

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Writ Petition No. 9566 of 2017

V. Vimala

.. Petitioner

Versus

1. The Municipal Commissioner
Municipal Office
Arcot, Vellore District
Tamilnadu

2. V. Nirmala

3. R. Vijayakumar

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Mandamus directing the first respondent to demolish the unauthorised and illegal constructions made by the respondents 2 and 3 at Door No.95/A and 95/1, Kuttakara Theru, Arcot, Vellore District.

For Petitioner : Mr. G. Poonkundran

For Respondents : Mr. R.Vijayakumar
Additional Government Pleader for R1
Mr. V. Raghavachari for RR2 and 3

ORDER

(Order of the Court was made by R. Subbiah, J)

The petitioner has come forward with this Writ Petition praying to issue a Writ of Mandamus directing the first respondent to demolish the unauthorised and illegal constructions made by the respondents 2 and 3 at Door No.95/A and 95/1, Kuttakara Theru, Arcot, Vellore District.

2. According to the petitioner, the second respondent is her sister and the third respondent is the husband of the second respondent. It is the case of the petitioner that she purchased

the property in question by means of a registered sale deed dated 20.07.2000, which was executed by none other than her sister and her husband, the second and third respondents herein. However, after such sale, the respondents 2 and 3 did not handover possession of the property to the petitioner, which prompted her to file a suit in O.S. No. 78 of 2014 on the file of Subordinate Judge, Ranipet, for recovery of possession against the respondents 2 and 3 herein. The said suit was dismissed against which the petitioner filed Appeal Suit No. 15 of 2013 on the file of the learned Second Additional District and Sessions Judge, Vellore and it was allowed on 11.04.2014 directing the respondents 2 and 3 to handover possession of the suit property to the petitioner within two months. The petitioner also thereafter filed EP No. 38 of 2014 in OS No. 78 of 2014 to execute the Decree passed in her favour. While so, the respondents 2 and 3 have Second Appeal No. 875 of 2014 before this Court and obtained an order of status-quo on 03.09.2014. On the strength of the order of status-quo, the respondents 2 and 3 have demolished the superstructure in the land in question and put up a new construction with cement bricks, including two shops and a residence at the backyard. According to the petitioner, such a construction was unauthorisedly put up without obtaining any planning permission from the first respondent. In this context, the petitioner had submitted a representation dated 19.12.2015 to the first respondent and requested to take action against the respondents 2 and 3 for having put up an unauthorised construction in the property in question. The petitioner also sent a letter dated 19.12.2017 addressed to the first respondent seeking to demolish the construction put up by the respondents 2 and 3 unauthorisedly. However, the first respondent did not take any action thereof, hence, the petitioner has filed this writ petition.

3. Today, when the writ petition is taken up for hearing, the learned counsel for the petitioner made detailed submissions and prayed for issuing appropriate direction to the first respondent to consider the representation dated 19.12.2015 and 19.02.2017 submitted by the petitioner and to pass appropriate orders thereof.

4. Per contra, the learned Additional Government Pleader appearing for the first respondent, by placing reliance on the counter affidavit of the first respondent, would contend that on receipt of the representation dated 22.12.2015 of the petitioner, the first respondent issued a notice to the second respondent as required under Section 216 (1) (2) of the Tamilnadu District Municipalities Act inter alia to stop the offending construction. On receipt of the notice, the respondents 2 and 3 also stopped putting up any construction in

the land in question. Further, the respondents 2 and 3 submitted an application dated 30.12.2015 seeking permission to put up a building and it was rejected by the first respondent in and by the notice dated 11.01.2016. Thereafter, the first respondent had also taken action against the respondents 2 and 3 for having put up an unauthorised construction without planning permission. Since, appropriate action has already been initiated by the first respondent on the basis of the representations submitted by the petitioner, no further order is necessary in this writ petition.

5. The learned counsel for the respondents 2 and 3, based on the counter affidavit of the second respondent would contend that the superstructure in the building was demolished as it was in a dilapidated condition and thereafter it was replaced with mangalore tiled roof. Therefore, the learned counsel for the respondents 2 and 3 only prayed for dismissal of the writ petition.

6. We have heard the counsel on either side and perused the materials placed on record. Admittedly, the dispute with respect to the title and/or ownership of the property in question between the petitioner and the respondents 2 and 3 is the subject matter of second appeal No. 875 of 2014 before this Court and such appeal is pending. As regards the prayer sought for in this writ petition to demolish the existing superstructure said to have been put up by the respondents 2 and 3, we are of the view that such a prayer cannot be countenanced especially when it is brought to our notice that the first respondent had already taken action by issuing a notice under Section 216 (1) (2) of The Tamil Nadu District Municipalities Act. Therefore, it is for the petitioner to approach the first respondent and produce all the records available with her and on receipt of the same, the first respondent shall pass appropriate orders after hearing the petitioner and the respondents 2 and 3 in accordance with law. Accordingly, this writ petition is disposed of. No costs. सत्यमेव जयते

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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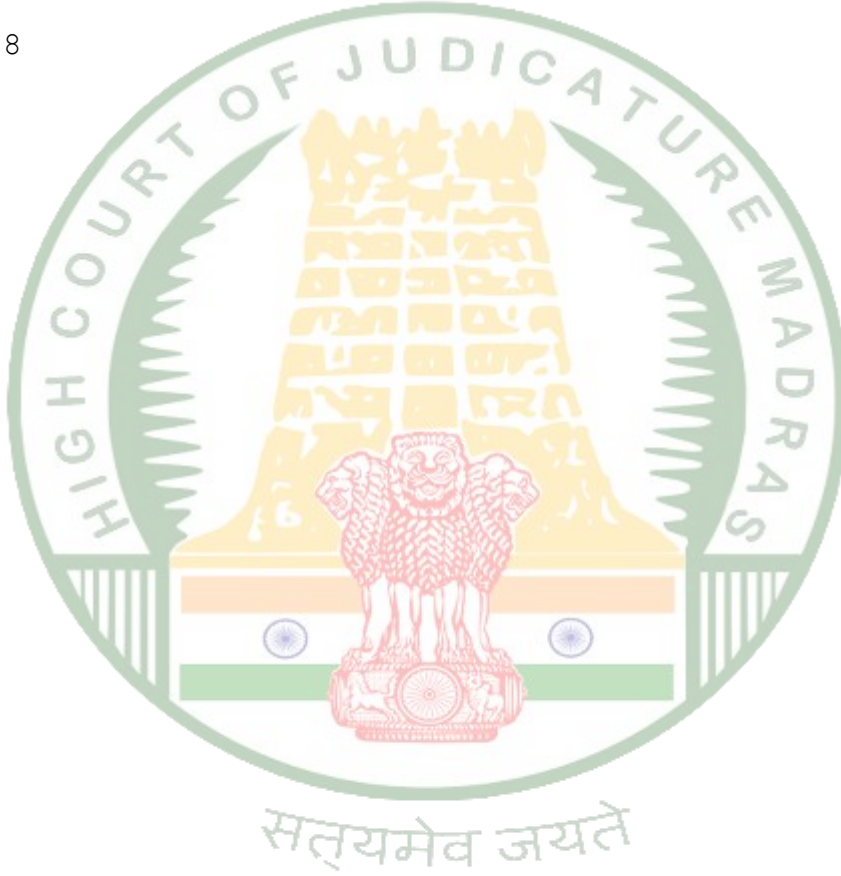
To

The Municipal Commissioner
Municipal Office
Arcot, Vellore District
Tamilnadu

+1cc to Mr. G. Poonkundran, Advocate, S.R.No.21319
+1cc to Mr. V. Raghavachari, Advocate, S.R.No.21261

WP No. 9566 of 2017

CS/20/04/18



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