

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.27307/2017 & WMP.No.29152/2017

Manjula

Petitioner

Vs

1 The District Collector
Kancheepuram District
Kancheepuram.

2 The Assistant Director
Town Panchayat
Kancheepuram Zone.

3 The Revenue Divisional Officer
Tambaram Circle, Tambaram.

4 The Tahsildar
Tambaram Taluk, Tambaram.

5 The Executive Officer
Madambakkam Town Panchayat
Madambakkam, Chennai.

6 Mr.B.Kumar

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of certiorarified mandamus calling for the records of the 5th respondent in impugned order dated 26.09.2017 and 11.10.2017 in vide Na.Ka.No.442/2014 and quash the same and consequently direct the 1st to 5th respondents not to remove or demolish the building in the schedule of property in the writ petition.

For Petitioner : Mr.P.B.Sambath Kumar

For RR 1 to 5 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 5.

2 The petitioner claims that she is a resident of Door No.13, Vinayakar Koil Street, Madura Paduvancheri Village, Madamabakkam, Chennai-126, for about 70 years and the said property is comprised in Gramanatham Survey No.419/4 [part], Patta No.227, New Survey No.781/9, admeasuring to an extent of 3052 sq.ft., with a superstructure and the petitioner and her family members are residing in the said premises, without any disturbance whatsoever. The petitioner would further aver that electricity service connection has also been provided to the said superstructure bearing No.273-123-016 and the said property is also subjected to statutory levies. The petitioner would further state that originally, the property belonged to her father-in-law, who had executed a Settlement Deed in favour of his wife/mother-in-law of the petitioner herein, through a registered Settlement Deed bearing Doc.No.2028/1956 dated 04.12.1956 registered on the file of the office of the Sub Registrar, Tambaram and she in turn, had executed a Sale Deed in favour of the petitioner through a registered Sale Deed bearing Doc.No.6167/2001 dated 07.12.2001 registered on the file of the very same Sub Registrar and the petitioner claims to be in possession and enjoyment of the same. The petitioner also states that to her shock and surprise, the 5th respondent has issued a notice dated 26.09.2017 in Na.Ka.No.442/2014, alleging that the petitioner had encroached upon the land in Old S.No.419/4 and New Survey No.781/9, Pillaiyar Koil 2nd Street, Paduvancheri Village, and calling upon the petitioner to remove the encroachment as per the order passed by this Court dated 12.08.2014 made in WP.No.21592/2014 and also in lieu of filing Cont.P.No.1130/2017. The petitioner in response to the said notice, submitted her reply dated 10.10.2017, stating among other things that in the light of the fact that in S.No.781/11, 9 and 17, no encroachments have been made and the said notice issued to the pattadhar, viz., the petitioner herein, is unsustainable and prayed for appropriate orders. However, the 5th respondent without considering the reply submitted by the petitioner, has issued yet another notice dated 11.10.2017 in Na.Ka.No.442/2014 under sections 180 and 182 of the Tamil Nadu District Municipalities Act, 1920, and challenging the legality of the same, has filed the present writ petition.

3 Mr.P.B.Sambath Kumar, learned counsel for the petitioner has invited the attention of this Court to the typed set of papers and would state that the petitioner is the

absolute owner of the land and superstructure in question and the title of the said property has been traced vide Sale Deed of the year 1956 and admittedly, the land on which the superstructure stands is also classified as Gramanatham and patta has also been issued and the said property is also subjected to statutory levies and therefore, the conclusion reached by the 5th respondent that the petitioner has committed encroachment, is per se unsustainable and the 5th respondent, without even considering the reply dated 26.09.2017 to the notice of the even date, has issued another notice dated 11.10.2017 and prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the official respondents would submit that the 6th respondent herein had filed WP.No.21592/2014, directing the respondents 1 to 4 therein to remove the encroachments in the 20 feet road, namely, Vinayagar Koil Street, Paduvancheri Village, Madambakkam, Chennai-600 126, and further to direct the 4th respondent to lay the road in the entire width of 20 feet road, Vinayagar Koil Street, Paduvancheri, Madambakkam, Chennai-126, and it was disposed of on 12.08.2014 directing the 3rd respondent therein to carry out survey and if the allegations of the petitioner are found to be correct, to take action in accordance with law after issuing notices to all the persons concerned and alleging non-compliance of the order dated 12.08.2014, the 6th respondent has also filed Cont.P.1130/2017 and hence, the 5th respondent has also invoked sections 180 and 182 of the Tamil Nadu District Municipalities Act, 1920, and issued a notice dated 11.10.2017 and as such, action on the part of the 5th respondent, cannot be faulted with and prays for dismissal of this writ petition.

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

6 It is relevant to extract section 182 of the Tamil Nadu District Municipalities Act, 1920:-

182. Removal of encroachments .- (1) The [Executive Authority] may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to

give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

7 As per sub-section [2] of Section 182 of the Act, if the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

8 In the light of the said provision, the petitioner is at liberty to submit his response to the notice dated 11.10.2017 issued by the 5th respondent along with a copy of this order as well as the documents evidencing prescriptive title or that it was erected with permission or licence, to the 5th respondent within a period of four weeks from the date of receipt of a copy of this order and the 5th respondent, upon receipt of the same, is directed to consider the said reply/representation on merits and in accordance with law and pass orders, within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner and till such time, the 5th respondent shall defer all further proceedings in terms of the impugned notice dated 11.10.2017. It is also made clear that till the disposal of the writ petition by the 5th respondent herein, the petitioner shall not alter the physical features and shall not create any third party rights in respect of the land and superstructure in question.

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

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

AP

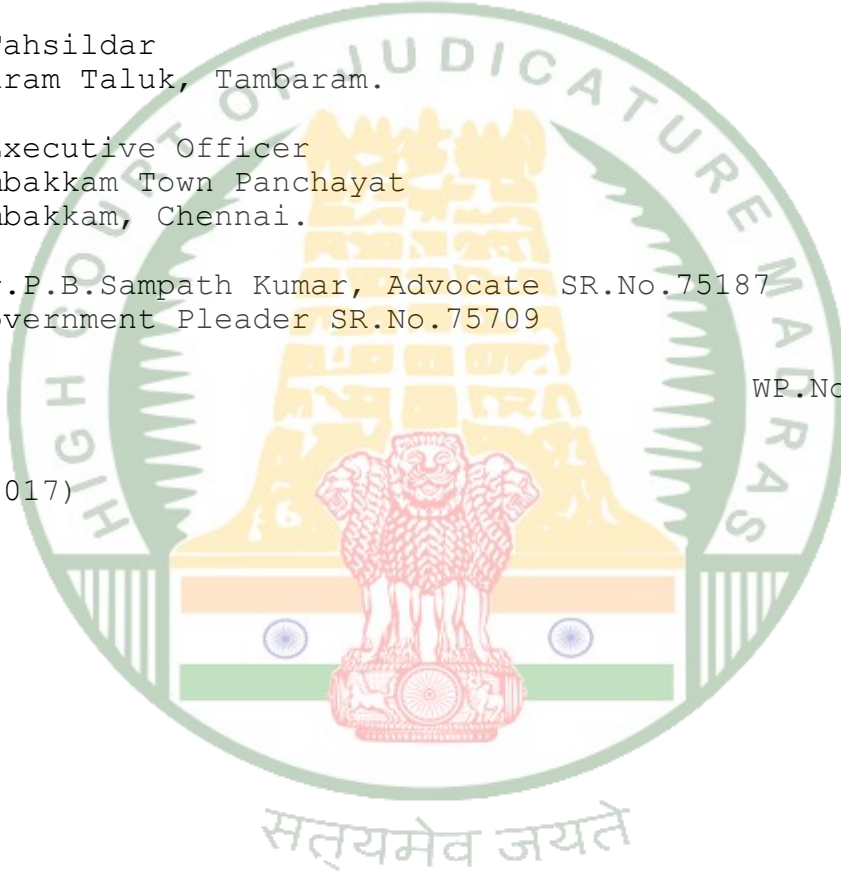
To

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+1cc to Mr.P.B.Sampath Kumar, Advocate SR.No.75187
+1cc to Government Pleader SR.No.75709

WP.No.27307/2017

VGII(CO)
GN(22/11/2017)



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