

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. Nos.5984 & 18147 of 2018 and

W.M.P.No.30304 of 2018 in

W.P.No.5984 of 2018

W.P.No.5984 of 2018:

K.Thirunavakkarasu

Vs.

.. Petitioner

1.The Commissioner,
Corporation of Chennai,
Chennai - 3.

2.The Regional Joint Commissioner (South),
Corporation of Chennai,
Chennai - 3.

3.The Executive Engineer,
Zone XIII, Corporation of Chennai,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.

4.K.N.Murugan

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus directing the respondents 1 to 3 to implement the order passed by the 2nd respondent dated 18.09.2014 passed in RJC(S)/L1/8165/2014 within a date fixed by the Court and thereby direct the 3rd respondent to remove the illegal constructions put up by the 4th respondent in O.S.No.49/2 in T.S.No.49 Block No.17, Kottur Village, Chennai- 600 085.

For Petitioner : Mr.A.R.Nixon

For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
for Mr.A.Nagarajan (R1 to R3)

W.P.No.18147 of 2018:

A.Janakiraman

.. Petitioner

Vs.

1.The Principal Secretary & Commissioner,
Department of Housing and
Urban Development,
Secretariat,
Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

3.The Executive Engineer,
Zone XIII, Corporation of Chennai,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai - 20.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus directing the respondents to remove the lock and seal at Bhajanai Madam, Ellaiamman Koil Street, Grama Natham Survey No.49/2, Block No.17, Kottur Village, Chennai- 600 085 pursuant to the petitioner's representations dated 19.04.2018 and 11.05.2018.

For Petitioner : Mr.V.Raghavachari
for Mr.S.Marshall

For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
assisted by Mr.A.Nagarajan,
Standing Counsel (Corporation) (R2 & R3)

Mr.S.Kamalesh Kannan (R1)

C O M M O N O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

W.P.No.5984 of 2018 has been filed by one K.Thirunavakkarasu to issue Writ of mandamus to direct the respondents 1 to 3 to implement the order passed by the 2nd respondent dated 18.09.2014 within the date fixed by this Court and to direct the 3rd respondent to remove the illegal constructions put up by the 4th respondent in O.S.No.49/2 in T.S.No.49 Block No.17, Kottur

Village, Chennai- 600 085.

2.W.P.No.18147 of 2018 has been filed by one A.Janakiraman to issue Writ of mandamus to direct the respondents to remove the lock and seal at Bhajanai Madam, Ellaiamman Koil Street, Grama Natham Survey No.49/2, Block No.17, Kottur Village, Chennai- 600 085 pursuant to the petitioner's representations dated 19.04.2018 and 11.05.2018.

3.It is brought to the notice of this Court that one E.Thangavel and E.Raju, sons of Elumalai Naicker have filed a suit in O.S.No.2232 of 2011 against the 1st respondent and two others for declaration. The parties to the suit entered into compromise and a Compromise Decree was passed on 18.07.2011 in O.S.No.2232 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai declaring that the plaintiffs also have right to participate and contribute along with the defendants in the Bajanai Koil as legal heirs of deceased Narayanaswamy Naicker. Further, it was declared that the plaintiffs also have right to do all acts, things and perform all poojas and to celebrate all religious functions along with the defendants in the Bajanai Koil as legal heirs of deceased Narayanaswamy Naicker.

4.It is also pertinent to note that the 4th respondent in W.P.No.5984 of 2018 filed a suit in O.S.No.270 of 2013 on the file of the V Assistant Judge, City Civil Court, Chennai and at the instance of the wife of the petitioner viz., T.Devasena, the plaint was rejected on 29.01.2015.

5.It is also brought to the notice of this Court that the 4th respondent viz., K.N.Murugan had died as early as in the year 2014 and the Writ Petition has been filed against a dead person in the year 2018. Further, on the date of pronouncement of judgment in O.S.No.270 of 2013 on 29.01.2015, the 4th respondent, who is the plaintiff in the said suit was not alive. From the above, it is clear that there is clear dispute with regard to the title of the property, which necessitated the parties to approach the Civil Court.

6.Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the respondents 1 to 3 submitted that the parties had put up un-authorized construction in Sarkar Poramboke and therefore, the Corporation of Chennai had given lock and seal and demolition notice on 01.06.2012 holding that the construction put up is un-authorized. The learned Additional Advocate General also submitted that as per the revenue records, the land has been classified as Sarkar Poramboke, therefore, neither the petitioner nor the 4th respondent has any right in the property. Further, the learned Additional Advocate General submitted that the construction put up in the said land is un-

authorized and any application given for regularization would be decided in accordance with law.

7.Since the land has been classified as Sarkar Pormaboke and that construction has been put up without getting any approval and also that the petitioner in W.P.No.5984 of 2018 has no locus standi to file the Writ Petition, the Writ Petition is liable to be rejected.

8.So far as the prayer in W.P.No.18147 of 2018 is concerned, the petitioner seeks to remove the lock and seal at Bhajanai Madam, Ellaiamman Koil Street, Grama Natham Survey No.49/2, Block No.17, Kottur Village, Chennai- 600 085. Admittedly, the lock and seal and demolition notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act was effected on 16.08.2017. If the petitioner in W.P.No,18147 of 2018 is an aggrieved party, the remedy open to him is to file an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act. Therefore, we are not inclined to entertain the Writ Petition in W.P.No.18147 of 2018 for the reason that the aggrieved party can challenge the lock and seal and demolition notice effected under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act under Section 80-A of the Act.

9.For the reasons stated above, both the Writ Petitions are dismissed. It is open to the respondents 1 to 3 to proceed further in the matter in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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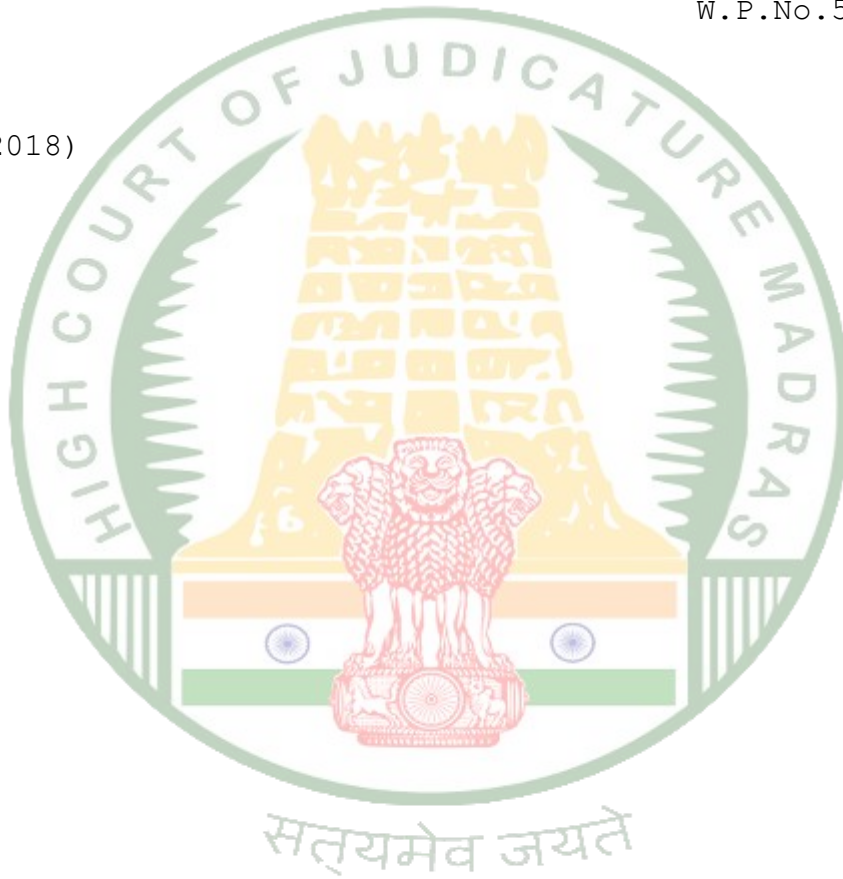
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Adyar, Chennai - 600 020.

4.The Principal Secretary & Commissioner,
Department of Housing and Urban Development,
Secretariat, Chennai - 600 009.

+1 CC to Mr.A.Nagarajan, Advocate sr 82308.
+1 CC to Mr.A.R.Nixon, Advocate sr 82190.
+1 CC to Mr.S.Marshall, Advocate sr 82147.
+1 CC to Govt. Pleader sr 82221

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W.P.No.5984 of 2018

VBA (CO)
SP(19/12/2018)



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