

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

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

W.P.No.22081 of 2018 and
W.M.P.No.25875 of 2018

R.Pandian

... Petitioner

vs.

1. The Commissioner,
Greater Chennai Corporation,
Rupon Building,
Chennai-600 003
2. The Zonal Officer,
Zone-X,
Greater Chennai Corporation,
No.117, N.S.K.Salai,
Kodambakkam,
Chennai-600 029
3. The Executive Engineer,
Zone-X,
Greater Chennai Corporation,
No.117, N.S.K.Salai,
Kodambakkam,
Chennai-600 029
4. The Assistant Executive Engineer,
Unit-29, Zone X, Greater Chennai Corporation,
Vadapalani,
Chennai-600 032

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of impugned Notice No.Z.O.X.C.No.8913/2018, dated 09.08.2018, on the file of the Second Respondent and to quash the same.

For Petitioner : Mr.V.Vasanthakumar

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 owner of the land and building at Door No.6, 2nd Main Road, Natesan Nagar (West), Virugambakkam, Chennai-92, of Senjeri Village, Egmore-Nungambakkam Taluk, Chennai District, comprised in Grama Natham Survey No.75, New T.S.No.134, Block No.2, measuring an extent of 2678 sq.ft together with building measuring an extent of 1400 sq.ft., and the same was acquired by him through a Settlement Deed dated 12.06.2014 (vide Registered as Document No.3867/2014, on the file of the Sub-Registrar, Virugambakkam). He is in absolute possession and enjoyment of the Schedule property ever since the date of Settlement, without any hindrance.

3.The version of the Petitioner is that originally the Schedule Property belongs to his father, who was in possession and enjoyment of the same for more than 70 days. During the possession of his father, the then Revenue Inspector of Mambalam Firka, Saidapet Taluk, issued a 'House Site Ownership Certificate' dated 25.05.1976 to prove his father's possession for about 20 years. His father also paid the Land Tax for the Fasli year 1387 and 1382 in receipt No.412402, 24.07.1979, issued by the Village Munsif and also the Urban Land Tax was paid for the Fasli year 1386 to 1396 ending 30.06.1996 and to that effect, the Payment Receipt was issued by the Village Karnam, Egmore-Nungambakkam Taluk, Chennai, on 03.05.1986.

4.The plea taken on behalf of the Petitioner is that his father was also issued with Town Survey Field Extract by the Egmore-Nungambakkam Taluk Tahsildar, for an extent of 2678 sq.ft., in the year 2011 for the Schedule property. Further, the Respondents had assessed the Property Tax in respect of the Schedule Property and the Metro Water Supply and Sewerage Board dues were also paid. The Petitioner, after execution of the Settlement Deed in his favour, had approached the DCB Bank Ltd and obtained a Mortgage Loan by way of 'Deposit of Title Deeds' for a sum of Rs.30,00,000/- and the same was Registered in Document No.5124/2015, in the Office of Sub-Registrar, Virugambakkam. While that being so, to his utter shock and dismay, the Respondents 2 to 4, by Notice dated 09.08.2018, had issued a Notice under Section 229 r/w.Section 222 of Chennai City Municipal Corporation Act, IV of 1919, alleging as if the Petitioner had encroached the Road, by constructing a Semi-

Permanent Structure of 229 sq.m.(size 10 m x 22.9 m) and Permanent structure of 62 sq.m. (size 10 m X 22.9 m), thereby projecting a claim as if the schedule property belongs to the Respondents and it is utilised as a Road and thereby called upon the Petitioner to remove the said encroachment within 7 days from the date of receipt of the notice.

5.At this juncture, the Learned Counsel for the Petitioner contends that the Second Respondent/Zonal Officer, Zone-X, Greater Chennai Corporation, had usurped the powers of the First Respondent/Commissioner, Greater Chennai Corporation, in regard to the title of the property.

6.The Learned Counsel for the Petitioner takes a plea that the Respondents cannot take over the property of the Government, which is classified as a 'Grama Natham'. Further, the Impugned Notice issued by the 2nd Respondent/The Zonal Officer, Zone-X, Greater Chennai Corporation, is without authority of Law. Also that, the Respondents had not issued a Show Cause Notice before invoking the ingredients of Section 220 of the Chennai City Municipal Corporation Act, 1919.

7.Yet another argument projected on the side of the Petitioner is that the Respondent had failed to establish 'Title' to the Property, but the present width of the Road 20 feet from time immemorial.

8.Per contra, it is the submission of the Learned Counsel for the Respondents that the Petitioner had constructed a Semi-Permanent superstructure of 229 sq.m.(size 10 m x 22.9 m) and Permanent superstructure of 62 sq.m. (size 10 m x 6.2 m) at No.6, Natesan Nagar (West), 2nd Main Road, Virugambakkam, Chennai-92, which is vested with the Greater Corporation of Chennai and therefore, the petitioner was issued with the Impugned Notice, dated 09.08.2018, whereby and whereunder, he was directed to remove the encroachment in question within 7 days from the date of receipt of Notice and also the Petitioner was informed that if he fails to remove the 'Encroachment' within the time limit specified, then action will be taken for removing the encroachments, as per Provisions of the Chennai City Municipal Corporation Act, 1919, without further Notice, holding him liable for all costs and consequences arising thereof.

9.In the instant case, the Petitioner, after execution of Settlement Deed, dated 12.06.2014, in his favour, had approached the DCB Bank Ltd., and obtained a Mortgage Loan, by way of 'Deposit of Title Deeds' for a sum of Rs.30 lakhs and the same was Registered in the Office of the Sub-Registrar, Virugambakkam.

10. 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'.

11. At this stage, a perusal of the impugned Notice dated 09.08.2018, issued by the 2nd Respondent, indicates that no opportunity was given to the Petitioner to put forth his version in regard to the purported encroachment, as alleged by the Corporation. Without providing an opportunity to the Petitioner, to put forward his case/version, the Impugned Notice, dated 09.08.2018, was issued by the 2nd Respondent straight away, to the Petitioner. As such, this Court is of the considered view that the Petitioner is to be provided with an opportunity to submit his Representation in writing for the Impugned Notice, dated 09.08.2018, issued by the 2nd Respondent. Viewing in that perspective, at this stage, this Court, simpliciter, directs the Petitioner to offer his remarks/submit a qualitative and quantitative detailed reply to the 2nd 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 copy of this Order. Thereafter, the 2nd Respondent/the Zonal Officer, Zone-X, Greater Chennai Corporation, Chennai - 29 is directed to look into the Representation of the Petitioner, along with enclosures, if any, filed/produced by him and to pass a reasoned speaking order on merits and in accordance with Law, 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.

12. It cannot be gainsaid that the 2nd Respondent shall provide an opportunity of personal hearing, if the Petitioner so desires, of course, by adhering to the 'Principles of Natural Justice'. The 2nd 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 2nd Respondent, the possession of the Petitioner from the subject property shall not be disturbed.

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

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

msk

To

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Vadapalani,
Chennai-600 032

+1cc to Mr.V.Vasanthakumar, Advocate SR.No.59567

+1cc to Mr.A.Nagarajan, Advocate SR.No.59636

W.P.No.22081 of 2018 and
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PPA (CO)
RMP (19/09/2018)