

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.21834 of 2018 and
W.M.P.Nos.25603 and 25604 of 2018

M.Rajeshwari ... 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.

4. The Assistant Executive Engineer (Unit 29)
Greater Chennai Corporation,
Zonal Office X, No.117, NSK Salai,
Kodambakkam, Chennai - 24

5. The Assistant Engineer [Division127]
No.1, Ayyappa Nagar Main Road,
Koyambedu, Chennai - 600 107.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling upon the records pertaining to the order of Removal Notice in No.Z.O.X.C.No.8914 of 2018, dated 09.08.2018 passed by the 3rd Respondent, quash the same and consequently forbear Respondents from demolishing, removing, evicting and preventing ingress and egress by locking and sealing the premises of the Petitioner leading to dispossess him from her property of Door No.5/2 having plinth area of 800 sq.ft.,in the land area of total 1995

sq.ft., comprised in Old S.No.72, Town Survey No.134/3, Natesan Nagar West Street, Virugambakkam, Chennai within Senjeri 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.B.Sundarapandiyan

For Respondents : Mr.A.Nagarajan
Government Advocate

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, she is the bread winner of the family. Her husband late S.Munusamy by spending his entire life with sweat and blood, had acquired the property of Door No.5/2, Natesan Nagar, [West], 2nd Main Road, Virugambakkam.

3. The stand of the Petitioner is that a residential land of 1950 sq.ft., comprised in Survey No.72 of Nadesan Nagar, erstwhile Senjeri Village and now within the limits of Chennai Corporation and within Guindy-Mambalam Taluk and now Aminjikarai Taluk, Chennai was originally owned by R.Rajaram and R.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, the said E.S.Kumar sold the property in favour of Petitioner's husband [Late] S.Munusamy through a registered sale deed executed on 13.03.1989 and registered with Sub-Registrar, Kodambakkam. The said Munusamy acquired the title by paying consideration of Rs.5,000/- during the year 1989 and thus, the title was settled absolute and in his favour. Before the execution of sale deed, the aforesaid E.S.Kumar 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 1989, the Petitioner's husband also emphasised and followed the same by producing title document and other relevant records. Thereafter, the regularisation orders was issued by the Special Tahsildar.

4. The Learned Counsel for the Petitioner points out that the Petitioner's husband had complied with all the requisite conditions mentioned in the Assignment Order in continuance and supplemental to his title acquired through the sale deed and

thereby held the property with absolute title and possession. Furthermore, the original Survey No.72 was reclassified as Town Survey No.132 and added further, the extract clarified that the total extent is 2272 sq.ft., and the record was mutated in Petitioner's husband's name and the property is situated at Block No.2 of Senjeri Village etc., In short, it is the plea of the Petitioner that the event of assignment of the property acquired in the year 1989 and that the regularisation was strengthened by a valid title, viz., by means of Registered Sale deed vide Document No.887 of 1989.

5. It comes to be known that the Petitioner's husband after purchase of the property had mutated the records like Water Tax Demand indexed in her husband's name bearing Subscription no.10-127-06224-000. Thereafter the subscription has been revised by the 1st Respondent and new bill is also indexed in the Petitioner's husband name vide Subscription No.10-127-06224-000 and as on date, there is no due in respect of the property in question. Even electricity connection is mutated in the Petitioner's Husband name with a valid Subscription No.10699512.

6. That apart, it is the version of the Petitioner that Tahsildar, Egmore, Nungambakkam, Chennai - 31 issued an Enjoyment Certificate, as per proceedings No.K.Dis.A2/2215/04 dated 01.11.2004 certifying that the land situated in Old No.72, New T.S.No.134/3 Block No.2 of No.105 Senjeri Village of Egmore-Nungambakkam Taluk measuring an extent of 2957 Sq.Ft. Classified as 'Gramma Natham' and corresponding to Door No.5/2, West Natesa Nagar, Virugambakkam, Chennai - 92 is in possession and enjoyment for the past 15 years of S.Munusamy, son of Chengani, resident of No.5/2, West Natesa Nagar, Virugambakkam, Chennai - 600 092 . In reality, the aforestated Certificate was issued for the purpose of securing Building Plan Approval from the Corporation / CMDA and for securing loan by mortgaging the property in Bank and Registration of Settlement.

7. The prime grievance of the Petitioner is that the officials attached to Respondents 3 to 5 came to the Petitioner's premises and claimed that the entire house 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 to 5th Respondents 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 to 5th Respondents 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.

8. 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 her rights.

9. 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.

10. 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.

11. 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.

12. 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.

13. Per contra, it is the submission of the Learned Counsel for the Respondents that since the Petitioner had encroached the road by constructing the semi permanent structure of 19.8 sq.m. [Size 3m X 2.2m and 6m X 2.2m] at Door No.5/2, 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, she was required to remove the encroachment within a period of seven days, failing which, she 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.

14. As far as the present case is concerned, the Petitioner has come with a categorical plea that her husband Late S. Munusamy purchased the land in issue from E.S.Kumar through a registered Sale Deed dated 13.03.1989 [bearing Document No.887 of 1989] on the file of Sub Registrar's Office, Kodambakkam for a valuable sale consideration of Rs.5,000/- 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.8914/2018 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 her grievances / her 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 her 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.

15. 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'.

16. 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 her 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 her 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.

17. 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

- 1.The Commissioner,
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2. The Regional Deputy Commissioner
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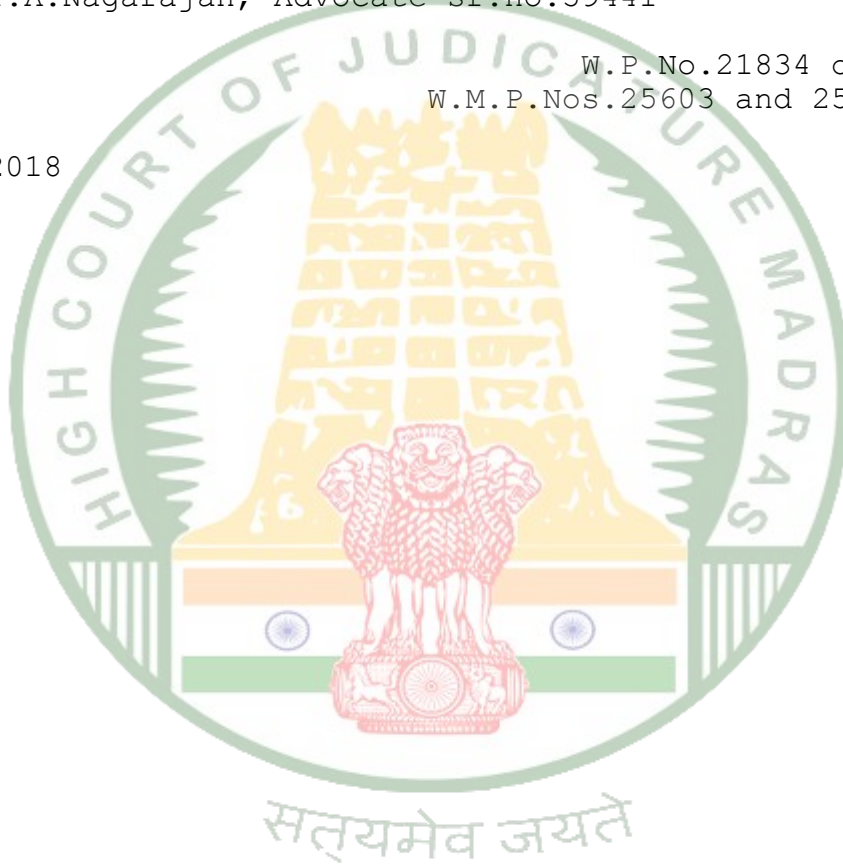
5. The Assistant Engineer [Division127]
No.1, Ayyappa Nagar Main Road,
Koyambedu, Chennai - 600 107.

+1cc to Mr.B.Sundarapandiyan, Advocate sr.no.58235

+1cc to Mr.A.Nagarajan, Advocate sr.no.59441

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nr 11/09/2018



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