

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

W.P.No.34133 OF 2017

P.Gopinath

... Petitioner

vs.

1. The District Collector,
Kanchipuram District at
Kanchipuram.

2. The Tahsildar,
Kanchipuram Taluk,
Kanchipuram District at
Kanchipuram.

3. The Municipal Commissioner,
Kanchipuram Municipality,
Kanchipuram District at
Kanchipuram.

4. A.Uma Maheswari

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents 1 to 3 to demolish the building constructed by the 4th Respondent without permission from the 3rd Respondent.

(Prayer amended by this Court vide order dated 03.09.2018 in W.M.P.11514 of 2018 in W.P.No.34133 of 2017)

For Petitioner : Mr.J.Kamaraj
For Respondents 1 to 3 : Mr.J.Pothiraj,
Special Government Pleader
For 4th Respondent : Mr.P.B.Ramanujam

O R D E R

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

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court, directing the Respondents 1 to 3 to demolish the building constructed by the 4th Respondent without permission from the 3rd Respondent.

2. Heard the Learned counsel for the Petitioner, the Learned Special Government Pleader appearing for Respondents 1 to 3 and the Learned Counsel appearing for the 4th Respondent.

3. According to the Petitioner, the 4th Respondent, in total disregard to the law pertaining to construction of building and affecting the easement right of neighbour, has endeavored to put up construction in the property adjacent to his property (as averred in paragraph 3 of the Writ Affidavit).

4. The prime contention advanced on behalf of the Petitioner is that the proposed unauthorised construction, that too without obtaining necessary permission from the authorities concerned, is an illegal one in the eye of law. In this regard, the Petitioner had addressed representations before the Respondents 1 to 3, complaining about the ongoing unauthorised construction in the property of the 4th Respondent, which is not yielding any positive result. Hence, the Petitioner has filed the present Writ Petition with an amended prayer seeking a direction to the Respondents 1 to 3 to demolish the building constructed by the 4th Respondent without permission from the 3rd Respondent.

5. In response, the Learned Special Government Pleader for Respondents 1 to 3 submits that the Petitioner's house is situated at Vilakadi Kovil Street, Kanchipuram and on the Southern side of the said Street, the entrance of the premises starts with 4 feet common passage, which is the access for 3 houses including the Petitioner's house and the 4th Respondent's house site. Furthermore, on the right side of the said common pathway, the House bearing No.65 is situated and next to the said house, the 4th Respondent's House site bearing No.65-B is situated and thereafter, at the dead end of the 4 feet common passage, the Petitioner's house is situated at Door No.65-A/1, Vilakadi Kovil Street.

6. At this juncture, the Learned Special Government Pleader for Respondents 1 to 3 brings it to the notice of this Court that the officials of the 3rd Respondent/Municipality inspected the property of the 4th Respondent and it was found that without permission, the 4th Respondent had constructed a total extent of 776 sq. ft. (11.20 meters x 6.50 Meters) 36 1/2 feet x 21 1/2 feet = 776 sq. ft. and the Officials from the Municipality had directed to stop the construction works immediately. In this regard, a Notice dated 12.03.2018 was issued by the 3rd Respondent/Municipality in terms of Sections 199/209, 216(1), 216(2), 313 and 317 of Tamil Nadu District Municipalities Act, 1920. Since no reply was forthcoming, the Municipality is taking continuous action as per the Tamil Nadu

District Municipalities Act, 1920.

7. In view of the fact that the 3rd Respondent/Municipality had come out with a clear-cut stand that the 4th Respondent had constructed the total extent of 776 sq. ft. without obtaining prior permission from the competent authority and also taking note of the fact that the Notice dated 12.03.2018 was issued by the 3rd Respondent/Municipality under Tamil Nadu District Municipalities Act, 1920, at this stage, this Court simpliciter directs the 3rd Respondent/Municipality to proceed further in terms of the Notice dated 12.03.2018 issued by it upon the 4th Respondent in accordance with the relevant provisions of the Tamil Nadu District Municipalities Act, 1920 and the said action of the Municipality may be taken to its logical end, of course, in accordance with Law and in the manner known to Law.

8. In respect of the violation committed by the 4th Respondent, if the 3rd Respondent/Municipality had initiated criminal proceedings in Summary Trial Case before the competent/appropriate Magistrate Court concerned, then, it is open to the 3rd Respondent/Municipality to proceed further and to see that necessary action is taken against the 4th Respondent in accordance with Law.

9. Before parting with, this Court directs the 3rd Respondent to take necessary action for demolition of the construction put up by the 4th Respondent in the property in question and to recover the expenses incurred by it from the 4th Respondent. The expenses incurred for clearing the debri shall also be recovered by the 3rd Respondent from the 4th Respondent as per the Tamil Nadu District Municipalities Act, 1920 and Rules, thereto.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.37890 of 2017 and W.M.P.No.11515 of 2018 are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Kanchipuram District at
Kanchipuram.

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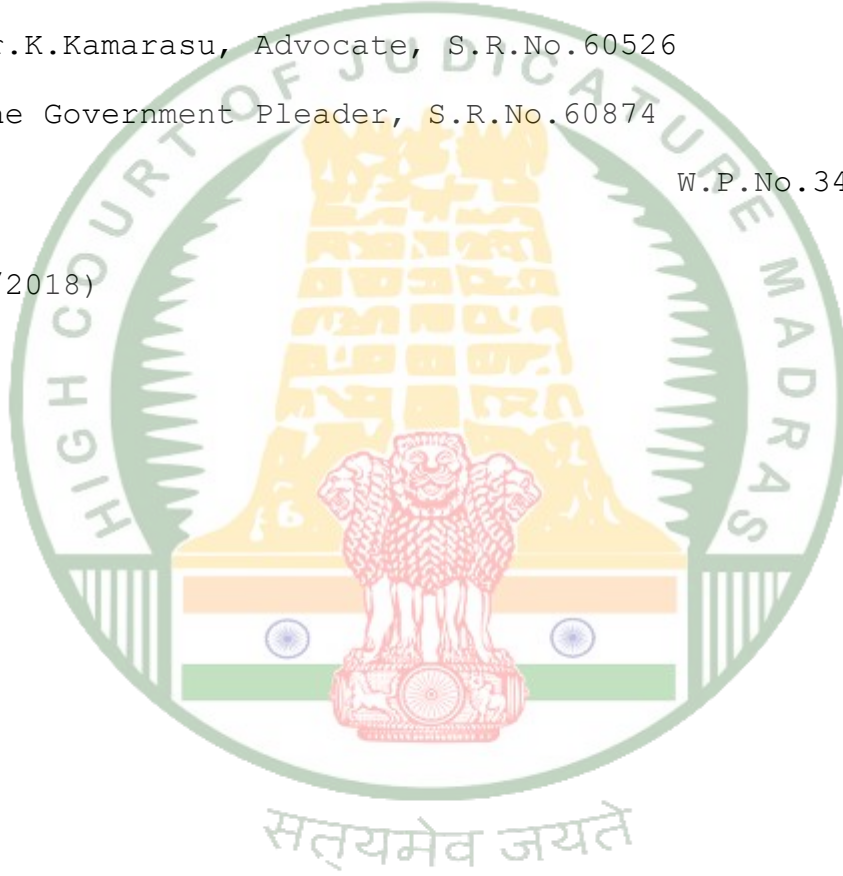
+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.60469

+2cc to Mr.K.Kamarasu, Advocate, S.R.No.60526

+1cc to the Government Pleader, S.R.No.60874

W.P.No.34133 of 2017

KAN(CO)
GSP(11/10/2018)



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