

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM:

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

W.P.No.32579 of 2017

M/s. MF Vruksha Residents Welfare Association,

rep. By its Secretary R.Balaji,
Old No.98, New No.121, Radhakrishnan Avenue,
Medavakkam Main Road,
Nanmangalam,
Chennai 600 129.

.... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep. by Secretary,
Public Works Department,
George Town, Chennai.
2. The District Collector,
Kancheepuram,
Kancheepuram District.
3. The Special Tahsildar,
Land Acquisition,
Sholinganallur Taluk,
Kancheepuram District.
4. The Chief Engineer,
Water Resources Organisation,
Public Works Department,
Kancheepuram District.
5. The Assistant Engineer,
Public Works Department,
Padappai Division,
Sholinganallur Taluk,
Kancheepuram District.
6. The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA),
Gandhi Irwin Road,
Egmore, Chennai 600 028.

... Respondents

(R6 suo motu impleaded as per order dated 31.01.2018
of this Court in W.P.No.32579 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus forbearing the Respondents from demolishing the compound wall and Sewage Treatment Plant comprised in Survey No.207/1B situated at New No.121, Medavakkam Road, Radhakrishnan Avenue, Nanmangalam, Chennai, named and styled as 'Vruksha Apartments'.

For Petitioner : Mr.G.Rrajan

For Respondents 1 to 5 : Mr.A.N.Thambidurai,
Special Government Pleader

For 6th Respondent : Mr.C.Johnson

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

The Petitioner/Association has come up with the present Writ Petition seeking to forbear the Respondents from demolishing the compound wall and Sewage Treatment Plant comprised in Survey No.207/1B situated at New No.121, Medavakkam Road, Radhakrishnan Avenue, Nanmangalam, Chennai, named and styled as 'Vruksha Apartments'.

2. According to the Petitioner/Association, the scheme of flats in question have been constructed after obtaining approval from the CMDA and after completion of the structures, CMDA has also issued Completion Certificate stating that the construction has been done as per the CMDA Approval. It is stated by the Petitioner/Association that the Public Works Department took steps to demolish the compound Wall and the Sewerage Treatment Plant that is situated on the rear side of the Scheme of Flats, which caters to the sewerage treatment of 200 families living in the scheme of flats. It is the case of the Petitioner/Association that the said Sewerage Treatment Plant (in short 'STP') is not an unauthorized construction, as CMDA has measured the land and has given approval for construction of STP in that area and after completion of construction, CMDA has once again inspected, measured and issued the Completion Certificate.

3. The grievance of the Petitioner/Association is that if the Public Works Department is going to demolish the said STP, the Association has no other option, but to relocate the same, for which, they require sufficient time, as concrete sumps will have to be constructed to the capacity of 1 lakh litres and if the STP is demolished without giving time for relocation, the sewage water from the 200 households would be pouring into the Canal, posing severe health hazards to the public and also contaminate the water in the Canal. Hence, the Petitioner/Association seeks two months' time to relocate the STP to another area.

4. Respondents 4 and 5 have filed detailed a detailed counter, wherein, it is stated that the Promotor who constructed the Apartments in question, has encroached the Government Odai in S.No.203, which is very adjacent to the private land in S.No.207. Taking advantage of the Odai, which is adjacent to the private land, the Promotor had encroached the Odai by constructing a Sewage Treatment Plant, which is objectionable.

5. It is further stated in the counter that since many parts of Chennai City and its suburbs were inundated in heavy rains during December 2015, encroachments in water bodies were crucial in aggravating the inundation of flood water in the Odai and hence, the inspection carried out was not in the private property of the Petitioner as alleged, but in the Odai, where the Petitioner has put up the compound wall and STP. According to the Respondents 4 and 5, they have not demolished a part of the compound wall as alleged by the Petitioner, while the letter dated 11.12.2017 vide Page Nos.23-25 of the Typed Set of Papers filed by the Petitioner would reveal that the Petitioner had only mentioned that the authorities were taking steps to demolish the compound wall and the STP that is situated on the rear side of the scheme of flats.

6. It is further stated by Respondents 4 and 5, that they will evict the encroachments made by the Petitioner under due process of law after issuance of statutory notices, when the Petitioner would be given an opportunity to prove his case that the compound Wall and the STP were not constructed in the Government Odai. Further, the representation made by the Petitioner to the Respondents was on 11.12.2017 and the Writ Petition was filed on 12.12.2017 and hence, the Respondents did not demolish any part of the compound wall as alleged. The inspection was made on 11.12.2017, when the Writ Petitioner was informed about the encroachment made in the water body, about which, the Petitioner has also admitted in the averment made in paragraph 7 of the Affidavit.

7. In the counter, Respondents 4 and 5 adds that the Petitioner had not stated anywhere in the representation dated 11.12.2017 that the STP was constructed within the boundaries of the Apartment Scheme. According to them, the CMDA is not competent to decide as to the ownership of the Government Odai and as to whether the STP is constructed in the private land or in the Government land by encroachment, and that the Revenue authorities are only competent to make a survey and demarcate the boundary and identify the encroachment. It is further stated in the counter that after filing of the present Writ Petition, necessary survey was made again by the Revenue Authorities at the request of the Respondents 4 and 5 and the Tahsildar, Sholinganallur has stated in his Letter No.Na.Ra.15077/2015/Aa.1, dated 06.02.2018 that the STP is

constructed in the Government Odai in S.No.203 of Nanmangalam by way of encroachment, which would affirm that the Petitioner has not constructed the STP in the Patta land, but in S.No.203, which is classified as 'Government Odai' in the Revenue Records.

8. Heard the learned counsel for the Petitioner, learned Special Government Pleader appearing for Respondents 1 to 5 and the learned counsel appearing for the 6th Respondent/CMDA, and perused the material documents available on record.

9. It is not in dispute that the Petitioner/Association has constructed Sewerage Treatment Plant (STP) adjacent to Odai in S.No.203. Even though the property of the Petitioner/Association is said to be situated in S.No.207, Medavakkam Road, admittedly, there is an encroachment in S.No.203, which is a 'Government Odai'. The Petitioner has also stated that they are willing to relocate the STP. The Completion Certificate given by the 6th Respondent/CMDA is with regard to the construction of 200 Dwelling Units in 3 Blocks comprising Stilt Floor + 4 Floors at S.No.207/1B of Nanmangalam Village, Chennai. It does not mean that they have not encroached the Odai. Grant of Completion Certificate will vouch only the total extent of land for which permission has been given for construction of building and it cannot vouch the Survey Number. As the encroachment is found at a later point of time, the STP has to be relocated to a different place and the Petitioner, as stated supra, requests two months' time to relocate the same.

10. In view of the above, this Court is of the view that the Respondents are right in asking the Petitioner, either to relocate the STP or in failure to do so, demolish the same. Since the Petitioner/Association had sought for two months' time to relocate the STP, this Court directs the Petitioner/Association to relocate the Sewerage Treatment Plant (STP) on or before 10.06.2018 and report compliance before this Court on 22.06.2018.

This Writ Petition is dismissed with the above direction (s) and observation(s). No costs. Consequently, connected W.M.P.No.35904 of 2017 and W.M.P.No.4863 of 2018 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary,
Government of Tamil Nadu,
Public Works Department,
George Town, Chennai.
2. The District Collector,
Kancheepuram,
Kancheepuram District.
3. The Special Tahsildar,
Land Acquisition,
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4. The Chief Engineer,
Water Resources Organisation,
Public Works Department,
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Padappai Division,
Sholinganallur Taluk,
Kancheepuram District.
6. The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA),
Gandhi Irwin Road,
Egmore, Chennai 600 028.
7. The Section Officer,
Writ Section,
High Court, Madras
(For Posting the matter on 22.06.2018
for reporting compliance)

+1cc to Government Pleader Sr.No.13656
+1cc to Mr.g.Rajan, Advocate SR.No.13494

sm:9.3.2018

Order in
W.P.No.32579 of 2017