

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

W.P.No.21697 of 2018 and
W.M.P.Nos.25449 and 25450 of 2018

T.K.Shanmugam ... Petitioner

vs.

1.The Commissioner,
Corporation of Chennai
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003

2. The Regional Deputy Commissioner
[Central] Corporation of Chennai,
Door No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

3. The Assistant Commisisoner,
Zone X, Greater Chennai Corporation,
No.117, N.S.K.Salai, Kodambakkam,
Chennai - 600 024.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of Removal Notice in No.Z.O.X.C.No.8915 of 2018, dated 09.08.2018 passed by the 3rd Respondent, quash the same and consequently forbear Respondents and anyone on their behalf from demolishing, removing, evicting and preventing ingress and egress by locking and sealing the premises of the Petitioner leading to dispossess him from above said property of Flat No.F4 having plinth area of 825 sq.ft., in the first floor along with 1/5 [454.4 Sq.ft] UDS in the land area of total extent 2227 Sq.Ft., comprised in Old S.No.72, Town Survey No.2/134, Plot No.4 bearing Door No.5, Natesan Nagar West Street, Virugambakkam, Chennai in Sencheri Village, erstwhile Egmore-Nungambakkam Taluk and now Aminjikarai Taluk, Chennai District and within the precincts of Block No.2, Division 10 of Corporation of Chennai.

For Petitioner : Mr.S.Thankasivam for
Ms. G.Helina Prathiba

For Respondents : Mr.A.Nagarajan

O R D E R

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

Heard both sides. No counter is filed on behalf of the Respondents.

2. According to the Petitioner, he is the bread winner of the family. He is aged about 85 years, his wife is aged about 80 years and they struggle with all age old ailments. Out of his hard earned money, by spending his entire life with sweat and blood, he acquired the property of two bedroom flat in the first floor at Door No.5, Natesan Nagar, West Street, Virugambakkam, Chennai - 96.

3. The stand of the Petitioner is that a residential land of 2222 sq.ft., comprised in Survey No.72 of Nadesan Nagar, erstwhile Sencheri Village and now within the limits of Chennai Corporation and within Guindy-Mambalam Taluk and now Aminjikarai Taluk, Chennai was originally owned by N.E.Narayanan Reddiyar. He sold the same by virtue of sale deed dated 07.10.1977 to Rajaram and Gunasekaran and ever since was in their absolute right and possession and aforesaid persons sold the property to one E.S.Kumar by virtue of sale deed dated 27.05.1982, duly registered on the office of Sub-Registrar, Kodambakkam. As a matter of fact, E.S.Kumar acquired the title by paying consideration of Rs.4,000/- during the year 1982 and thus, the title was settled absolute and in his favour. Before the execution of sale deed, the aforesaid Rajaram and Gunasekaran had already applied before the Tahsildar, Egmore-Nungambakkam Taluk to regularise the title acquired by them and the process to issue assignment patta had already begun. After the sale occurred in the year 1982, the subsequent purchaser and title holder E.S.Kumar also emphasised and followed the same by producing title document and other relevant records. Thereafter, the regularisation orders was issued by the Special Tahsildar [Assignments], Saidapet, Chennai. The requisition for issuance of assignment orders by E.S.Kumar was considered by Special Tahsildar through the proper channel, viz., the Tahsildar, Mambalam - Guindy Taluk in R.C.No.1012/77c, which was validated by the District Collector in R.C.No.174626/77 in 1978. After following due procedures, for an extent of 0.05 cents, assignment order was issued and the entire extent of the schedule conveyed to E.S.Kumar was issued by means of

demarcating the property as Plot No.23 together with sketch appended in the assignment order itself. Indeed, the specific boundaries with measurements were mentioned and the same was classified as 'Residential Plot [Kudiyirupu]'.

4. It comes to be known that the said E.S.Kumar had applied for regular 'Revenue Patta', since the village comes within the city of Chennai Corporation and surveyed and declared as a Town under the statute, the land records relating to Survey No.72 was entered into Town Survey Land Register and the Tahsilar, Mambalam-Guindy issued a TSLR extract in TR No. 1237 of 2000 dated 05.04.2000.

5. Apart from that, the entry of Original Classification of the land at Column No.6 was mentioned as 'Ryot' and Column No.7 described as 'Manai', being a Residential Plot. Besides these, the original Survey No.72 was re-classified as Town Survey No.132. The total extent is 2272 sq.ft., as per extract and in reality, the record was mutated in the name of E.S.Kumar and the property is at Block No.2 at Sencheri village. The field map appended to the TSLR extract clarified that the said property is private property relating to T.S.No.134 and in Block No.2 and within the precincts of Virugambakkam Division.

6. At this juncture, the Learned Counsel for the Petitioner submits that the said E.S.Kumar sold the property in the year 2008 by raising super structure of Ground Plus First Floor consisting of four flats. The ground floor has parking and one occupation and the first floor is having three flats. The 1st Respondent / Corporation of Chennai had approved the building and plan vide Approval No.3462/2000 dated 12.06.2000 and building Approval No.3729/2000 dated 25.08.2000 after verifying the title records. In fact, the building was constructed in accordance with plan without any deviation and was completed and, as on date, there is no query from the Respondents of any deviations.

7. The Learned Counsel for the Petitioner brings it to the notice of this Court that E.S.Kumar had constructed flats by an 'Independent Agreement' with 'Oyen Builders', and retained the title and occupation with himself and construction alone was given to the builders and they completed the same. Also that, the flat having plinth area of 825 sq.ft., at first floor with covered parking including common area bearing Flat No.F4, two bedroom flat were offered for sale with UDS of 1/5 [454/4 Sq.Ft] out of 2222 sq.ft., The said flat with UDS was duly purchased by the Petitioner's vendors, viz., Arakkal Sarojini and another for a sum of Rs.2,66,300/-through a registered sale deed dated 13.12.2002 on the file of Sub-Registrar Office, Virugambakkam, as such, they had acquired the absolute title and unhindered

possession over the said Flat bearing No.F4.

8. It transpires that the Petitioner purchased the flat in question for a sum of Rs.26,42,600/- from Arkkal Sarojini and another on 31.01.2013 on the file of Sub Registrar's Office, Virugambakkam, therefore, it is the plea of the Petitioner that he had acquired a clear title over the Flat no.F4 measuring an extent of 825 square feet along with 1/5 [454.4 sq.ft] UDS and he is in possession of the same ever since the date of purchase. The records such as water tax and demand are indexed in the name of Petitioner's vendors with the Subscription No.05-065-3847-000004. He had paid water and sewerage tax as on date without any due and also is remitting electricity charges, while the same continues to stand in the name of the erstwhile owner E.S.Kumar in Subscription No.09-260-003-346.

9. The grievance of the Petitioner is that on 09.08.2018, the officials of the 3rd Respondent / Assistant Commissioner, Zone X, Greater Chennai Corporation, Kodambakkam, Chennai came to the Petitioner's Apartment and claimed that the entire apartment itself is an encroachment and then, began to earmark the entire compound facing road side and also the left side of the property wherein the other road is located. To the shock and surprise of the Petitioner, the Officials of 3rd Respondent made the cut down marks at the compound walls and termed that the entire building itself will be demolished. The Petitioner resisted the same and demanded for a proper reason. However, the officials of the 3rd Respondent were not ready to answer the queries made by all the occupants. After marking, they went away and on 10.08.2018 at about 10.00 a.m., the officials attached to the 3rd Respondent, particularly, the Assistant Engineer, Junior Engineer [AEE] were present at the Petitioner's building and started to verify the markings made by their subordinates and again spelled out the same version.

10. The Learned Counsel for the Petitioner points out that on 10.08.2018 at about 4.00 p.m., the Impugned Notice under Section 220 r/w Section 222 of the Chennai City Municipal Corporation Act, 1919 was issued mentioning that as if the permanent structure of the building of 182.4 sq.ft., is an encroachment and as if it is affecting free flow of traffic and is causing inconvenience to the public. The Petitioner was directed to demolish and remove the entire structure within 7 days from the date of Notice and that the Notice was received without prejudice to his rights.

11. The Learned Counsel for the Petitioner strenuously contends that the 3rd Respondent / Assistant Commissioner, Zone X, Greater Chennai Corporation had issued impugned notice dated 09.08.2018 without even providing an opportunity to the

Petitioner to explain the reasons and in short, no explanation was sought from the Petitioner.

12. The pith and substance of the submission of the Learned Counsel for the Petitioner is that the Petitioner was not provided with pre-decisional hearing and in fact, the tenor and spirit of ingredients of Section 220 r/w Section 222 of the Chennai City Municipal Corporation Act, 1919 is to remove road side encroachments and not the private properties.

13. The Learned Counsel for the Petitioner projects an argument that the Impugned Notice dated 09.08.2018 is a non speaking order and in fact, the 3rd Respondent should have considered the objection raised by the Petitioner. The other contention projected on the side of the Petitioner is that from the production of records, the Petitioner's property is a private property and he acquired title in the year 1982 and he is in possession ever since from the date of his purchase.

14. Lastly, it is represented on behalf of the Petitioner that the attempt of the 3rd Respondent in dispossessing the Petitioner by demolishing the 'Approved Building' is highly an improper one and the same is liable to be prevented.

15. Per contra, it is the submission of the Learned Counsel for the Respondents that since the Petitioner had encroached the road by constructing the permanent structure of 182.4 Sq.ft [Size 9.6m X 19m] at Door No.5, Natesan Nagar (West) 2nd Main Road, Virugambakkam, Chennai - 92, which is vested with the 1st Respondent / Greater Chennai Corporation, Chennai, he was issued with the Impugned Notice dated 09.08.2018 by the 3rd Respondent and in the said notice, he was required to remove the encroachment within a period of seven days, failing which, he was also informed that further action would be taken for removing the encroachment in question under Section 220 r/w Section 222 of the Chennai City Municipal Corporation Act, 1919.

16. As far as the present case is concerned, the Petitioner has come with a categorical plea that he had purchased the flat in question from one Arakkal Sarojini and another for valuable sale consideration of Rs.26,42,600/- by means of a registered Sale Deed dated 03.01.2013 on the file of Sub Registrar, Virugambakkam and he is in possession of the property in question ever since from the date of his purchase by paying water and sewerage taxes, electricity charges etc., On a perusal of the contents of the impugned notice in Ref.No.Z.O.X.C.No.8915/2018 dated 09.08.2018 [issued under Section 220 r/w 222 of the Act, 1919] shows that the Petitioner was not given opportunity of hearing to put forth his grievances / his version of the case with all supporting documents and

relevant records. Even though the notice appears to be a summary one, yet, this Court is of the considered view that when the said notice affects the valuable right of the Petitioner relating to the property, then, the 3rd Respondent should have provided an opportunity to the Petitioner to put forth his grievances / objections in a writing after prescribing some time limit thereto. Later on, the 3rd Respondent should have fixed the date of hearing and after hearing the Petitioner and also taking note of the entire material documents to be produced by him should have passed a reasoned speaking order.

17. Admittedly, in the instant case, the Petitioner was issued with Notice under Section 220 of the Act, 1919 no doubt, the ingredients of Section 220 of the Act, 1919 authorises the City Municipal Corporation to issue notice and to remove any unauthorised occupation of the public place control of which is vested with City Municipal Corporation. Section 222 of the Act, 1919 speaks of 'Removal of Encroachment'.

18. Be that as it may, considering the fact that the 3rd Respondent / Assistant Commissioner, Greater Chennai Corporation, Chennai had only issued a notice dated 09.08.2018 to the Petitioner requiring him to remove the encroachment in question within seven days from the service of notice, at this stage, this Court directs the Petitioner to submit a qualitative and quantitative detailed reply to the 3rd Respondent for the Impugned Notice dated 09.08.2018 by setting forth his pleas [both factual and legal] with supporting material records within two weeks from the date of receipt of a copy of this order. Thereafter, the 3rd Respondent / the Assistant Commissioner, Zone X, Greater Chennai Corporation, Chennai - 24 shall pass a speaking order after considering the objections and also taking note of the relevant material documents and factual and legal pleas to be raised by the Petitioner within a period of eight weeks.

19. It cannot be gainsaid that the 3rd Respondent shall provide an opportunity of personal hearing, if the Petitioner so desires / advised, of course, by adhering to the 'Principles of Natural Justice'. The 3rd Respondent is directed to pass a reasoned speaking order based on the representation / objections of the Petitioner in a just, free, unbiased and in a dispassionate manner, especially, untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition. Till the final orders are passed in the subject matter in issue by the 3rd Respondent, the possession of the Petitioner from the subject property shall not be disturbed.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssd

To

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3. The Assistant Commissioner,
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No.117, N.S.K.Salai, Kodambakkam,
Chennai - 600 024.

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.59444

+1cc to Mr.G.Helina Prathiba, Advocate, S.R.No.58204

W.P.No.21697 of 2018 and
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VGII (CO)
GSP(12/09/2018)

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