

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.A.No.295/2016 & CMP.No.4675/2016

Smt.J.Jansi Rani ... Petitioner

vs.

1. Thiru. C.Rajamohan
2. The Managing Director,
Chennai Metropolitan Water Supply
& Sewerage Board,
No.1, Pumping Station Road,
Chennai-600 002.
3. The Area Engineer (Area IV),
Chennai Metropolitan Water Supply
& Sewerage Board,
Kilpauk, Chennai-600 002.
4. The Corporation of Chennai,
Rep. by its Assistant Engineer,
Division-65, Zone VI,
Kolathur, Chennai-99. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order in W.P.No.33052/2015 dated 18.02.2016 directing the respondents to provide water and Sewerage connection to the petitioner premises at No.4, Venkateswara Nagar Extension, Subramaniyapuram 2nd street, Kolathur, Chennai 600 099.

For Appellant : Mr.L.Chandrakumar
for Mr.A.Rajeshkannan
For R-1 : Mr.R.Ramanlaal
For RR2 & 3 : M/s.Janakiraman
For R-4 : Mr.A.Nagarajan

JUDGMENT

(Judgment of the Court was made by M. SATHYANARAYANAN, J.)

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

2. The 1st respondent in this writ appeal, is the writ petitioner and he filed W.P.No.33052/2015 praying for issuance of a writ of mandamus directing the respondents 2 to 4 herein to provide water sewerage connection to the writ petitioner premises at No-4, Venkateswara Nagar Extension, Subramaniyapuram 2nd Street, Kolathur, Chennai-600 009.

3. The writ petition after contest, came to be disposed of vide order dated 18.02.2016, in and by which, the learned Single Judge after taking note of the fact that in the light of the stand taken up by Corporation of Chennai that there is a road in existence and coupled with the stand taken by the Chennai Metropolitan Water Supply Sewerage Board(CMWSSB) that they are ready to provide water supply and sewerage connection, granted an order of direction directing the CMWSSB to provide water supply and sewerage connection to the writ petitioner/1st respondent premises within a period of eight weeks from the date of receipt of copy of this order, subject to compliance of the prescribed formalities.

4. The 4th respondent in the said writ petition got subsequently impleaded as a party respondent and came forward to file this writ appeal, challenging the said order.

5. Mr.L.Chandrakumar, learned senior counsel appearing for the appellant/ 4th respondent in the writ petition would submit that the appellant/4th respondent had filed in O.S.No.4623 of 2001 on the file of the XI Assistant City Civil Court, Chennai against the Collector of Chennai, Singaravelan Maligai, Chennai 600 001, The Director of Survey Land Records, Chepauk, Chennai 600 005, The Assistant Director of Survey Land Records, Singaravelan Maligai, Chennai 600 001, The Tahsildar, Perambur-Purasawalkam Taluk, Prembur, Chennai 600 011, The Commissioner, Corporation of Chennai, Rippon Building, Chennai 600 003, R.Shankaranarayanan, Represented by his Power of Attorney Agent Mr.R.Seshiah, No.71, 7th Street, Rajaji Nagar, Villivakam, Chennai-49, R.Kumar, Represented by his Power of Attorney Agent, Mr.R.Seshiah, No.71, 7th Street, Rajaji Nagar, Villivakam, Chennai-49 as well as against the 1st respondent/writ petitioner praying for a declaration that the land measuring 22 cents of thereabouts comprised in Survey No.24/1, Block No.9, T.S.No.125 and 126 of Kolathur Village, Purasawalkam-Perambur Taluk, measuring East to West : 54 feet, North to South : 183 feet, absolute property of the plaintiff and the defendants 1 to 4 have not authority or right to show a portion of the plaint schedule mentioned property as a Road in Field Map bearing File TR/1020/99-2000, Ads and L.R.Reference NO.A1/7959/99, dated 24.08.1999 on that and further declaration showing the portion of the plaint schedule property as a road in the certificate of Extract dated 26.08.1999 issued by the 4th respondent as null and void and for mandatory injunction directing the respondents 1 to 4 to revise the file dated 24.08.1999 and to grant then permanent injunction restraining the 5th defendant therein from

proceeding with the work of laying road in the plaint schedule property and other consequential limits and the said suit came to be decreed and challenging the same, A.S.Nos.417, 428, 449 and 47 of 2009 came to be filed on the file of the III Additional Judge, city Civil Court, Chennai dated 17.08.2010 and the writ petitioner/ 1st respondent has filed AS.No.428/2010 and the appeal suits were allowed and challenging the legality of the same, the appellant had filed SA.No.1245 of 2010 and the other defendants namely R.Sankaranarayanan, R.Kumar had filed SA.Nos.1246 to 1248 of 2010 and initially, interim order of status quo was granted and subsequently, vide common order dated 19.12.2014, the interim order status quo was vacated and it was also indicated that without prejudice to the rights of both the parties to be decided in the second appeals, petitions for interim orders were also dismissed, so also the other miscellaneous petitions.

6. It is further averred that since the second appeals are pending, it is not open to the Corporation of Chennai and Chennai Metropolitan Water Supply and Sewerage Board to treat the land in question as a road and provide water connection and water sewerage connection to the 1st respondent/writ petitioner prays for allowing of this writ appeal.

7. Per contra, Mr.R.Ramanlal, learned counsel appearing for the 1st respondent/ writ petitioner has drawn the attention of this Court to the report of the 4th respondent dated 13.04.2016 and submitted that the suit property is a road as per the available revenue records and the same was also clearly mentioned in the Block Map as per Block No.9, TS.No.124, Kolathur Village, and during pendency of the second appeal, the Advocate Commissioner was also appointed and in his report dated 28.03.2012, it was also indicate the suit property is a portion of the road. Further, the learned counsel appearing for the 1st respondent would submit that in the light of the fact of the interim order, the road has also been laid and the first respondent / writ petitioner has also been given water and sewerage connection and in the light of the said development, nothing survives for further adjudication in this writ appeal and prays for dismissal of the same.

8. The respective learned Standing counsel Corporation of Chennai as well as CMWSSB would submit that as per the records maintained, the suit property is shown as a road in the light of the adverse findings recorded by the Civil Court it is not open to the appellant in take a contrast stand and prays for dismissal of the second appeal .

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

10. The suit in O.S.No.4623 of 2001 filed by the appellant herein on the file of the IX Assistant City Civil Court, Chennai came to the decreed and challenging the same, the defendants 6 to 8 which include the 1st respondent/writ petitioner, had filed AS.Nos. 417, 428, 449 and 47 of 2010 respectively on the file of the III Additional Judge, city Civil Court, Chennai and on 17.08.2010 the appeals were allowed and as a consequence, the suit filed by the appellant herein came to be dismissed. Challenging the legality of the same, the appellant herein had filed SA.No.1245 of 2010 and so also the other parties and initially, an order of status quo was granted and the said order was vacated, vide common order dated 19.12.2014 in M.P.Nos.1,1,1 and 1 of 2010 and M.P.No.2 of 2012 in S.A.Nos.1245 to 1248 of 2010 and in paragraph No.16 of the said order, it has been indicated that without prejudice to the rights of both the parties to be decided the second appeals, M.P.No.1 of 2012 and M.P.NO.2 of 2012 in S.A.No.1248 of 2010 are dismissed. It is the categorical stand of the respective learned counsel appearing for the Corporation of Chennai as well as CMWSSB after vacation of the interim order, the road has been laid and the first respondent/petitioner had also been provided water and sewerage connection.

11. The learned Single Judge while vacating the interim order, common order dated 19.12.2014 in M.P.No.1 of 2012 and M.P.NO.2 of 2012 in S.A.No.1248 of 2010 also indicated that the connected M.Ps. are dismissed without prejudice the rights of both parties to be decided in the second appeal. In the light of the said observations, the interest of the appellant is also protected and the same is subject to the result of the second appeals.

12. Therefore, the writ appeal is dismissed, confirming the order passed in WP.No.33052/2015 dated 18.02.2016. Consequently connected miscellaneous petition is also dismissed.

13 The findings / observations are made only for the dismissal of this writ appeal and it is open to the respective parties to substantiate their case in the pending second appeals.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Chennai Metropolitan Water Supply
& Sewerage Board,
No.1, Pumping Station Road,
Chennai-600 002.

2. The Area Engineer (Area IV),
Chennai Metropolitan Water Supply
& Sewerage Board,
Kilpauk, Chennai-600 002.

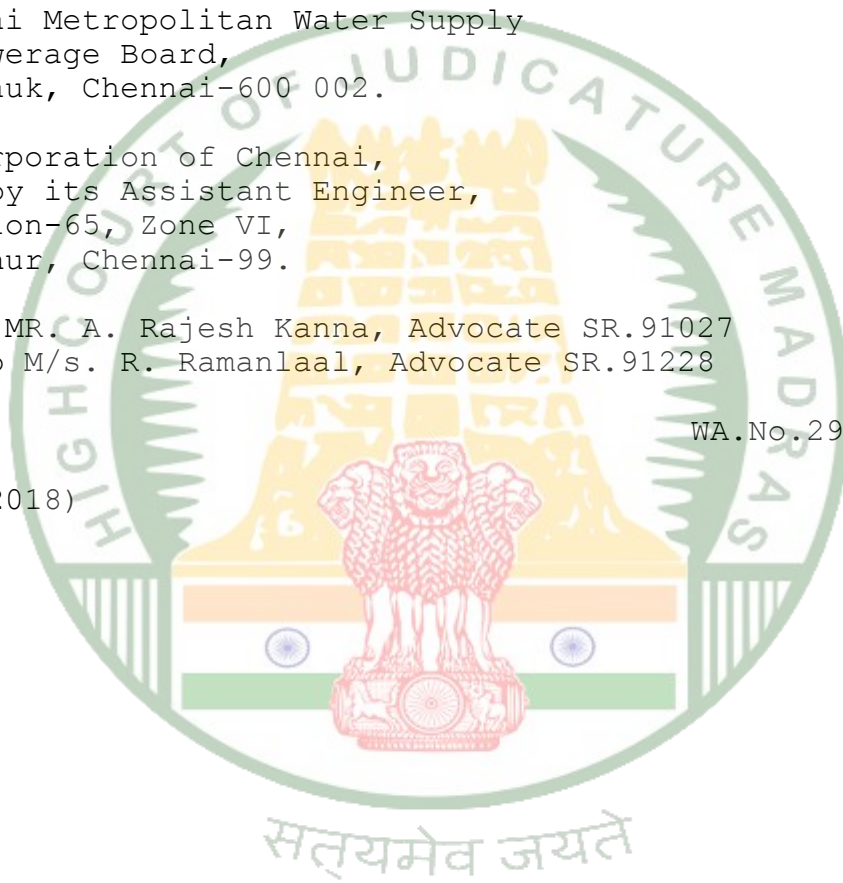
3. The Corporation of Chennai,
Rep. by its Assistant Engineer,
Division-65, Zone VI,
Kolathur, Chennai-99.

+ 1 cc to MR. A. Rajesh Kanna, Advocate SR.91027

+ 3 ccs to M/s. R. Ramanlal, Advocate SR.91228

WA.No.295 of 2016

CS-Dr.
EU(05/01/2018)



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