

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WA.No.1476/2018

Manapakkam First Grade Village Panchayat
rep.by its President
Manapakkam and Post
Chennai 116. ... Appellant/Petitioner

Versus

- 1 THE MEMBER SECRETARY
CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY
NO 1 GANDHI IRWIN ROAD CHENNAI-8.
- 2 THE DISTRICT COLLECTOR
KANCHEEPURAM DISTRICT KANCHEEPURAM.
- 3 RAJENDRA R MEHTA ... Respondents/Respondents

Prayer:- Writ appeal filed under Clause 15 of the Letters Patent Act against the order made in WP.No.19436/2004 dated 01.10.2004.

PRAYER IN WP.No.19436/2004:

This petition is filed Under Article 226 of the Constitution of India to issue a writ of mandamus directing the 1st respondent to exercise the power under section 56 of the Town and Country Planning Act 1971 pursuant to the Second Respondent's order passed in his proceedings Na.Ka.No.30011/2004 H1 dated 14.06.2004 pointing out contravention of Planning permission issued to 3rd respondent herein in its letter No.B1/39607/2001 dated 27.11.2003 in respect of road width on the eastern side of flats constructed at S.No.43/1 of Manapakkam Village, Chennai 116.

For Appellant : Ms. Hemalatha,
For R1 : Mrs.Veena Suresh
For R2 : Mr.R.Udhayakumar, AGP
For R3 : Mr.Ramanathan

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal. Mrs.Veena Suresh, learned standing counsel accepts notice on behalf of the 1st respondent ; Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the 2nd respondent and Mr.Ramanathan, learned counsel accepts notice on behalf of the 3rd respondent.

2 The 3rd respondent / writ petitioner, on an earlier occasion, filed WP.No.11388/2004, praying for issuance of a writ of certiorarified mandamus to quash the records of the appellant herein dated 31.03.2004 with regard to the construction of the compound wall in S.No.43/1 at Manapakkam Main Road, Chennai-116, put up by the writ petitioner with a further direction, restraining them from interfering with the construction activities. The said writ petition was disposed of on 26.04.2004 with a direction, granting liberty to the respondents therein to measure the disputed area with the help of Surveyor and Field Officer and if the writ petitioner appears to have encroached upon the land and put up the compound wall, action to be taken in accordance with law. Subsequently, the 2nd respondent/District Collector, has passed the impugned proceedings dated 14.06.2004, stating that though in the application for the Planning Permission, the 3rd respondent / writ petitioner has shown the land having width of 33 feet, it varies from place to place between 19 feet to 26 feet and therefore, directed him to execute a Sale Deed conveying the excess land said to be in his occupation.

3 The 3rd respondent / writ petitioner made a challenge to the said proceedings by filing WP.No.17176/2004 and the appellant herein also filed WP.No.19436/2004 praying for issuance of a writ of mandamus, by directing the District Collector, Kancheepuram, to exercise the power under section 56 of the Town and Country Planning Act, in respect of the road width on the Eastern side of the Flat constructed in S.No.43/1 of Manapakkam Village, Chennai. Both the writ petitions were taken up for final disposal on 01.10.2004 and the learned Single Judge, having found that the 2nd respondent herein has failed to conduct necessary enquiry in accordance with law to find out as to how the road width has been reduced, has not done the same and therefore, held that the direction, directing the 3rd

respondent/writ petitioner to execute necessary Sale Deed to convey the excess land in his possession, cannot be sustained at all and hence, set aside the said order and allowed the writ petition filed by the writ petitioner and consequently, dismissed the writ petition, viz., WP.No.19436/2004 filed by the appellant herein. Challenging the legality of the same, the appellant is before this Court by preferring the present writ appeal.

4 The Court heard the submissions of the learned counsel appearing for the appellant ; Mrs.Veena Suresh, learned standing counsel appearing for the 1st respondent ; Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the 2nd respondent and Mr.Ramanathan, learned counsel appearing for the 3rd respondent.

5 A perusal of the order of the 2nd respondent dated 14.06.2004 would disclose that the writ petitioner / 3rd respondent herein, has not been afforded with any opportunity before concluding that he has shown the wrong particulars with regard to the width of the road while applying for the planning permission. The learned Judge in the impugned order also found that the width of the street varies between 19 to 26 feet and no effective steps have been taken to find out the actual width of the street, for which the writ petitioner cannot be penalised by directing him to execute necessary Sale Deed to convey the alleged excess land in favour of the Municipality. It is also to be pointed out at this juncture that the building plan has also been approved by the 1st respondent herein and unless such a modification is done, it is not open to the 2nd respondent to conclude that the writ petitioner has to convey the alleged excess land by way of Sale Deed. In the considered opinion of the Court, the learned Judge, on proper appreciation of the materials placed, has rightly reached the conclusion to quash the order passed by the 2nd respondent and as a consequence, dismissed the writ petition filed by the appellant herein.

6 In the considered opinion of the Court, in the absence of any infirmity or error apparent on the face of the record, this Court cannot interfere with the said order.

7 In the result, the writ appeal is dismissed confirming the order passed in WP.No.19436/2004 dated 01.10.2004. No costs.

8 It is also open to the appellant / local Body to cause inspection of the superstructures put by the 3rd respondent, after putting him as well as the occupiers on notice and depending upon the result of the inspection, is at liberty to take appropriate action in accordance with law.

Sd/-
Assistant Registrar (CS-viii)

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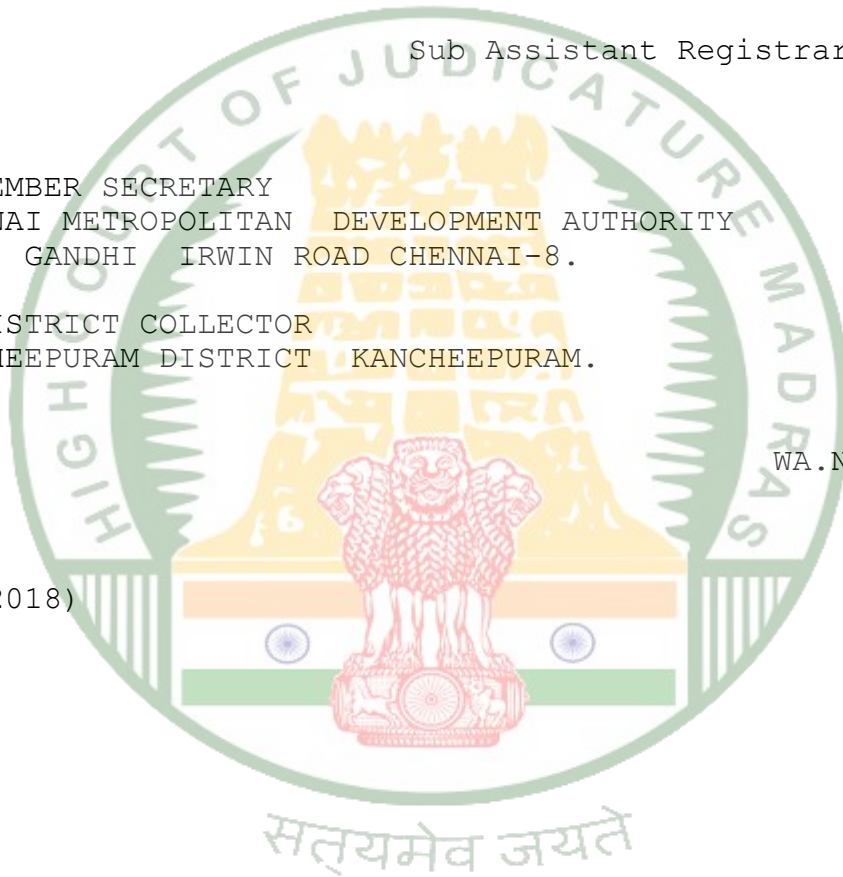
Sub Assistant Registrar

AP
To

- 1 THE MEMBER SECRETARY
CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY
NO 1 GANDHI IRWIN ROAD CHENNAI-8.
- 2 THE DISTRICT COLLECTOR
KANCHEEPURAM DISTRICT KANCHEEPURAM.

WA.No.1476/2018

sr (CO)
TR(02/08/2018)



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