

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.21983 OF 2017

Selvarajathiammal

... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai.
2. The Zonal Officer,
Zone - 3,
Chennai Corporation,
Madhavaram,
Chennai - 60.
3. The District Revenue Officer,
Anna Nagar,
Chennai.
4. The Revenue Divisional Officer,
Ambattur Taluk,
Ambattur, Chennai.
5. The Tashildar,
Madhavaram,
Chennai.
6. The Inspector of Police,
M-2, Madhavaram Milk Colony Police Station,
Madhavaram, Chennai.
7. V. Srinivasan
8. Berachah Apostolic Christian Assembly,
Anna Street, K.K.Thazhai,
Madhavaram, MMC Post,
Chennai 600 051.

... Respondents

(R7 & R8 impleaded as per order dated 23.10.2017
in W.M.P.No.28968/2017 in W.P.No.21983/2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a mandamus directing the Respondents particularly the 1st and 2nd Respondents to remove the encroachment of 375 sq. ft. in Block No.40, A-Ward, Sivapatham 1st Street, K.K.Thazhai, Madhavaram Taluk, Thiruvallur District, referring the 5th respondent (Tahsildar, Madhavaram) communication letter in Na.Ka.No.308/2017/Aa1, dated 04.03.2017.

For Petitioner : No appearance
For Respondents 1 & 2 : Mr.A.Nagarajan
For Respondents 3 to 6 : Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

(Order of the Court was made by M.VENUGOPAL, J.)

The Petitioner has focussed the present Writ Petition praying for passing of an order by this Court in directing the Respondents, particularly, the 1st and 2nd Respondents to remove the encroachment of 375 sq. ft. in Block No.40, A-Ward, Sivapatham 1st Street, K.K.Thazhai, Madhavaram Taluk, Thiruvallur District, with reference to the 5th Respondent's communication vide letter in Na.Ka.No.308/2017/Aa1, dated 04.03.2017.

2. Heard the Learned Counsel appearing for Respondents 1 and 2 and the Learned Special Government Pleader appearing for Respondents 3 to 6.

3. The stand of the Petitioner is that the access and entry of her premises was abutting in Sivapatham 1st Street, Madhavaram Taluk, Chennai 600 051. As a matter of fact, she purchased the property during the year 2010 and from that time onwards, the access and entry for her premises was abutting in Sivapatham 1st Street. It is the plea of the Petitioner (as seen from the Writ affidavit) that a few individuals, with a malafide intention and with an ulterior motive, had erected a small Temple without obtaining permission/sanction from the statutory authority in the extreme end of the 15 feet common road, which, eventually is obstructing her entry to the premises. In short, her passage is blocked by virtue of the erection of the small Temple as aforestated and an encroachment is made to an extent of nearly 375 sq. ft. in Block No.40, A-Ward, Sivapatham 1st Street, K.K.Thazhai, Madhavaram Taluk, Thiruvallur District.

4. It is the version of the Petitioner that after the blockage of the premises, there was no passage and that she is using Berachah Apostolic Christian Assembly Trust abutting

Kumaran Street, presently known as Anna Street, Madhavaram Taluk, Chennai 600 051 and inspite of the fact the matter was brought to the fore of the Respondents, nothing tangible has transpired and it is the contention of the Petitioner that in any event, a place of worship cannot be built in the middle of the road, causing inconvenience to the road-users.

5. Indeed, based on the complaint of the Petitioner's husband, the Chairman of the State Minorities Commission had inspected the site and found that the encroachment abutted had blocked her passage and furthermore, the 2nd Respondent, through his reply (vide RTI Letter) stated that leaving the encroached area, they were ready to lay concrete road to Sivpatham 1st Street and admitted that was an encroachment. Moreover, after numerous representations, the 1st Respondent, through his communication dated 04.03.2017 had stated that there was an encroachment in Block No.40, A-Ward, Sivapatham 1st Street, K.K.Thazhai, Madhavaram Taluk, Thiruvallur District and the same was forwarded to the 2nd Respondent for removal of encroachment. Since no tangible action has been taken in this regard, the Petitioner has filed the present Writ Petition.

6. At this juncture, it is brought to the notice of this Court by the 2nd Respondent/Zonal Officer, Zone - 3 of Chennai Corporation, that the Petitioner and one Mariya Singarayar had constructed the Church admeasuring 7272 sq. ft. and also constructed two separate blocks admeasuring 1654 sq. ft. and 1729 sq. ft. each and had left around 2738 sq. ft. of land as vacant in the entrance of Sivapatham 1st Street.

7. It is also seen from the Inspection Report of the 2nd Respondent/Zonal Officer, Zone - 3 of Chennai Corporation that Berachah Apostolic Christian Assembly Trust is not fulfilling the requirements of Section 230 of Chapter X of the Chennai City Municipal Corporation Act, 1919 read with the Special Rules for Multi-Storeyed and Public Buildings, 1974.

8. It is to be noted that the measurements required for the Special Building as per the Development Regulation Rules are mentioned as under:

S.No.	Description	Required	Provided
1.	Minimum Plot Extent	1200 sq.m.	654 sq.m.
2.	Minimum Plot Width	25m	43m
3.	Minimum Road Width	12m	4.30m
4.	FSI	1.5	1
5.	Plot Coverage	30%	100%
6.	Minimum Height	24m	6.37m

S.No.	Description	Required	Provided
7.	Minimum Setback for all round of the Building	15.25m	Nil

9. It transpires that on inspection, it was found that the Petitioner's premises is situated at Door No.31, Anna Street, K.K.Thazhai, M.M.C., Chennai 600 051 and also it was found that the Petitioner's property has 2 nos. of entrance, i.e. from Manikkam Street and Anna Street. Added further, the Petitioner had put up an unauthorized construction at Door No.31, Anna Street, K.K.Thazhai, M.M.C., Chennai 600 051, measuring an extent of 837 sq. ft. Also, a notice calling for Approval Plan under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, dated 09.09.2017 was issued to the Petitioner. Apart from that, there is no record found in the name of the Petitioner, viz. Selvarajathiammal for No.31, Sivapatham Street.

10. Insofar as the encroachment made in Sivapatham Street, as averred by the Petitioner, it appears that a letter dated 12.09.2017 was addressed to the Special Tahsildar, Madhavaram Taluk, requesting to earmark the boundaries of Sivapatham Street and to furnish a Report. Subsequent to that, it appears that no further action has been taken in regard to the removal of the unauthorised construction in the subject matter in issue.

11. In view of the above and also considering the Inspection Report of the 2nd respondent/Zonal Officer, Zone-3, Chennai Corporation, Madhavaram, Chennai-60, this Court, in the interest of justice, fair play, equity, good conscience and even as a matter of prudence, directs the 1st respondent/Commissioner, Corporation of Chennai to remove the encroachments in question, with the assistance of the 6th respondent/The Inspector of Police, M-2, Madhavaram Milk Colony Police Station, Madhavaram, Chennai, within a period of three weeks from the date of receipt of a copy of this order and to report compliance to this Court without fail.

With the aforesaid observations and directions, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Commissioner,
Corporation of Chennai,
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3. The District Revenue Officer,
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5. The Tashildar,
Madhavaram, Chennai.
6. The Inspector of Police,
M-2, Madhavaram Milk Colony Police Station,
Madhavaram, Chennai.

+1cc to Mr.A.Mohammeed Aseef, Advocate SR.No.596
+1cc to Mr.A.Nagarajan, Advocate SR.No.147
+1cc to Mr.I.T.Ramanathan, Advocate SR.No.486
+1cc to Government Pleader SR.No.212

W.P.No.21983 of 2017

GN(12/01/2018)

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