

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM :

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

W.P.No.25627/2007

Mr.T.A.Mohan Kumaran

...Petitioner

Vs

1 The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai 600 003.

2 The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, Egmore, Chennai - 600 008.

3 M.Arasakumar

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of mandamus directing the 1st and 2nd respondents to take immediate action to demolish the illegal constructions put up by the 3rd respondent in the premises bearing Door No.5/1, New No.15, Madasamy Nadar Street, Old Washermenpet, Chennai-600 021 as per law.

For Petitioner : Mr.V.R.Kamalanathan
For R1 : Mr.G.Anantharangan
For R2 : Mr.N.Sampath
For R3 : Dr.C.S.Nandakumar

ORDER

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

By consent, the writ petition itself is taken up for final disposal.

2 The petitioner claims that he is the owner of the house property bearing Old No.5/3, New No.17, Madasamy Nadar Street, Old Washermenpet, Chennai-600 021, and his neighbour, viz., the

3rd respondent herein, is the owner of the adjacent house premises bearing Door No.5/1, New No.15, and he started constructing multi-storeyed building consisting of Ground + 3 Floors without any planning permit or building permit and in contravention of the relevant rules and norms and also started construction, encroaching upon the common passage. The petitioner would further aver that on account of the said illegal construction on the part of the 3rd respondent in the common passage, he and his family members are unable to have free ingress and egress to their house property and in this regard, the petitioner has also submitted a representation dated 20.10.2004 to the official respondents to take action and since no response was forthcoming, the petitioner filed WP.No.34726/2004 on the file of this Court and vide order dated 30.11.2004, this Court had directed the concerned official respondent to consider and dispose of the petitioner's representation in accordance with law and pass orders within the stipulated time. The official respondents, in compliance of the above said order, called upon the 3rd respondent to produce the copy of the approved plan and since he has failed to produce the same, the Demolition Notice dated 04.01.2005 was issued and since it did not fructify into any positive action, the petitioner submitted a further representation dated 05.05.2005 to the 2nd respondent to know about the progress / action taken by them. In the meanwhile, the 3rd respondent has also filed WP.No.5915/2005, challenging the demolition notice dated 04.01.2005 and it was disposed of by this Court on 23.02.2005, directing the 1st respondent to reply the petitioner's application dated 02.02.2005 as to the availability or otherwise of the sanctioned plan and till such time, directed the said official to defer further decision. The petitioner endeavour to demolish the offending construction put up by the 3rd respondent herein did not yield the desired result and therefore, he filed

WP.No.11344/2005 and it was disposed of by this Court on 12.06.2006, by directing the 1st respondent to consider and dispose of his representation within the stipulated time. The petitioner would further aver that though the respondents 1 and 2 had reached the conclusion that neither the building plan nor the building permit was available or produced by the 3rd respondent, they had failed to take any action and therefore, came forward to file the present writ petition, praying for appropriate action to demolish the illegal construction put up by the 3rd respondent.

3 The writ petition was admitted on 04.02.2009 and the petition for interim order was dismissed on 04.02.2009. The writ petition was listed for hearing on 07.09.2017 and this Court, having found that the 3rd respondent was in the services of the Corporation of Chennai and taking note of the civil

proceedings, directed the 1st respondent herein to file typed set of documents relating to the civil proceedings. The writ petition was again listed on 13.09.2017 and having taken note of the fact that the Civil Court decree in AS.No.281/2008 on the file of the Court of Fast Track, Chennai, operates in favour of the 3rd respondent, directed the Corporation of Chennai to verify and file a report as to whether any appeal has been preferred against the judgment and decree dated 09.08.2010 made in AS.No.281/2008.

4 Mr.V.R.Kamalanathan, learned counsel for the petitioner would submit that admittedly that 3rd respondent had neither produced the sanctioned plan nor obtained permission to put up any construction over the common passage and therefore, the construction is totally an unauthorized one and hence, the official respondents are bound to take action to demolish the offending construction so as to enable the petitioner and his family members to have ingress and egress to their property through common passage and prays for appropriate orders.

5 Per contra, the learned counsel for the 3rd respondent has drawn the attention of this Court to the counter affidavit as well as the typed set of documents and would submit that the 3rd respondent has filed OS.No.6573/2005 on the file of the Court of VI Assistant City Civil Judge, Chennai, against the Commissioner, Corporation of Chennai and the Chennai Metropolitan Development Authority represented by the Member Secretary, praying for a declaration, that B-Schedule property-common passage forming part of A-Schedule property and it was constructed in the year 1972 for consequential declaration, declaring the impugned notice dated 14.09.2005 issued under section 256[3] of the Chennai City Municipal Corporation Act, 1919, is null and void and unenforceable and also prayed for permanent injunction, restraining the defendants therein from interfering with his peaceful possession and enjoyment of the said property and after contest, the suit was dismissed on 21.01.2008 and challenging the legality of the same, filed an appeal in AS.No.281/2008 and the Lower Appellate Court - Fast Track Court No.IV, Chennai, vide judgment and decree dated 09.10.2010 has reversed the judgment and decree passed by the Trial Court and allowed the appeal, thereby decreed the suit as prayed for and in the light of the decision rendered by the Civil Court of competent jurisdiction, the claim made by the petitioner for demolition of the alleged offending construction is per se unsustainable and prays for dismissal of this writ petition.

6 Learned standing counsel appearing for the Corporation of Chennai would submit that the common passage has been used by the 3rd respondent and except ground floor, three floors had

already been constructed without obtaining approval or planning permission.

7 In response to the said submission, the learned counsel appearing for the 3rd respondent would submit that he has got planning permission bearing No.P.1183/1972 and despite applying for a copy of the same, it is yet to be furnished by the Corporation of Chennai, may be on account of the non-availability of the relevant records and for that, the 3rd respondent cannot be put to blame and reiterated his submission that in the light of the Civil Court decree, the claim made by the petitioner is liable to be rejected.

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

9 The fact remains that the 3rd respondent is having the benefit of the Civil Court decree in AS.No.281/2008 dated 09.10.2010 and admittedly, neither the Corporation of Chennai nor the Chennai Metropolitan Development Authority who were parties to the said appeal suit, have not preferred any appeal and therefore, the said judgment and decree has become final and though the writ petitioner has not been arrayed as a party in the said civil litigation, on becoming aware of the same, he would have taken some action and however, unfortunately, he has failed to take any step to challenge the said legality of the said judgment and decree.

10 In the light of the legal interdict of civil court decree, this Court is unable to come to the rescue of the writ petitioner for the present. However, if the petitioner is so advised and if it is available to him under law, subject to law of limitation, he is entitled to work out his remedy in accordance with law to the alleged offending construction.

11 The writ petition stands dismissed subject to the above observation. No costs. सत्यमेव जयते

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

AP

To

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Chennai 600 003.

2 The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, Egmore, Chennai - 600 008.

+2cc to Dr.C.S.Nandakumar, Advocate Sr. 71385

+1cc to Mr.GAnantharangan, Advocate SR. 71798

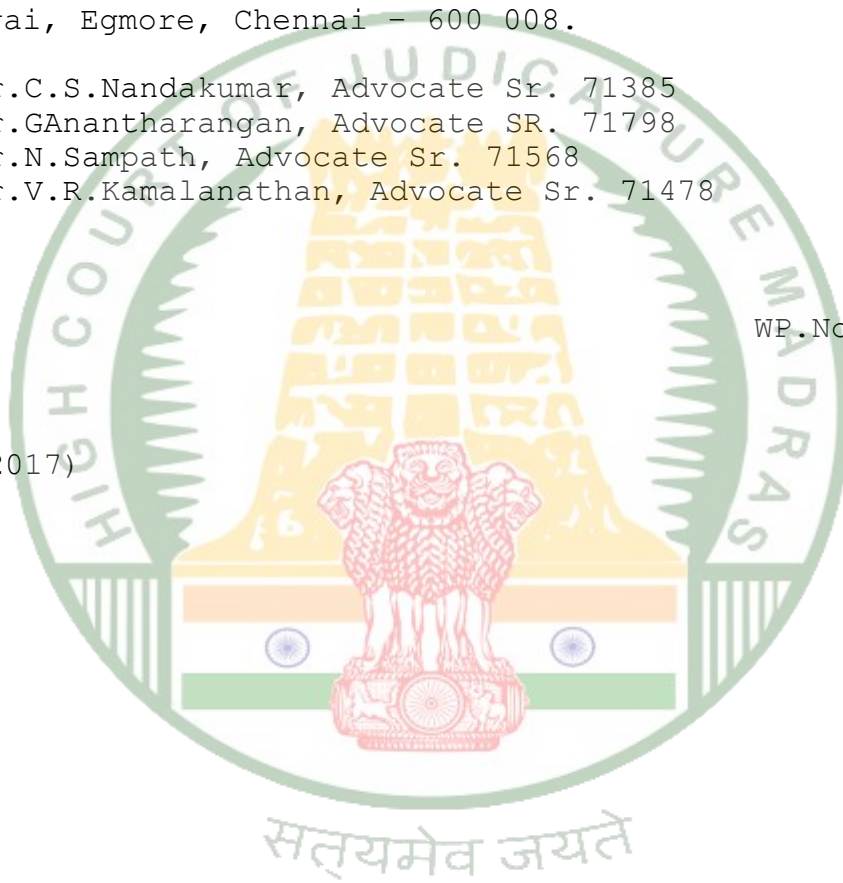
+1cc to Mr.N.Sampath, Advocate Sr. 71568

+1cc to Mr.V.R.Kamalanathan, Advocate Sr. 71478

WP.No.25627/2007

AR (V)

VR(12/10/2017)



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