

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.28371 of 2014

M.Murali

... Petitioner

Vs.

1. The Zonal Engineer
Corporation of Chennai
Zone-7, Ambattur, Chennai-600 053.
2. The Junior Engineer
Division-81, Corporation of Chennai
Zone-7, Ambattur, Chennai-600 053.
3. The Assistant Commissioner of Police
Ambattur Range, Ambattur
Chennai-600 053.
4. The Inspector of Police (Law and Order)
T-1, Ambattur Police Station
Ambattur, Chennai-600 053.
5. Kulasekaran, Vegetable Vendor
6. Thanga Mariammal, Vegetable Vendor
7. Dakshayani, Vegetable Vendor
8. Sudhakar, Vegetable Vendor
9. Kuppi Nagarajan, Vegetable Vendor
10. Vijaya Rani, Vegetable Vendor
[R5 to R10 - impleaded as per order dated
06/11/2014 in MP.1/14]
11. Ambattur Kaigani Nadaipathai Vyabarigal Sangam
Regn.No.54/1993, rep. by its Secretary
No.5/1, Venkatarama Iyer Street
Venkatapuram, Ambattur, Chennai - 600 053.
[R11 impleaded as per order dated 24/1/2017
in MP.2/14]

12.The Secretary to Government

Housing and Urban Development Department

Fort St. George, Chennai - 600 009.

... Respondents

[R12 impleaded vide this order]

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct respondents 1 and 2 to remove the encroachments in the margin of the road and abutting the land and building of the petitioner situate at No.28/18, 19, Venkatrama Iyer Street, Venkatapuram, Ambattur, Chennai and along the said Street and within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.K.Venkataramani
Additional Advocate General
for Mr.R.Arun Mozhi
for respondents 1 and 2

Ms.Vasuda Thiyagarajan
Additional Government Pleader
for respondents 3, 4 and 12

Mr.S.N.Ravikumar
for respondents 6 to 8 & 10

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has filed the writ petition seeking a direction against the Corporation of Chennai/respondents 1 and 2 to remove the encroachments in the margin of the road and abutting the land and building of the petitioner situated at No.28/18, 19, Venkatrama Iyer Street, Venkatapuram, Ambattur, Chennai. Subsequently, respondents 5 to 10 were added as parties vide order dated 6.11.2014. These respondents are stated to be the tenants of the petitioner.

2. The relevant portion of the stand of the Corporation, as stated in the counter affidavit and recorded in the order dated 15.2.2016, is extracted as under:

"7.... (a). The Venkatarama Iyer street is a prime market area and encroached by street vendors of more than 60 in numbers occupy both sides of the road margin and by putting up temporary structures and doing their vegetable and other business for their day to day livelihood.

(b) The writ petitioner has constructed the building consisting of ground floor and first floor without providing any set back open space as required under the provisions of the Development Control Rules, the petitioners has constructed 6 Nos. of permanent shops in the ground floor and ladies hostels in the first floor and the entire building is used for commercial purpose for which enforcement action was initiated separately."

3. The learned Additional Advocate General has also drawn our attention to the paragraph (9) of the counter affidavit which is as under:

"9. I respectfully submit that apart from the filing of the writ petition by the petitioner, the occupiers of the shop in front of his premises namely Mr.T.Sudhakar and Mrs.T.Dakshayani D/o. Kulasekaran have filed the original suits vide O.S.No.6 of 2014 and 7 of 2014 against the writ petitioner in the Hon'ble District Munsiff Court, Ambattur and prayed for injunction and other relief for allotting the shops to them. In the above suits, the Commissioner, Corporation of Chennai and the Zonal Officer, Zone-VII have been included in the implead petition filed by the plaintiffs. In the impleading affidavit, the plaintiffs have stated that they have caused legal notice to the writ petitioner Mr.M.Murali with regard to the tenancy and the above suits are still pending as on date."

4. The learned counsel for the private respondents seeks to contend that the present petition is an endeavour to evict them as tenants and tenancy proceedings are pending before the competent court.

5. We have heard learned counsel for the parties.

6. There can be little doubt that the vending has to be controlled and monitored and the rights of vending would be determined by the Vending Committee as to whether they are to be located here or another place and as to who is entitled. For this purpose, the learned Additional Advocate General says that a period of three months may be granted. We accept the request and the Corporation shall remain bound by the same.

7. Now coming to the issue of private respondents, we are not inclined to interfere with their tenancy rights, but then the tenancy rights would entitle them to occupation of such of the area as was rented out to them and not to area in front of their rented areas. The private respondents are thus directed

to ensure that their occupation is confined to the tenanted premises and not spread out their goods outside, as is apparent from the photographs produced before us. Any violation would be at the pain of contempt, apart from the fact that the Corporation would ensure prompt action in case there is any breach of the order.

8. The last aspect is the construction of the building by the petitioner himself where there are stated to be violations of the Development Control Rules. If it is so, the Corporation should proceed in accordance with law in respect of the same promptly. The learned counsel for the petitioner states that an appeal was filed against the lock and seal notice dated 16.2.2016 and the same is pending before the Secretary to Government, Housing and Urban Development Department. We, thus, implead the Secretary to Government, Housing and Urban Development Department as the 12th respondent and the learned Additional Government Pleader accepts notice for the 12th respondent. The 12th respondent is directed to dispose of the appeal within a maximum period of three months from today.

The writ petition, accordingly, stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

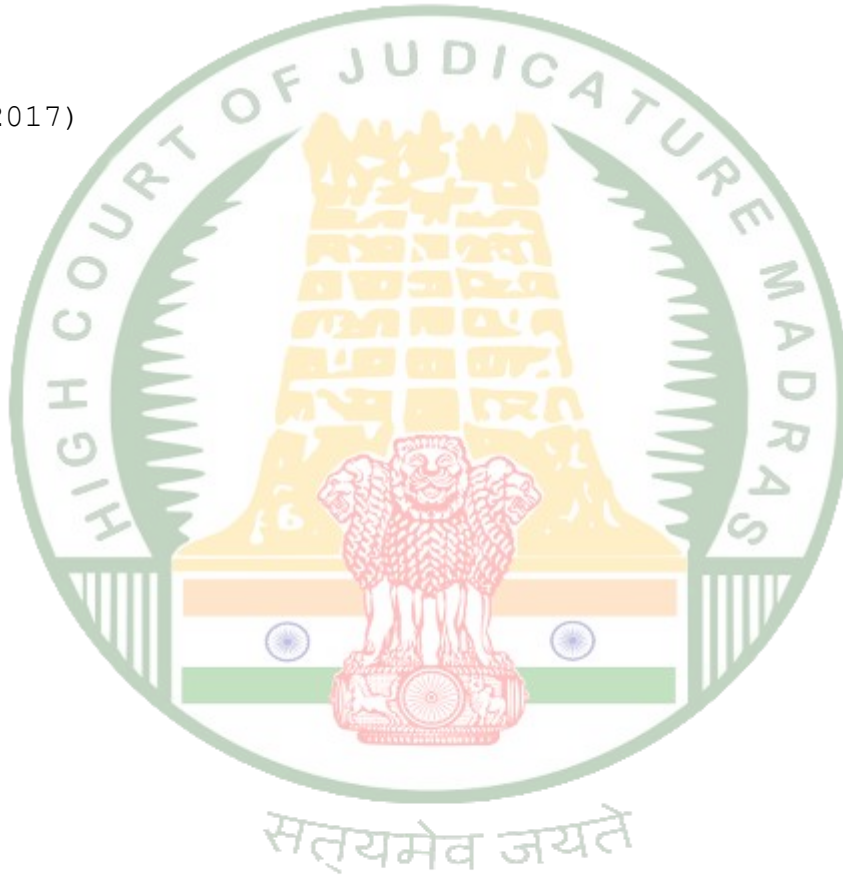
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5. The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai - 600 009.

+1cc to Mr.P.Krishnan, Advocate, S.R.No.4405
+2cc's to Mr.S.N.Ravikumar, Advocate, S.R.No.4413
+1cc to Mr.R.Arun Mozhi, Advocate, S.R.No.4442
+1cc to the Government Pleader, S.R.No.4567

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RSY(CO)
CA(03/02/2017)



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