

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.29570 of 2017

Mr.A.R.Sujatha

... Petitioner

vs.

1. Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
'Thalamuthu-Natarajan Maaligai',
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. Corporation of Chennai,
Rep. by its Commissioner,
Rippon Buildings, No.1131, EVR Periyar Salai,
Park Town, Chennai - 600 003.

3. The Zonal Officer,
Zone-8, Corporation of Chennai,
No.36B, II Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

4. Mr.L.B.Senthil Kumar. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the respondents to consider the complaint of petitioner dated 09.10.2017 and take immediate steps to pass order against converting, constructing, or do any alteration, new additional construction.

For Petitioner : Mr.N.Kishore Kumar

For Respondents : Mr.A.Kumar (for R1)
Spl. Government Pleader
Mr.A.Nagarajan, Sr. counsel
(for R2 & R3)

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Writ petitioner has claimed that she is the owner of Flat No.AB-123, Ground Floor, Shanthi Colony, Anna Nagar, Chennai - 40, measuring 852 sq.ft., (plinth area of the flat), together with 1775 sq.ft., of the undivided share in the land thereof in the land comprised in S.No.109(part) of Naduvakkarai Village.

2. According to her, Mr.L.B.Senthil Kumar, the 4th respondent herein had purchased a flat bearing No.AB-126 (Old Door Nos.AB-125&38D), 4th Avenue, Shanthi Colony, Anna Nagar, Chennai - 600 040. The said flat measures 801 sq.ft. (Supre plinth area), together with the 1775 sq.ft., of undivided share of land. The petitioner has contended that the 4th respondent, has put up additional construction, in the flat purchased by him. He has put up unauthorised additional construction, by erecting beams and columns, in the open/common/set back area, and property adjacent to the petitioner's property, and walls, thereby, causing damage to the property owned by her. According to the petitioner, the 4th respondent has laid foundation for ground plus two floors, with lift, in the open area, where the sewerage and water lines, for the four flats of the petitioner's block, are laid. The petitioner has also contended that 4th respondent, has diverted the existing sewerage line, which crossed the proposed lift pit, in such a way, providing four elbows, in order to shift the line, three feet, parallelly, away from the existing line, making it impossible, for the purpose of cleaning, in case of sewerage block.

3. The writ petitioner has contended that her attempt to stop the illegal construction, has went in vain. According to her, the 4th respondent and his contractor, have not obtained necessary permission and approval for conversion, from Chennai Corporation and Chennai Metropolitan Development Authority. No objection from other owners, is also not obtained. According to her, in the abovesaid circumstances, left with no other alternative, she has made a complaint dated 09.10.2017 to (1) Chennai Metropolitan Development Authority, Chennai, (2) Corporation of Chennai, represented by its Commissioner, Chennai and (3) The Zonal Officer, Zone-8, Corporation of Chennai, Chennai, respondents 1 to 3 herein, to take action against the 4th respondent, from converting or constructing or do any alteration, new additional construction or changing the flat with undivided share of the subject property, stated supra. Supporting the prayer sought for, the writ petitioner has also enclosed photographs, alleging unauthorised

construction/conversion of additional construction, as the case may be.

4. On this day, when the matter came up for hearing, Mr.N.Kishore Kumar, learned counsel for the writ petitioner submitted that, vide order dated 14.11.2017 in O.A.No.1144 of 2017 in CS No.889 of 2017, between Mrs.A.R.Sujatha, the writ petitioner and Mr.L.B.Senthil Kumar, Chennai, the 4th respondent, a learned Single Judge of this Court, has granted an interim injunction, and that the said order is extracted:

"That Mr.L.B.Senthil Kumar, the respondent herein, his men, agents or anyone claiming under them be and is hereby restrained by an order of interim injunction till 04.12.2017 from converting, constructing, or do any alteration, new additional construction or changing the flat with undivided share of land in the property morefully setout in the Schedule-B hereunder in any nature other than as to what it was allotted without any valid permission thereof from other owners of the flats and also sanction from Corporation and (or) Chennai Metropolitan Development Authority.

2. That the notice of this O.A.No.1144 of 2017 in C.S.No.889 of 2017 returnable by 04.12.2017 be served on the respondent herein and also privately.

3. That the applicant/plaintiff herein shall comply with Order 39 Rule 3 on or before 15.11.2017.

4. That the O.A.No.1144 of 2017 in C.S.No.889 of 2017 be posted on 04.12.2017."

5. Subject matter of the property in O.A.No.1144 of 2017 and the instant writ petition, is one and the same.

6. In the complaint dated 09.10.2017 stated to have been sent to the respondents 1 to 3, and acknowledged on 11.10.2017, the petitioner, at paragraph Nos.1, 2, 8, 9, 11, 12 and 15, has stated, as hereunder.

"1. I state I am an Practicing Advocate and was born and living in he suit premises for over 42 years. I also submit that I am the absolute owner of the flat bearing Flat No.AB-123, Ground Floor, Shanthi Colony, Anna Nagar, Chennai - 600 040, measuring 852 sq.ft., (plinth area of the flat), together with 1775 sq.ft., of the undivided share in the land thereof in the land comprised in S.No.109 (part) of Naduvakkarai Village...

2..... I came to know that the L.B.Senthil Kumar had purchased the Flat bearing No.AB-126 (Old Door Nos.AB-125 & 38D), 4th Avenue, Shanthi Colony, Anna Nagar, Chennai - 600 040, the flat measuring 801 sq.ft. (super plinth area)...

... the said L.B. Sentil Kumar is carrying on with the illegal act of alteration and additional construction in the above said flat purchased by him. I state that the flat in which the L.B.Sentil Kumar is attempting to do illegal and alteration / re-construction is more fully detailed...

8. I further submit that the said action of the L.B.Sentil Kumar and contractor on behalf of the L.B.Sentil Kumar makes it clear that without any valid permission for demolition / alteration, they are putting up new additional construction in the said premises. They did not even obtain necessary permission and approval for conversion from the Chennai Corporation and Chennai Metropolitan Development Authority.

....

9..... All the four flats including the one owned by me and L.B.Sentil Kumar are in one building (Block) and they are interconnected with walls, beams, staircases and especillay roof of the ground and first floor of the building and hence there cannot be any structural alteration, new additional construction and conversion in the above said flat of L.B.Sentil Kumar. L.B.Sentil Kumar was dare enough to carry on the said new additional construction and conversion without any valid permission thereof from other owners of the flats...

11. In such circumstances putting up additional construction in undivided open space has already caused danger and is not only gross and negligent but has caused irreparable damage and I have lost my residence and the property now in a state of uninhabitable condition.

12. I submit that further if L.B.Sentil Kumar disturbs the wall the structural stability will be lost and entire structure could collapse.

....

15. I state that L.B.Sentil Kumar seems to be a very powerful person and is flexing his muscle power and money power. I am therefore making this complaint and requesting for help from Government agencies and Authorities. I submits that I suffered serious losses, lost my house and put to severe hardship and I have no other alternative and efficacious remedy."

7. In Original Application No.1144 of 2017, Mr.L.B.Senthil Kumar, Chennai, the 4th respondent herein alone, has been arrayed as the party respondent, and prayer has been sought for, against him, his men, agents or anyone claiming under him, and that vide order dated 14.11.2017, they have been restrained from converting, constructing or do any alteration, new additonal construction or changing the flat, with undivided share of the land in the property, without any valid permission thereof, from other owners of the flat and sanction from Corporation and (or) Chennai Metropolitan Development Authority.

8. When the original side of this Court is seized of the matter and issued an order of injunction, as stated supra, it would be inappropriate for the writ Court, to direct the authorities to enquire into the complaint. Suffice to grant liberty to the writ petitioner to bring it to the notice of the respondents 1 to 3, the order of this Court in O.A.No.1144 of 2017, though not impleaded as parties in O.A.No.1144 of 2017 in CS.No.889 of 2017, and we are of the view that the authorities informed of the orders of this Court, are bound to take note of the same, and act accordingly.

9. During the course of hearing of the writ petition, Mr.N.Kishore Kumar, learned counsel for the writ petitioner submitted that though, notice was sent in O.A.No.1144 of 2017 in CS No.889 of 2017, the 4th respondent was evading to receive the same, and proceeding with construction. Order of injunction, operates from the date of order. By evading to receive notice, if the 4th respondent is proceeding with construction, it is always open to the writ petitioner to move the Court, for invoking the provisions of Contempt of Courts Act, 1971, against the 4th respondent, or against his agents, men or anyone claiming under him.

10. Majesty of the Court, has to be respected by all, though not a party to an order. Therefore, we are of the view that no sooner the official respondents 1 to 3, are brought to the notice of the order of this Court in O.A.No.1144 of 2017 in CS No.889 of 2017 dated 14.11.2017, due respect has to be given and accordingly, action be taken. Respondents 1 to 3 should not act contrary to the abovesaid order. Aiding or violating the orders of this Court, would attract, provisions of the Contempts of Courts Act, 1971. Respondents 1 to 3, to act, in conformity with the orders of this Court, in O.A.No.1144 of 2017 in CS No.889 of 2017 dated 14.11.2017.

11. With the above observations, writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
'Thalamuthu-Natarajan Maaligai',
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. The Commissioner,
Corporation of Chennai,
Rippon Buildings, No.1131, EVR Periyar Salai,
Park Town, Chennai - 600 003.

3. The Zonal Officer,
Zone-8, Corporation of Chennai,
No.36B, II Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

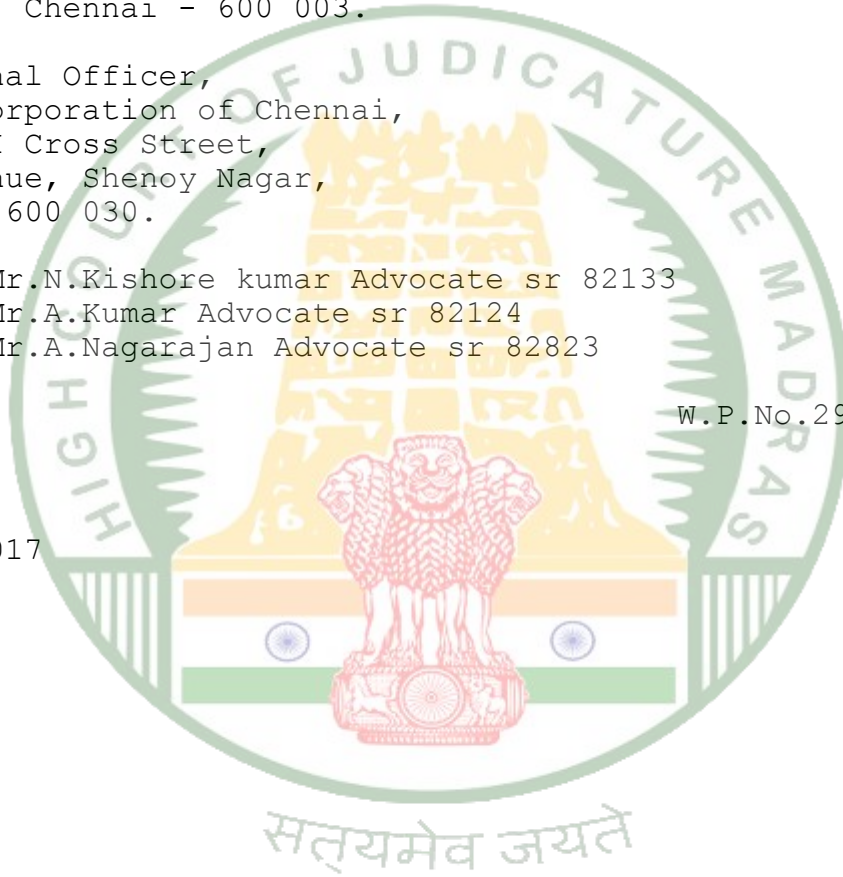
+1 cc to Mr.N.Kishore kumar Advocate sr 82133

+1 cc to Mr.A.Kumar Advocate sr 82124

+1 cc to Mr.A.Nagarajan Advocate sr 82823

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