

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE M.SUNDAR

Rev.Aplw.No.15 of 2018
and
W.M.P.No.3608 of 2018

A.Sadhanandam ... Petitioner

-vs-

1. B.Murugan

2. The Commissioner,
Avadi Municipality,
Avadi, Chennai - 600 054.

3. The Tahsildar,
Avadi Taluk Office,
Chennai - 600 054.

... Respondents

Prayer: Review Petition filed under Order 47 Rule 1 r/w.
Section 114 of CPC against the order dated 05.06.2017 made in
W.P.No.13807 of 2017,

PRAYER: Petition under Article 226 of the Constitution of
India praying to issue a writ of mandamus directing the first
respondent to consider and pass orders on the petitioner's
representation dated 20.02.2017 in respect of illegal
encroachment by the third respondent by putting up construction
in 12 feet public road comprised in Survey No.93, East Mada
Street, Kovilpadagai, Avadi, Chennai-600 062 in public road and
demolish the same.

For Petitioner : Mr.B.Vijay

For Respondents : Mr.R.P.Prathap Singh
Government Advocate (For R3)

ORDER

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

This review application has been filed by the third respondent in the writ petition to review the order and direction issued in W.P.No.13807 of 2017 dated 05.06.2017.

2.The writ petition was disposed of by the Hon'ble First Bench by order dated 05.06.2017 and it appears that since the direction which the Court proposed to issue was only a direction for appropriate action by the Municipality, notice to the third respondent/review petitioner was dispensed with, however safeguarding the review petitioner's interest by directing that action can be initiated in accordance with law after notice to the review petitioner/third respondent.

3.The review petitioner is before us contending that the writ petition is liable to be dismissed on the ground of suppression of material facts and non-disclosure of the decree obtained by the review petitioner in O.S.No.131 of 2013 on the file of the District Munsif Court, Ambattur dated 09.07.2015. Further, it is submitted that the first respondent/writ petitioner suppressed the filing of the suit by him in O.S.No.35 of 2016 on the file of the District Munsif Court, Ambattur praying for a declaration to declare that the plaint 'C' Schedule property is a public road and for consequential relief. In the suit filed by the first respondent/writ petitioner, the Commissioner of Avadi Municipality, the second respondent has been impleaded as second defendant. In support of the above contention, the learned counsel for the review petitioner relied upon the recent decision of the Hon'ble Supreme Court in the case of Roshina T. vs. Abdul Azeez K.T. and others in Civil Appeal No.11759 of 2018 dated 03.12.2018, wherein in more or less identical situation the Hon'ble Supreme Court held that the parties should abide by the result of the civil proceedings.

4.In the light of these facts, it goes without saying that the Municipality can initiate action only subject to the outcome of the civil proceedings. In fact if the order and direction issued in the writ petition is properly understood by the Municipality, then action can be taken only in accordance with law and if there is a decree of the Civil Court obtained by the review petitioner, the effect of the decree needs to be considered. Apart from that, the first respondent/writ

petitioner has filed a suit for declaration in O.S.No.35 of 2016 on the file of the District Munsif Court, Ambattur in which Municipality is a party. Therefore, the order and direction issued in the writ petition which requires to be complied with by the respondent Municipality shall abide by the decree in the Civil proceedings instituted by the first respondent/writ petitioner.

5.The review application is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Commissioner,
Avadi Municipality,
Avadi, Chennai - 600 054.
2. The Tahsildar,
Avadi Taluk Office,
Chennai - 600 054.

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SV(CO)
SSM(12/04/2019)