

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.20222 of 2018

S.Kannan .. Petitioner

-vs-

1. The Secretary to Government
Housing and Urban Development Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009
2. The Commissioner
Corporation of Chennai
Rippon Building
Chennai 600 003
3. The Zonal Officer
Corporation of Chennai (Zone VI)
Dr.Besant Road, Ice House
Chennai 600 014
4. The Assistant Revenue Officer
Corporation of Chennai (Zone VI)
Dr.Besant Road, Ice House
Chennai 600 014 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the respondents 2 to 4 herein, their men, agents, servants, officials, subordinates or anyone acting under or in trust for them in any manner by locking and sealing the premises bearing Door No.30, Dr.Besant Road, Ice House, Chennai 600 014, as contained in the un-dated notice issued by the respondents 2 to 4 herein under Ref.No.Zone/IX/003/2018, till the disposal of the petitioner's statutory appeal, pending on the file of the first respondent against the un-dated notice issued by the respondents 2 to 4 under Ref.No.Zone/IX/003/2018.

For Petitioner :: Mr.Ashok Menon

For Respondents:: Mr.R.Udhayakumar

Additional Government Pleader for R1

Mr.A.Nagarajan
Standing Counsel for R2 to R4

ORDER

(Order of the Court was delivered by M.VENUGOPAL, J.)

Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader for the First Respondent and the Learned Standing Counsel for the Respondents 2 to 4.

2. According to the Petitioner, he is running a Mansion at No.30, Dr.Besant Road, Ice House, Chennai-14 under the name and style of 'Vasantha Mansion'. The said premises belonged absolutely to his father late Sri.Shanmugam and after his demise, the property devolved on himself, his mother, sisters and brothers and they are the legal heirs of their late father/husband.

3. The stand of the Petitioner is that his father (since deceased) was a tenant under the Prince of Arcot Endowments, in respect of two pieces of vacant land, one bearing Door No.29, Dr.Besant Road, Ice House, Chennai-14 and the other at Door No.30, Dr.Besant Road, Ice House, Chennai-14 and the latter being the petition premises, after obtaining sanction from the relevant Authorities of Chennai Corporation, his father had put up construction in both the pieces of land mentioned supra. The Prince of Arcot Endowments, thereafter, commenced proceedings for 'Ejectment' and his father filed an application under Section 9 of the Madras City Tenants' Protection Act, 1921. After a detailed enquiry, an order was passed directing the Prince of Arcot Endowments, to sell the land to his father. Subsequently, by means of a Registered Sale Deed dated 16.3.85 on the file of the Sub Registrar, Mylapore, in respect of the petition premises and Door No.29, Dr.Besant Road, Ice House, Chennai-14, were conveyed to his father, by the said Prince of Arcot Endowments.

4. At this stage, the learned Counsel for the Petitioner points out that the Petitioner's father borrowed money from one Appasamy, who was carrying on business under the name and style of 'Sri Vidhya Investments' and 'Sri Meenakshi Enterprises', at No.1, Magesh Street, T.Nagar, Chennai. His father had executed an 'Equitable Mortgage' (by way of deposit of Title Deeds) in respect of the property bearing Door No.30, Dr.Besant Road, Ice House, Chennai to and in favour of 'Sri Vidhya Investments' and among the documents deposited were the Sale Deed dated 16.3.85, Sanctioned Plan in respect of the superstructure, Valuation Report and the latest Encumbrance Certificate. As his father was unable to clear the 'Mortgage', Legal Proceedings were initiated on behalf of 'Sri Vidhya

Investments' and 'Sri Meenakshi Enterprises' and after his father's demise on 19.9.99, they approached the said Appasamy and reached a compromise. A Memorandum of Compromise was entered into between the parties. However, the documents were not returned to the Petitioner by the said Appasamy and at that point of time, his Counsel claimed that the documents were submitted before the Fast Track Court, where the case was filed etc. Subsequently, the Petitioner's mother seriously fell ill and the Petitioner had other family problems and therefore the matter was not pursued any further.

5. The plea of the Petitioner is that to reach his Mansion at No.30, Dr.Besant Road, Ice House, Chennai-14, one has to go through a lane which runs from North to South from Dr.Besant Road. Right from the year 1972 onwards, 'Ingress' and 'Egress' to the Mansion has been through the aforesaid passage, which is being used by the occupants of Door Nos.29, 30, 31, 32 and 33, Dr.Besant Road, Ice House, Chennai-14. Further, it is represented on behalf of the Petitioner that on the morning of 30.10.2004, some employees of Prince of Arcot Endowments, who had on the previous day demolished an old Dharga that was in existence on the right hand side of the passage, started putting up a fresh construction by erecting several pillars where the Dharga had earlier stood and also in a portion of the passage in front of the land where the Dharga originally stood. Since the construction was proceeded with, without a Sanctioned Plan from the Authorities of the Second Respondent/Corporation of Chennai, the Petitioner was forced to initiate Legal Proceedings to ensure that the construction would not prevent him, his men, servants, agents or anybody acting under or in trust for him and his customers from using the Mansion. Therefore, he filed Writ Petition No.13227 of 2006 against the Second Respondent/Commissioner, Corporation of Chennai, Zonal Officer, Zone-VI and also the Assistant Revenue Officer, Corporation of Chennai, Zone-VI, Dr.Besant Road, Ice House, Chennai-14 praying for a direction to them to cancel the assessment of property tax in respect of the illegal construction put up in the passage.

6. The Learned Counsel for the Petitioner brings it to the notice of this Court that this Court had directed the Respondent/Corporation Authorities to find out whether the superstructure put up by the Fourth Respondent in the said Writ Petition was sanctioned and also whether the superstructure wherein the present Petitioner was running 'Vasantha Mansion' also had sanction. A status report was filed on behalf of the Corporation Authorities, whereby they had mentioned that during inspection, the present Writ Petitioner had shown them only a copy of the Plan and not the Sanctioned Plan and subsequently, on 20.1.2018, the

Petitioner received an un-dated notice from the Respondents styled as 'Locking and Sealing and Demolition Notice' under Reference No.Zone/IX/003/2018. In fact, the Petitioner has an apprehension that the Authorities may take steps to lock and seal his premises and therefore, on 2.8.2018, he preferred an Appeal before the First Respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Since the Respondent Nos.2 to 4 will come to his premises at any time and seal the premises, he has filed the present Writ Petition.

7. No counter affidavit is filed on behalf of the Respondents.

8. At this stage, the Learned Additional Government Pleader for the First Respondent fairly submits that the Petitioner has filed the Appeal on 2.8.2018 before the First Respondent with a condone delay petition and also filed an interim application seeking an interim relief. If the First Respondent is granted some time to dispose of the Appeal and the miscellaneous/interlocutory applications preferred by the Petitioner, then, based on the direction of this Court, the First Respondent will act and pass necessary orders within the time to be determined by this Court.

9. On careful consideration of the respective contentions and also this Court, taking note of the attendant facts and circumstances of the present case in an encircling manner, is of the considered view that the Appeal preferred by the Petitioner along with the interlocutory application is required to be disposed of by the First Respondent within a reasonable period of time. Viewed in this perspective, this Court, without traversing upon the merits and contents of the Appeal preferred by the Petitioner and also not expressing any opinion one way or the other about the contents of the Appeal and also not delving deep into the subject matter in issue, at this stage, simpliciter directs the First Respondent to take up the Appeal preferred by the Petitioner together with the interim/miscellaneous application filed thereto and to dispose of the same by passing a reasoned speaking order on merits, of course, after providing sufficient/adequate opportunity of hearing to the Petitioner and others concerned, by adhering to the Principles of Natural Justice, in any event, within a period of six weeks from the date of receipt of a copy of this order. Liberty is granted to the Petitioner to raise all factual and legal pleas before the First Respondent during the course of hearing of the Appeal and it cannot be gainsaid that the First Respondent shall meet out the points raised by the Petitioner at the time of passing a final order in the Appeal in question.

10. With the aforesaid directions and observations, the Writ Petition stands disposed of. Consequently, W.M.P.No.23691 of 2018 is closed. No costs.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

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To

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4. The Assistant Revenue Officer
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Dr.Besant Road, Ice House
Chennai 600 014 .

+2cc to Mr.Ashok Menon , Advocate SR.No.60233

+1 CC TO GOVERNMENT PLEADER SR.NO. 60107

W.P.No.20222 of 2018

ASK(18/09/2018)

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