

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.4060 of 2018
& W.M.P.No.4988 of 2018

Chennai Egmore Residents & Owners
Welfare Association,
No.43/19, 2nd Street, Sait Colony,
Egmore, Chennai - 600 008.
rep. By its Secretary T.D.Ramalingam

..... Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.
3. The Commissioner of Police,
Greater Chennai,
E.V.K.Sampath Salai,
Vepery, Chennai - 600 007.
4. The Asst. Commissioner cum Zonal Officer,
Royapuram Zone V, Corporation of Chennai,
62, Basin Bridge Road, Old Washermenpet,
Chennai - 600 021.
5. Sri Ayyappa Prarthana Mandir Samithi Trust,
New No.20, (Old No.18) Chinna Street,
Egmore, Chennai - 600 008,
rep. By its Trustee, Vivekanandan

..... Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of writ of mandamus directing respondents 1 to 4 to seal and demolish the illegal,

unauthorized and high handed construction of temple in premises bearing New No.19, (old No.10), Poosala Gengu Street, Egmore, Chennai - 600 008 comprised in O.S.No.1045, 1052 and R.S.No.690/2 (in Corporation Division No.61, Royapuram Zone V), constructed by the 5th respondent and pass such further or other orders as this Court may deem fit.

For Petitioner : No appearance
For Respondents : Mr.V.C.Selvasekaran,
Standing Counsel - R1 & R4
Mr.Thiruvengadam,
Standing Counsel - R2
Mr.M.Karthikeyan, AGP - R3
Mr.V.Lakshmi Narayanan - R5

O R D E R

(Delivered by DR.VINEET KOTHARI,J)

None present for the petitioner even in second round.

2. Heard the learned counsel for the respondents.

3. The petitioner - Chennai Egmore Residents and Owners Welfare Association through its Secretary T.D.Ramalingam has filed this Writ Petition in Public Interest Litigation jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction to respondents 1 to 4 to seal and demolish the illegal, unauthorized and high handed construction of temple in the premises bearing New No.19, (old No.10), Poosala Gengu Street, Egmore, Chennai - 600 008 comprised in O.S.No.1045, 1052 and R.S.No.690/2 (in Corporation Division No.61, Royapuram Zone V), constructed by the 5th respondent Sri Ayyappa Prarthana Mandir Samithi Trust and pass such further as this Court may deem fit.

4. Learned counsel for the respondents though brought to our notice that the same petitioner had earlier filed a Writ Petition in the nature of PIL in this Court, namely, W.P.No.11823 of 2014, (Chennai Egmore Residents & Owners Welfare Association V. The Commissioner, Corporation of Chennai and others), a Division Bench of this Court vide order dated 28.07.2016 dismissed the said Writ Petition filed by the petitioner with the following observations:

'2.The stand placed before us by the learned counsel for respondent no.5 is that this temple is in existence for the last 21 years and now some renovation / construction work is going on. On the other hand, learned counsel for the petitioner submits that the fifth respondent was not even in the picture at that stage and there was residential accommodation which was purchased much later by the fifth respondent in the year 2007. It is submitted that only thereafter, the residential building was demolished and the property

was sought to be re-constructed as a temple.

3. We are of the view that keeping in mind the nature of controversy and the allegations inter se the parties, it is not possible to determine them in a writ proceeding under Article 226 of the Constitution of India and that too in a public interest litigation. This is really in the nature of private dispute and it is only on evidence being led, would there be a clarity to the issue. Thus, it is in only civil proceedings that the rights and obligations of the parties can be determined.

4. Learned counsel for the petitioner states that there was an order of status quo to be maintained as on 25.04.2014 and since this petition is being disposed of, the consequence would be that the interim order would stand vacated. In our view, that would be the natural consequence, but it is trite to say that any construction to be made has to be made as per sanction. To that extent, the responsibility of the Corporation / Municipal authorities would be to see that construction should only be permitted as per any sanction plan. At this stage, learned counsel for respondent no.5 assures the Court that no demolition or construction would be done without sanction by the competent authority.

5. We, thus, close the petition with the aforesaid liberty to the petitioner. No costs. Consequently, M.P.No.1 of 2014 stands closed.'

5. After such dismissal of the earlier Writ Petition filed by the petitioner, learned counsel for respondents 1 to 4 though submitted that no further construction or demolition of the property in question has been undertaken by respondent No.5, respondent No.4 - the concerned authority of the Corporation has ensured that no such construction takes place by respondent No.5.

6. In view of the said stand taken by the respondents, we do not find any fresh cause of action in public interest for which the petitioner again presented the said repetitive Writ Petition in this Court on 23.02.2017. Such frivolous and repeated Writ Petition wastes the time of the Court in its extraordinary jurisdiction, especially in Public Interest Litigation.

7. We would have imposed costs on the petitioner for such repeated Writ Petition which is filed unnecessarily in this Court, but since the petitioner or his counsel is not present even in second round when the case was called out, we are not imposing costs on the petitioner with a note of caution to the petitioner in this regard.

8. The petition is accordingly dismissed. Consequently WMP No.4988 of 2018 is also dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sl

To

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.
3. The Commissioner of Police,
Greater Chennai,
E.V.K.Sampath Salai,
Vepery, Chennai - 600 007.
4. The Asst. Commissioner cum Zonal Officer,
Royapuram Zone V, Corporation of Chennai,
62, Basin Bridge Road, Old Washermenpet,
Chennai - 600 021.

+1cc to Mr.V.Raghavachari, Advocate SR.No.83922

+1cc to Government Pleader SR.No.84411

Writ Petition No.4060 of 2018
& W.M.P.No.4988 of 2018

KJI (CO)
GMY (08/01/2019)