

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.16116/2017 & WMP.No.17405/2017

Arulmighu Bharatwajeshwarar
Temple rep.by its Executive Officer
Puliyur, Kodambakkam, Chennai 600 024.

... Petitioner

vs

1. Rep by Chennai Metropolitan Development Authority, The Member Secretary, Thalamuthu Natarajan Maligai No.1, Gandhi Irwin Road, Egmore Chennai 600 008.
2. The Commissioner Corporation of Chennai Chennai 600 003.
3. The Executive Engineer Zonal Office - 10, Kodambakkam Chennai 600 024.
4. The Inspector of Police R8 Vadapalani Police Station Vadapalani, Chennai 600 026.

5. Ismail
6. Amsavalli
7. N. Ramachandran
8. Aparnalakshmi

... Respondents

***RR7&8 impleaded as per order dated
25.10.2017 made in WMP.No.19429/2017
in WP.No.16116/2017.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the respondents No.1 and 3 to demolish and remove the unauthorised construction at Block-3, Door-50, Vivekananda Colony Street in Survey No.16, Puliyur Village, Kodambakkam -

600 024, as per the provisions of law and to further direct the respondent Nos.1 and 4 to stop any further unauthorised constructions upon the said plot by issuing stop work notices to the respondents No.5 and 6 or any other person claiming through the respondents No.5 and 6 in accordance with law.

For Petitioner : Mr.Suhrith Parthasarathy
For R1 : Mr.N.Sampath
For R2&R3 : Mr.A.Nagarajan
For R4 : Mr.A.N.Thambidurai, Spl.GP
For RR7&8 : Mr.D.S.Rajasekaran

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.N.Sampath, learned Standing counsel appears on behalf of the 1st respondent ; Mr.A.Nagarajan, learned standing counsel appears on behalf of the respondents 2 and 3 ; Mr.A.N.Thambidurai, learned Special Government Pleader appears for the 4th respondent and Mr.D.S.Rajasekaran, learned counsel appearing for the impleaded respondents/respondents 7 and 8.

2 It is the case of the petitioner - temple that it is the absolute owner of the landed property comprised in S.Nos.14, 15 and 16, Puliur Village, Kodambakkam and it also holds patta and the petitioner - temple would further aver that the respondents 5 and 6 are the erstwhile tenants of the petitioner - temple in respect of the premises bearing Door No50, Block No.3, Vivekananda Colony Street and they were in arrears of rent and therefore, notices calling upon them to vacate and deliver the vacant possession of the premises were also issued on 18.08.2009 and they did not respond and as such, they were in unauthorised occupation of the premises. The petitioner came to know that some construction activities are going on in the said land, leased out to the respondents 5 and 6 and it submitted representations alleging among other things, unauthorised construction without any planning permission and since no action has been taken, the petitioner came forward to file the present writ petition.

3 The writ petition was entertained on 03.07.2017 and on 17.07.2017, this Court, on a perusal of the photographs, having found that the construction is in an unfinished stage, directed the proposed respondents / respondents 7 and 8 who appeared through a counsel, not to carry out any further construction and directed them to maintain status quo as on that date.

4 The learned counsel for the petitioner would submit that the respondents 7 and 8 have no valid or legal title to the land in question and not stopping with that, have started putting up unauthorised construction and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

5 Per contra, Mr.A.Nagarajan, learned Standing counsel appearing for the Corporation of Chennai / respondents 2 and 3 has drawn the attention of this Court to the counter affidavit filed by the 3rd respondent and would submit that the inspection of the said site was done on 16.08.2017 after noting the deviations, the 3rd respondent has issued the Locking, Sealing and Demolition Notice No.X/TPENF/00284/2017 dated 16.08.2017, wherein the following deviations were noted:-

Sl.No	Details	As per Approved Plan	As per Site	Deviation
I. Set Back				
1	Front	1.52 m	1.62 m	Nil
2	Rear	2.17 m 1.55 m	0.65 m 0.80 m	1.52 m 0.75 m
3	Side 1	1.52 m	1.13 m	0.39 m
4	Side 2	1.78 m 1.60 m	0.89 m 1.04 m	0.89 m 0.89 m
II Floor Area				
1	Stilt Floor	344.39 sq.m.	398.88 sq.m.	54.49 sq.m.
2	First Floor	344.39 sq.m.	398.88 sq.m.	54.49 sq.m.

and calling upon the petitioner to secure the compliance of the sanctioned plan within the stipulated time, failing which, stringent action would be initiated further and in the light of the said development, nothing survives for further adjudication in this writ petition.

6 The learned counsel appearing for the respondents 7 and 8 would submit that the respondents 7 and 8 got the said properties through the registered Sale Deeds dated 12.05.2010 and 28.07.2011 respectively and patta was also issued in favour of them and as per the Town Survey Land Register, they are also shown as the owners of the land in question and as such, the plea made by the petitioner - temple that it is the owner of the land, is per se, false. It is the further submission of the learned counsel appearing for the respondents 7 and 8 that the construction is in semi-finished stage and it cannot be found out that the respondents 7 and 8 are putting up the

construction, deviating the sanctioned plan and would further submit that the petitioner under the guise of filing the present writ petition, seeks an order from this Court as to the title in respect of the said land in question and the same is impermissible and prays for dismissal of this writ petition.

7 The Court has considered the rival submissions and also perused the materials placed before it.

8 In the light of the said stand taken by the 4th respondent coupled with the fact that Locking, Sealing and Demolition Notice dated 16.08.2017 has also been issued to the respondents 7 and 8 and challenging the same, they have also filed a Special Revision/Appeal u/s.80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9, no further orders are necessary in this writ petition and depending upon the result of the appeal/special revision, the writ petitioner as well as the respondents 7 and 8 are at liberty to work out their remedy in accordance with law.

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

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

AP
To

1. The Member Secretary,
Chennai Metropolitan Development
Authority, The Member Secretary,
Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road, Egmore
Chennai 600 008.
2. The Commissioner
Corporation of Chennai
Chennai 600 003.
3. The Executive Engineer
Zonal Office - 10, Kodambakkam
Chennai 600 024.

4.The Inspector of Police
R8 Vadapalani Police Station
Vadapalani, Chennai 600 026.

Copy to:-

The Secretary to Government
State of Tamil Nadu,
Housing and Urban Development
Department, Secretariat,
Fort St George, Chennai-600 009.

+1 CC to Mr.N. Sampath, Advocate sr 81194.

+1 CC to Mr.N. Nagarajan, advocate sr 81364.

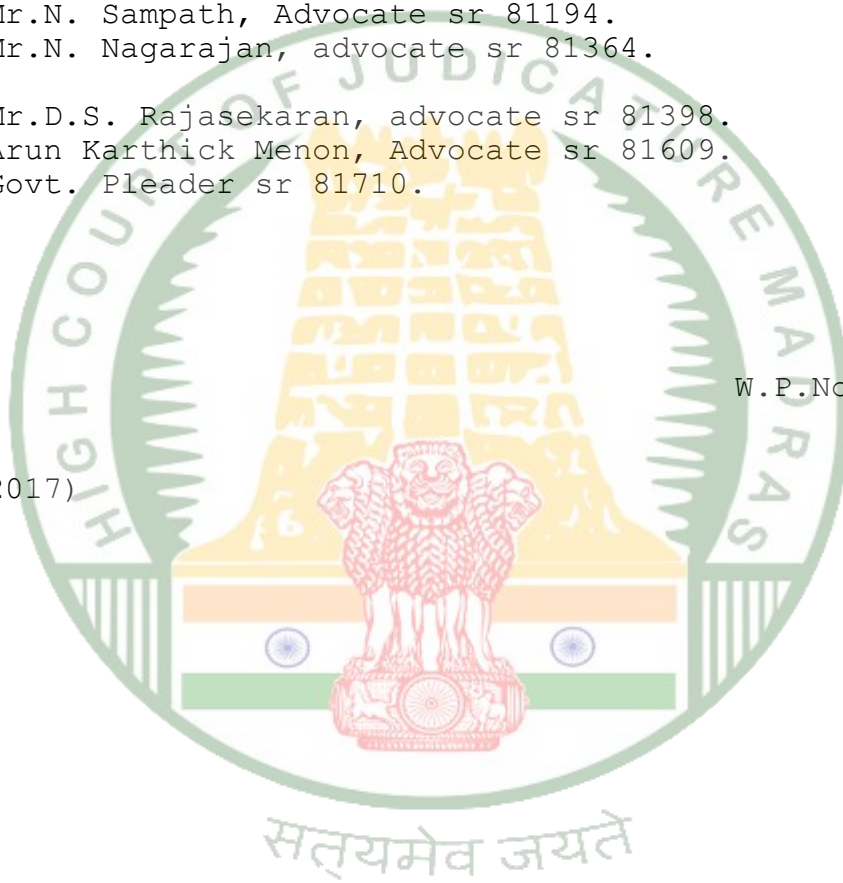
+1 CC to Mr.D.S. Rajasekaran, advocate sr 81398.

+1 CC to Arun Karthick Menon, Advocate sr 81609.

+1 CC to Govt. Pleader sr 81710.

W.P.No.16116/2017

BR(CO)
SP(12/12/2017)



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