

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM

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

W.P.No.26894 of 2017 in W.M.P.No.28666 of 2017

R.Gomathy ... Petitioner

.Vs.

1. The Assistant Commissioner,
Zone-10, Corporation of Chennai,
117, NSK Road, Kodambakkam,
Chennai-24

2. The Executive Engineer,
Zone-10, Corporation of Chennai,
117, NSK Road, Kodambakkam,
Chennai-24

3. The Junior Engineer,
Corporation of Chennai,
Division 135,
Thambaiah Street,
West Mambalam, Chennai -600 033.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the notice dated 10.10.2017 in Notice No.Z.O. X.C. No.00030/2017 issued by the first respondent and quash the same.

For Petitioner : Mr.R.Vijayaraghaven

For Respondents : Mr.K.Soundararajan

ORDER

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

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

2 The petitioner would state that her husband's cousin brother Viz., Babu along with 11 others had filed a civil suit

in O.S.No.2990 of 2017 on the file of III Assistant Judge, City Civil Court, Chennai, against the husband of the petitioner-the 1st defendant and four others, praying for declaration that the ground floor and first floor of the land comprised in T.S.No.25 (Part) Block No.13, Thiyagaraya Nagar Division measuring east to west 15 $\frac{3}{4}$, north to south 8 feet measuring 126 square feet, including a portion adjoining F2 property is a joint family property of the plaintiff and the 2nd defendant and also for possession of the said property after demolishing the said property and also for mandatory injunction directing the 1st defendant to demolish and remove the structure made on the said suit property and the husband of the petitioner who is elder of 1st defendant had entered appearance and filed his written statement wherein he took a stand that the said suit property was released to him by all his brothers, sisters and his mother and he is in absolute possession and enjoyment of the same and he in turn executed a Settlement Deed in favour of the 5th respondent herein.

3 It is further averred by the petitioner that one Saraswathy, wife of Babu, filed WP.No.17610 of 2010 against the Commissioner, Corporation of Chennai and also against one G.Ramesh, praying for a writ of Mandamus directing the 1st respondent to initiate action under sections 256 and 222 of the Chennai City Municipal Corporation Act, to stop the illegal construction put up by the 2nd respondent therein and also to demolish the same in T.S.No.25, Block Construction No.13, Thiyagaraya Nagar, Division 125 and on the public street viz., Gandhi Street, West Mambalam, Chennai - 33 and this Court vide order dated 07.11.2016 has disposed of the same, directing the 1st respondent to carry out an inspection at site and verify whether any encroachment has been made by the 2nd respondent or not and in case of any encroachment is found, action in accordance with law to be taken to remove the encroachment.

4 The petitioner also filed Writ petition No.7208 of 2017 challenging the notice dated 10.03.2017 issued by the Executive Engineer, Corporation of Chennai, Chennai 24, in and by which, the husband of the petitioner was called upon to remove the encroachments.

5 This Court vide order 27.03.2017 has disposed of the writ petition by granting liberty to the petitioner to submit her representations to the eviction notice dated 10.03.2017 enclosing all relevant documents within a period of one week from the date of receipt of copy of the order and upon receipt of the same, the respondent authority shall take action in accordance with law after affording an opportunity to the petitioner and to all parties, and give a disposal of the same within a stipulated time.

6 It is a specific case petitioner that in pursuant to the liberty granted as per the above said order, she has submitted her representation dated 04.04.2017 and also enclosed relevant and necessary documents and the petitioner was also called upon to appear on 11.09.2017 and accordingly, she appeared and made her submissions and however, to her shock and surprise without considering the same, another impugned notice dated 06.10.2017 was issued by the 1st respondent, calling upon the petitioner for personal hearing on 10.10.2017 and on that day, she appeared and made her submissions and however, to the shock and surprise without considering the representation dated 09.10.2017, the impugned notice came to be issued under Section 220 read with 222 of Chennai City Municipal Corporation Act IV of 1919 and challenging the same, the present writ petition is filed.

7 The learned counsel for the petitioner would submit that the order dated 27.03.2017 made in writ petition No.7208 of 2017 filed by the petitioner makes it very clear that this Court has directed the petitioner therein to reply to the eviction notice 10.03.2017 and also directed the respondent therein to take a decision after putting the concerned parties on notice and the said decision shall be taken in accordance with law and in violation of the said order, though the petitioner as well as her husband submitted their representations, without considering the same, by cryptic order in the form of impugned notice came to be issued and hence prays for interference.

8 Per contra, the learned standing counsel appearing for the Corporation of Chennai would submit the petitioner had not only encroached upon the road margin, but also put up construction without any planning permission and husband of the petitioner using the rowdy elements, is preventing the officials from discharging their duties and hence, an action has been taken in accordance with law and prays for dismissal of this writ petition.

9 This Court has considered the rival submissions and also perused the materials placed before it.

10 It is relevant to extract the paragraphs No.8 to 10 of the order dated 27.03.2017 made in Writ petition No.7208 of 2017.

8.Pursuant to the direction issued in
W.P.No.17610 of 2010 the Corporation officials

have issued notice to the petitioner's husband calling upon him to remove the encroachment. In his reply to the eviction notice, the petitioner's husband state that there was no encroachment. Admittedly, the petitioner herein is not a party in W.P.No.17610 of 2010.

9. In view of the above submission, we direct the petitioner to give reply to the eviction notice dated 10.03.2017 enclosing all relevant documents within a period of one week from the date of receipt of a copy of this order. On receipt of such reply the respondent authorities shall take a decision in accordance with law after affording an opportunity to all parties within a period of two months thereafter. Till then, no coercive steps shall be taken by the respondent authorities.

10. The writ petition accordingly, stands disposed of. No costs. Consequently, W.M.P.No.7839 of 2017 is closed.

11. It is the claim of the petitioner that in response to the notice dated 06.09.2017 issued by the 1st respondent, her husband appeared for personal hearing on 11.09.2017 and once again, notice of personal hearing was issued on 06.10.2017 fixing the date of personal hearing on 10.10.2017 at 11:30 a.m and the petitioner herself has appeared and submitted her response to the respondents 1 to 4, projecting her cause / defence. The grievance expressed by the petitioner is that despite the direction given in the above cited order to consider and dispose of the representation, after putting the concerned persons on notice, it has not been complied with.

12. This Court taking into consideration the above facts and circumstances, direct the 2nd respondent to take into consideration of the petitioner representations dated 04.04.2017 and 09.10.2017 and after putting Mrs.Saraswathi, the petitioner in WP No.17610 of 2010 on notice, shall consider and dispose of the said representation in accordance with law and pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision to the parties concerned and till such time, the respondents shall defer further proceedings in terms of the impugned notice dated 10.10.2017.

13 The writ petition stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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Zone-10, Corporation of Chennai,
117, NSK Road, Kodambakkam,
Chennai-24

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+ 1 cc to Mr.K.Soundararajan, Advocate,SR.73765

+ 1 cc to M/s.R.Vijayaraghavan, Advocate,SR.73817

W.P.No.26894 of 2017

MN(CO)
NR 24/10/2017

सत्यमेव जयते

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