

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.30434 of 2017

1. Vijay B Daswani
S/o.Bhagwandas F.Daswani
 2. Gita B Daswani
D/o.Bhagwandas F.Daswani
 3. Chandrakant B Daswani
S/o.Bhagwandas F.Daswani
- ... Petitioners

Vs

- 1.The Collector,
Chennai District,
Chennai.
- 2.The Chennai Metropolitan Development
Authority,
represented by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
- 4.Thinamalar
represented by its Manager,
No.161a, New No.219,
Anna Salai,
Chennai - 600 002.
- 5.Visalam Chit Funds,
represented by its Manager,
Sree Visalam Building,
161, Anna Salai,
Chennai - 600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 2 to 3 to demolish or remove the illegal construction of a compound wall measuring about 6 feet (1600 sq.f.t) being carried out by 1.Thinamalar and 2.Visalam Chit Funds (the 4th and 5th respondents herein) in respect of No.162, Mount Road (Anna Salai), Chennai - 600 002, measuring of 6 grounds & 2202 sq.ft. in the name of the petitioners herein.

For Petitioners:Ms.N.Kavitha Rameshwar

For Respondents:Mr.A.N.Thambidurai,
Special Government Pleader [R1]
Mr.C.D.Jhonson, Standing Counsel [R2]
Mr.A.Nagarajan, Standing Counsel [R3]

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.N.Thambidurai, learned Special Government Pleader, appears for first respondent, Mr.C.D.Johnson, learned standing counsel, appears for second respondent and Mr. A.Nagarajan, learned standing counsel, appears for third respondent.

2. Petitioners claim that the property in Old Door No.36-C, New No.162, Mount Road (Anna Salai), Chennai - 600 002, (Old Survey No.28, Re-Survey No.321/12) admeasuring an extent of 6 Grounds and 2202 sq.ft. originally belonged to his father and after his demise on 07.01.2014, the petitioners claim to succeed to the said estate and the said property is subjected to statutory levies.

3. Petitioners would further aver that since patta has not been granted they filed W.P.No.22677 of 2016 and it was disposed on 01.07.2016 and in compliance of the order, patta has also been granted in their favour. The grievance now expressed by the petitioner is that the adjacent land owner had encroached about 6 feet illegally and put up a compound wall and it is measuring 1600 sq.ft. and in this regard, a representation dated 28.07.2016 followed by a reminder representation dated 16.05.2017 has been submitted. Despite receipt and acknowledgment, no action has been taken. Hence, petitioners have filed the present writ petition.

4. The Writ Petition was entertained on 27.11.2017 and notice was ordered.

5. The first respondent has filed counter affidavit stating that petitioners are in possession of 6 grounds and 602 sq.ft. and the Tahsildar, Mylapore, has also caused inspection. It is the stand of the first respondent that since the property is a patta land, it is for the petitioners to safeguard and protect their right from any third person.

6. The fourth respondent has filed counter affidavit and took a stand that they are only tenants under the fifth respondent and they have not constructed any compound wall and encroached upon any property.

7. The fifth respondent has filed counter affidavit and took a stand that the compound wall is in existence for over 60 years and the writ petition has been filed based on the affidavit filed by Thasildar in another writ petition, who is not competent to allege about the encroachment by private persons on a private property and as such, the fifth respondent took a stand that the writ petition is not maintainable and prays for dismissal also.

8. This Court has considered the rival submissions as also perused the materials placed before it.

9. A perusal of the materials placed before this Court prima facie indicate that the lands in question belong to the petitioners and it is their allegation that a compound wall has been put up without obtaining any planning permission whatsoever. The first respondent took a stand that it is a private property and it is for the petitioners to protect their interest.

10. In the considered opinion of this Court, the points urged by learned counsel for petitioners involve adjudication of disputed question of facts and in the light of the stand taken by the first respondent in the counter affidavit, this Court is of the considered view that the writ petition is not maintainable.

Therefore, the Writ Petition is dismissed. No costs. However, if the petitioners are so advised, they are at liberty to work out their remedy in accordance with law before the competent Court.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gm

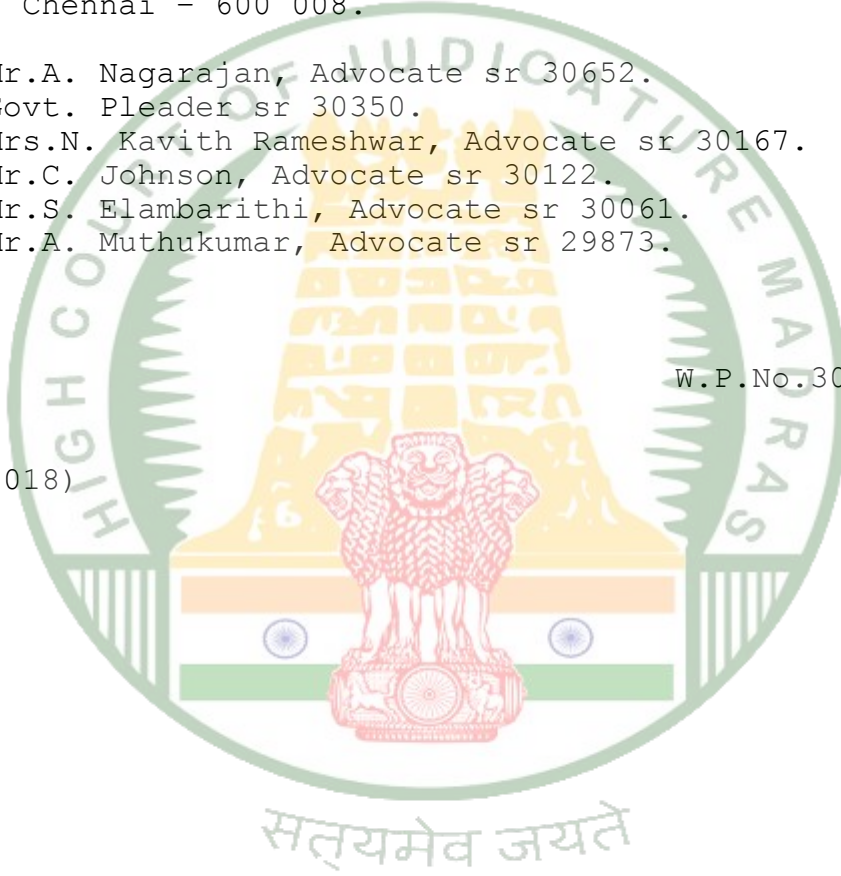
To

1. The Collector,
Chennai District,
Chennai.
2. The Member Secretary,
Chennai Metropolitan Development
Authority,
Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1 CC to Mr.A. Nagarajan, Advocate sr 30652.
+1 CC to Govt. Pleader sr 30350.
+1 CC to Mrs.N. Kavith Rameshwar, Advocate sr 30167.
+1 CC to Mr.C. Johnson, Advocate sr 30122.
+1 CC to Mr.S. Elambarithi, Advocate sr 30061.
+1 CC to Mr.A. Muthukumar, Advocate sr 29873.

W.P.No.30434 of 2017

SKV(CO)
SP(22/05/2018)



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