

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.827 of 2018

and

W.M.P.No.993 of 2018

C.Kasthuri Rangan

S/o.Late N.S.Chellappa

...

Petitioner

Vs

1.The Executive Engineer,
Greater Chennai Corporation.

2.The Assistant Executive Engineer/124

3.The Assistant Executive Engineer/U25
R1 to R3 at Greater Chennai Corporation
Zonal Office IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai-34

4.C.Venkatesh

S/o.Late N.S.Chellappa

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to initiate proceedings as per the Town and Country Planning Act, the Madras City Municipal Corporation Act and as per the notices issued by the respondents 1 to 3 on 13.02.2017 and 31.03.2017.

For Petitioner : Mr.Saurabh Mishra

For Respondents: Mr.A.Nagarajan [R1 to R3]
Mr.Balasingh Ramanujam [R4]

C O M M O N O R D E R

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

By consent, the writ petition is taken up for final disposal. Mr.A.Magarajan, learned counsel, accepts notice for

respondents 1 to 3 and Mr.Balasingh Ramanujam, learned counsel, accepts notice for fourth respondent.

2. The fourth respondent is none other than the brother of the petitioner. According to the petitioner, he and his brother/fourth respondent are owners of the property situated at No.20/11, Kesavaperumal Sannathi Street, Ground Floor, Mylapore, Chennai - 600 004 and by virtue of the arrangements between them, the petitioner shall own the ground floor and fourth respondent shall own the first floor of the property. But, contrary to the mutual understanding, the fourth respondent is making attempts to put up illegal and unauthorised construction in the ground floor and in this regard, petitioner has also filed O.S.No.485 of 2017 on the file of V Assistant City Civil Court, Chennai and obtained an interim order in I.A.No.1304 of 2017 restraining his brother from doing any construction in the ground floor portion of the petition premises and since it was violated, the petitioner has also filed I.A.No.3231 of 2017 in I.A.No.1304 of 2017 in O.S.No.485 of 2017 u/s.11 of the Contempt of Courts Act, 1971 and Order 39, Rule 2A of the Civil Procedure Code and it was dismissed on 10.07.2017 and challenging the same, steps are being taken to file an appeal.

3. Learned counsel for the petitioner would submit that the act and attitude of the fourth respondent would clearly exhibit that he has no regard or respect, in respect of the orders passed by the Court of competent jurisdiction and taking advantage of the dismissal of the petition in I.A.No.3231 of 2017 in I.A.No.1304 of 2017 in O.S.No.485 of 2017, he is proceeding with the construction and therefore, the petitioner is constrained to approach this Court by filing this writ petition.

4. The first respondent has filed counter affidavit stating that on due inspection, it was found that the fourth respondent has commenced construction in the ground floor and after causing inspection, action has been taken by issuing a Stop Work Notice/Notice Calling for Approved Plan u/s.56 and 57 r/w Section 85 of the Town and Country Planning Act, 1971, dated 13.02.2017 has been issued and challenging the same, the fourth respondent has filed an appeal/special revision u/s.80-A of the Town and Country Planning Act, 1971 and the same has been entertained and is still pending and further action will be taken after disposal of the said appeal/special revision.

5. Learned counsel for the fourth respondent, in his counter affidavit, contended that in the year 2015, on account of cyclone, the front portion of the wall got collapsed and he has erected the wall on his own and he has not put up any unauthorised construction and the petitioner, being his own

brother, with bad motive and malafide intention, is going on instituting civil proceedings only to harass him and prays for dismissal of the writ petition.

6. This Court has considered the rival submissions and perused the materials on record.

7. Though the petitioner prays for larger relief, this Court, in the light of the facts and circumstances of the case, without going into the merits of the case projected either by the petitioner or the fourth respondent directs the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai - 600 009, or the delegated official, to entertain the appeal/special revision filed by the fourth respondent (Letter No.9680/UD-VI(1)/2017-1), if the papers are otherwise in order and after putting the petitioner and the fourth respondent on notice, dispose of the same on merits and in accordance with law within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and the fourth respondent. It is also made clear that till the disposal of the said appeal/special revision, the fourth respondent shall not create any third party right in respect of the property in question and shall not alter the physical features also.

The Writ Petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Executive Engineer,
Greater Chennai Corporation
Zonal Office IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai-34

WEB COPY

2.The Assistant Executive Engineer/124
Greater Chennai Corporation
Zonal Office IX,
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3.The Assistant Executive Engineer/U25
Greater Chennai Corporation
Zonal Office IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai-34

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.38817

+1cc to Mr.R.Thiagarajan, Advocate, S.R.No.39384

+1cc to Mr.Balasingh Ramanujam, Advocate, S.R.No.38866 (30.07.18)

W.P.No.827 of 2018

VBA (CO)
CS/03/07/18



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