2 as expeditiously as possible within a period of ten weeks from the date of receipt of a copy of this order and depending upon the result of the action initiated, the petitioner as well as the 3rd respondent are at liberty to workout their remedy in accordance with law before the competent forum.

10. The writ petition stands disposed of. No costs.

सत्यमेव जयते

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

21.09.2017

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M.SATHYANARAYANAN,J.

And

N.SESHASAYEE,J.

Sk

To

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Zone-13, Corporation of Chennai,
Dr.Muthulakshmi Salai,
Adayar, Chennai.

2.The Assistant Engineer,
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WP.No.13144 of 2017



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