

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.4276 of 2017

S.Venkatachalam

... Petitioner

vs.

1. The Commissioner,
Chidambaram Municipality,
Chidambaram,
Chidambaram Taluk,
Cuddalore District.
2. The Inspector of Municipalities/
Collector,
Cuddalore District.
3. Natanasabapathi
4. The Assistant Director,
Office of Town & Country Planning,
Villupuram Region,
56/A, TADCO-Campus,
Government Hospital Road,
Villupuram Town.

... Respondents

(R4 impleaded vide order of this Court dated 13.09.2017 in
W.M.P.No.25041 of 2017 in W.P.No.4276 of 2017)

Writ Petition filed under Article 226 of the Constitution
of India praying for the issuance of a writ of mandamus,
directing the Respondents 1 and 2 to demolish the first floor
and second floor of the house in T.S.No.723/2, bearing Door
No.12/27, Lalpettai Street, Chidambaram, Chidambaram Taluk,
Cuddalore District.

For Petitioner : Mr.R.Gururaj

For 1st Respondent : Mr.N.K.Ponraj,
for Mr.P.Srinivas

For 3rd Respondent : Mr.S.T.Bharath Goutham
for Mrs.P.Veena Suresh

For Respondents 2 & 4 : Mr.R.Udaya Kumar,
Additional Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner, Mr.N.K.Ponraj, Learned Counsel appearing for the 1st Respondent, Mr.S.T.Bharath Goutham, Learned Counsel appearing for the 3rd Respondent and Mr.R.Udaya Kumar, learned Additional Government Pleader appearing for Respondents 2 and 4.

2. According to the Petitioner, the House bearing Door No.10/26, Lalpettai Street, Chidambaram, Chidambaram Taluk, Cuddalore District, belongs to himself and his younger brothers, viz. S.Ganapathy and S.Mani. The said property was purchased by the Petitioner's father Sammandam Pillai, through a registered Sale Deed dated 14.12.1946. After the death of his father, the Petitioner and his brothers inherited the house and he along with his brother, Mani are residing in the front portion of the property, while Ganapathy (another brother) is residing in the back portion. As a matter of fact, the house is more than 70 years old and the families are residing in the said house.

3. The version of the Petitioner is that the 3rd Respondent is his immediate neighbour on the west of his house and he is an Advocate Clerk for a very senior lawyer in Chidambaram. The 3rd Respondent's elder brother is also an Advocate's Clerk working with another Senior Lawyer in Chidambaram. In fact, the 3rd Respondent and his brother are residing in a terraced house. Earlier, the house had a Ground Floor and First Floor and the Petitioner was not aware as to whether the 3rd Respondent had obtained necessary permission and further, he bonafidely believed that the construction was legally raised. However, there arose a dispute between the Petitioner and the 3rd Respondent. Indeed, the Petitioner had not claimed any right to the lane of the 3rd Respondent or his brother. However, the Suit in O.S.No.459 of 1998 was filed by the Petitioner (Plaintiff) against the 3rd Respondent and his brother before the Learned Additional District Munsif Court, Chidambaram and on 04.03.2005, the Suit came to be dismissed. In fact, the Petitioner had accepted the verdict of the Trial Court in the main Suit and had not filed any Appeal before the Appellate forum.

4. It is pointed out by the Learned Counsel for the Petitioner that the dismissal of the Suit in O.S.No.459 of 1998 on the file of the Trial Court will not give right to the 3rd Respondent to do whatever he wants to do against his interest and rights. The 3rd Respondent is not respecting the law and according to the Petitioner, he has constructed the second floor and causing damage to the tiles of his house and resting walls, on his tiles. He had cut a portion of the rafters. The construction is an unauthorized one and will endanger the Petitioner's old tiled house and they are living in fear. Although, the Petitioner had requested the 3rd Respondent not to do so, he had not heeded to his words. Hence, the Petitioner was perforced to project a complaint before the Police on 13.10.2016. However, no action has been taken by the concerned Police.

5. The Petitioner had addressed a representation to the Respondents 1 and 2 on 13.10.2016 seeking to demolish the unauthorized construction and that the 1st Respondent, after receiving the said representation, had not issued any reply. Further, the said representation was returned by the 2nd Respondent stating that the address was insufficient. The version of the Petitioner is that on 19.09.2016, he had applied to the 1st Respondent under the Right to Information Act, 2005 and that the 1st Respondent caused a reply, dated 26.10.2016 stating that the 3rd Respondent had obtained permission only on 13.08.1998 and that the permission was granted to construct one floor only and that granting permission for the second floor is not within its powers.

6. In short, the contention of the Learned Counsel for the Petitioner is that only the ground floor was constructed legally by the 3rd Respondent and the first and second floors constructed by the latter are unauthorized ones and they require immediate demolition. Hence, the Petitioner has filed the present Writ Petition because of the fact that the 1st Respondent had not taken any action immediately.

7. Learned Counsel for the 1st Respondent proceeds to point out that the 3rd Respondent, who is the owner of the house in respect of Door No.12/27, Lalpettai Street, had originally applied for permission to reconstruct his residential house and to put up a new construction. He had applied for the permission and was granted requisite permission as per Proceedings dated B.A.No.119/98 B.L.No.110/98, dated 23.07.1998. It is the further stand of the 1st Respondent that the permission for putting up construction of the ground floor structure was issued to the 3rd Respondent and the building was put up by him and the same is also assessed to Property Tax. The Petitioner and the 3rd Respondent's buildings are in a continuous Building Zone and

there is no side set back required in the said Zone.

8. Added further, Learned Counsel for the 1st Respondent brings it to the notice of this Court based on the complaint of the Petitioner, that the site in question was inspected on 19.09.2016 and it came to light that the 3rd Respondent had raised an additional construction of first and second floors of the building. In fact, the 3rd Respondent was not able to produce

any Building permission and therefore, a notice under Section 216(1) and (2) of the Tamil Nadu District Municipalities Act, 1920, was issued to him on 19.09.2016. Soon after receipt of the said notice, the 3rd Respondent projected an application dated 19.10.2016 seeking approval of the second floor of the building and also paid requisite fee and charges.

9. In reality, he had paid a penalty of Rs.840/- relating to the unapproved construction and also remitted a sum of Rs.420/- towards Demolition Licence Fees (charges for removal of debris), a sum of Rs.410/- towards Development Charges, a sum of Rs.7000/- towards Drainage Deposit, a sum of Rs.9,320/- towards Construction Workers Welfare Fund and a sum of Rs.50/- towards Additional Copy.

10. Learned Counsel appearing for the 1st Respondent points out that the application of the 3rd Respondent was scrutinized and it was found that the building cannot be approved by the 1st Respondent for the reason that the power to grant the approval was limited to 9 Metres in height, as 'Chidambaram' is a Heritage Town and for the buildings having more than that height, the authority to grant approval is the Deputy Director of Town and Country Planning of the concerned area. In the present case, the Deputy Director of Town and Country Planning is the competent authority and therefore, the Petitioner's application was returned, stating that he had to approach the concerned authority and this was intimated to him through the communication dated 25.10.2016.

11. Besides the above, since the 3rd Respondent had again started a construction, a notice under Section 216 of the Tamil Nadu District Municipalities Act, 1920, was issued to him, inasmuch as the Petitioner had filed a Writ Petition and a notice was received by the 1st Respondent and the 1st Respondent had kept the file pending. Further, it is represented on behalf of the 1st Respondent that the confirmation notice under Section 216(3) of the Tamil Nadu District Municipalities Act, 1920, will be issued as per the orders of this Court and follow up action will be taken as per law.

12. At this juncture, the Learned Counsel appearing for the 3rd Respondent submits that the 3rd Respondent had addressed a communication to the Deputy Director of Town and Country Planning, Villupuram, together with necessary Plan seeking approval for construction of second floor in respect of the property in question. Admittedly, as on date, the construction put up by the 3rd Respondent in respect of the second floor is not an authorized one. Even after issuance of original notice under Section 216 of the Tamil Nadu District Municipalities Act, 1920, the Petitioner, thereafter, once again had started putting up construction.

13. When the 3rd Respondent is not having any approved or valid or sanctioned Plan from the competent authority and in law, when he is not entitled to raise second floor in the absence of any valid permission being granted by the competent authority, the Respondents 1 and 2, necessarily, in law, are bound to demolish the first and second floors of the house in T.S.No.723/2, bearing Door No.12/27, Lalpettai Street, Chidambaram, Chidambaram Taluk, Cuddalore, within a period of three weeks from the date of receipt of a copy of this order. If any resistance is made by the 3rd Respondent in regard to the act of demolition being carried out by Respondents 1 and 2, it is open to the Respondents 1 and 2 to seek necessary assistance from the jurisdictional Police to carry out the orders of eviction, strictly in accordance with the orders passed by this Court, in true letter and spirit.

14. It is made clear that if any Planning permission is given in and around the Heritage building by the Deputy Director of Town and Country Planning, Villupuram in violation of the prohibition of 9 Metres height, then such permission shall not hold good in the eye of law. As such, it is appropriate for the Deputy Director of Town and Country Planning, Villupuram not to grant permission to the 3rd Respondent to construct first floor as well as second floor, in violation of the sanctioned Plan or Rules and Regulations, that are in force from time to time.

15. Before parting with, this Court makes it lucidly clear that the purported pendency of the Application dated 20.02.2018 addressed to the Deputy Director, Town and Country Planning, Villupuram, by the 3rd Respondent, shall not preclude the Respondents 1 and 2 to take necessary action to demolish the building in accordance with law, as directed by this Court in the present Writ Petition.

The Writ Petition is disposed of with the above direction (s) and observation(s). No costs. Consequently, connected W.M.P.No.4449 of 2017 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Commissioner,
Chidambaram Municipality,
Chidambaram,
Chidambaram Taluk,
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2. The Inspector of Municipalities/
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Cuddalore District.
3. The Assistant Director,
Office of Town & Country Planning,
Villupuram Region,
56/A, TADCO-Campus,
Government Hospital Road,
Villupuram Town.

+2cc to Mr.R.Gururaj, Advocate, S.R.No.13717

+1cc to Mr.P.Veena Suresh, Advocate, S.R.No.14127

+1cc to Mr.P.Srinivas, Advocate, S.R.No.14095

W.P.No.4276 of 2017

AK(CO)

RRK(21/03/2018)

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