

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.7075 of 2018

D.Padmavathy

.. Petitioner

v.

- 1 The District Collector
Kancheepuram District
Kancheepuram
- 2 The Tahsildar
Tambaram Taluk
Tambaram Chennai - 600 045
- 3 The Executive Officer
Madambakkam Town Panchayat
Chennai - 600 126
- 4 The Member Secretary
Chennai Metropolitan Development Authority
Chennai - 600 008
- 5 Gabriel Builders and Associates
Rep. by S. Muthukumar S.Stanley Rajan
No.90, Shifa Enclave
Rengasamy Street
Chrompet Chennai - 600 0 44 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 to 4 to demolish the illegal encroachment of the common pathway and construction of flats by the 5th respondent by blocking the petitioner's common pathway.

For Petitioner : Mr.S.Saravanan Satheesh Kumar

For Respondents: Mr.V.Jayaprakash Narayanan
Government Pleader (i/c) - for R1 to R3

No Appearance - for R4 & R5

O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus directing the respondents 1 to 4 to demolish the illegal encroachment of the common pathway and construction of flats by the 5th respondent by blocking the petitioner's common pathway.

2.1 It is the case of the petitioner that she had purchased the land bearing Plot No.11, Gnanandha Nagar, Madambakkam Village, Chennai, comprised in Survey No.659/2C, measuring an extent of 2316 sq.ft. in the year 2006 and that the other plots bearing Plot Nos. 7, 8, 9, 10 and 12 are connected to Madampakkam Gandhi Road through a 20 feet width common pathway. Further, it is the case of the petitioner that the 5th respondent had encroached the common pathway in collusion with the 3rd respondent and obtained land approval and constructed a building.

2.2 The petitioner also filed a suit in O.S.No.179 of 2003 on the file of the District Munsif Court, Tambaram and an ex-parte decree was passed on 12.11.2016.

3. It is brought to the notice of this court that earlier, the petitioner filed a Writ Petition in W.P.No.1895 of 2013 and this court, by order dated 28.03.2013, dismissed the Writ Petition giving liberty to the petitioner to approach the Civil Court. Accordingly, the petitioner has also filed a Civil Suit and obtained a decree against the respondents.

4. In such circumstances, the remedy open to the petitioner is only to execute the decree in accordance with the provisions of the Civil Procedure Code.

5. When this court has already found that the dispute between the petitioner and the 5th respondent cannot be decided in a Writ Petition, on the same set of facts, we cannot entertain this Writ Petition now. In these circumstances, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The District Collector
Kancheipuram District
Kancheipuram

2 The Tahsildar
Tambaram Taluk
Tambaram Chennai - 600 045

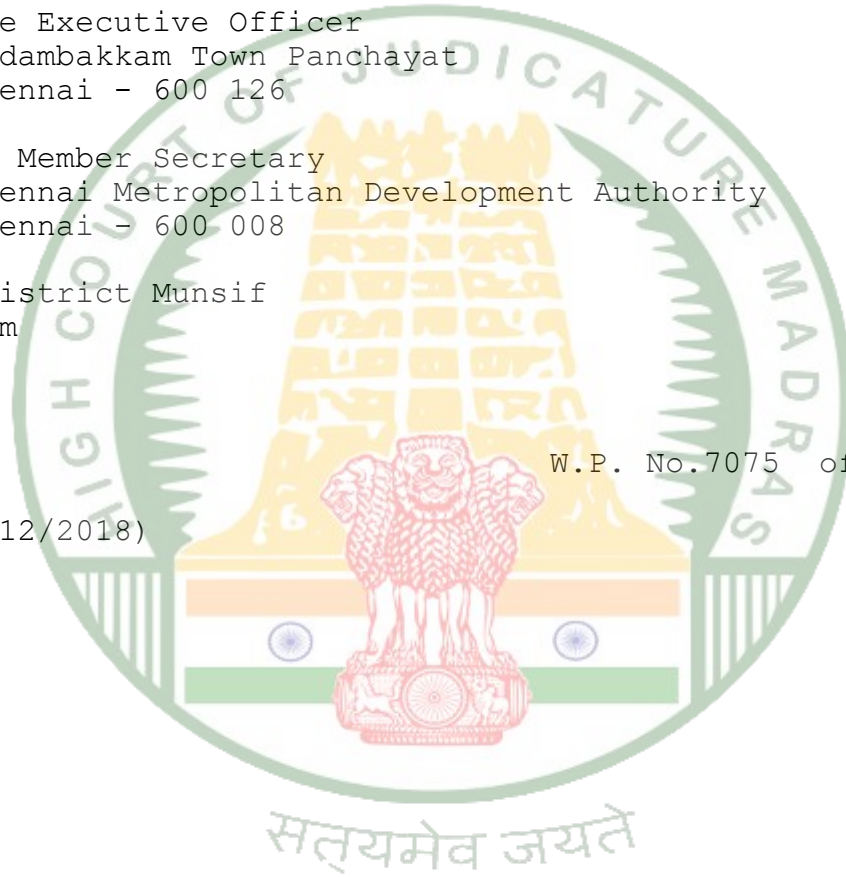
3 The Executive Officer
Madambakkam Town Panchayat
Chennai - 600 126

4 The Member Secretary
Chennai Metropolitan Development Authority
Chennai - 600 008

5. The District Munsif
Tambaram

W.P. No.7075 of 2018

ASK(18/12/2018)



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