

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.12379/2018

Lalitha

Petitioner

Versus

1.The Assistant Engineer
Chennai Corporation,
Division 11, Parthasarathy Street
Vannarapettai, Chennai 600 031.

2.The Ward Officer
Chennai Corporation Ward IV
No.266, Tandiarpettai High Road
Tandiarpet, Chennai 600 081.

3.The Executive Engineer
Chennai Corporation, Ward IV
No.266, Tandiarpettai High Road
Tandiarpet, Chennai 600 081.

4.Logeswaran

Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1 to 3 respondents to demolish the illegal construction put up by the 4th respondent at property bearing Old No.5, New No.14/1, Selvavinayagar Koil Street and Magazhirpuram, Vyasarpadi, Chennai-39, comprised in S.No.671/5, RS.No.671/88 in the common passage to an extent of 6 feet x 60 feet morefully described in the schedule.

SCHEDULE OF PROPERTY

House and Ground Old No.5, New No.14, Selva Vinayagar Kovil Street, Magazinepuram Vyasarpadi, Chennai 600 039 comprised in Survey No.671/5 and RS.No.671/88 to an extent of 300 out of 947 sq.ft. Sub Registration District of Purasawalkam, Registration District of north Chennai, bounded on the North by Murugesan

property, South by Ramalingam property, East by 6 feet x 60 feet passage from Selva Vinayagar Kovil Street, West by Appadurai House and Plot.

For Petitioner : Mr.A.S.Balaji
for Ms.Thenmozhi Sivaperumal

For R1 to R3 : Mr.K.Soundararajan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.K.Soundararajan, learned counsel accepts notice on behalf of the respondents 1 to 3.

2 The petitioner claims that as per the Registered Gift Settlement Deed dated 02.07.2004 [Document No.2735/2004], her husband namely, Kothandapani is entitled to 1/3rd share of the property bearing old Door No.5, New No.14 in OS.No.137,195,196 along with the superstructure and it is her claim that she, her father-in-law and family members are exclusively entitled to enjoyment of the common pathway from Selva Vinayagar Kovil Street, admeasuring to an extent of 6 feet x 60 feet.

3 it is further averred by the petitioner that attempts are being made to interfere with the possession of the same and hence, she is constrained to file OS.No.2343/2006 on the file of the Court of I Assistant Judge, City Civil Court, Chennai, for permanent injunction restraining the 4th respondent from interfering with the peaceful possession and enjoyment of the property comprised in S.No.671/5, RS.No.671/88 admeasuring to an extent of 300 out of 947 sqft., including the common passage to an extent of 6 feet x 60 feet. The suit, after contest, came to be dismissed on 19.01.2009 and challenging the same, the petitioner filed an appeal in AS.No.151/2009 on the file of the Court of the 17th Additional Judge, City Civil Court, Chennai, and the same was also dismissed vide judgment and decree dated 27.11.2015. The grievance now expressed by the petitioner is that despite the fact that she was unsuccessful in civil litigation, the 4th respondent, without obtaining any planning permission whatsoever, ha started and completed the illegal construction upon the said common pathway and in this regard, a legal notice dated 22.02.2018 has been sent to the concerned officials of the Corporation of Chennai and in spite of receipt and acknowledgment, no action has been taken whatsoever and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

4 The learned counsel for the petitioner would submit that the superstructure put up by the petitioner is wholly authorised and the 4th respondent, without adhering to the law, has put up and completed an unauthorised construction and therefore, it should be demolished forthwith.

5 The Court heard the submissions of Mr.A.Soundararajan, learned Standing counsel appearing for the respondents 1 to 3 and perused the materials placed before it.

6 This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in the legal notice or in this writ petition, directs the 3rd respondent to put the petitioner as well as the 4th respondent on notice and cause inspection of the premises bearing Old Door No.5, New No.14/1, Selva Vinayagar Kovil Street and the premises bearing Door No.15/9, Arumugampillai Street, Magazinapuram, Vyasarpadi, Chennai-39, within a period of six weeks from the date of receipt of a copy of this order and depending upon the result of the same, shall take appropriate action in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner as well as to the 4th respondent herein.

7 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CS VII)

//True copy//

सत्यमेव जयते Sub Assistant Registrar

AP

To

1.The Assistant Engineer
Chennai Corporation,
Division 11, Parthasarathy Street
Vannarapettai, Chennai 600 031.

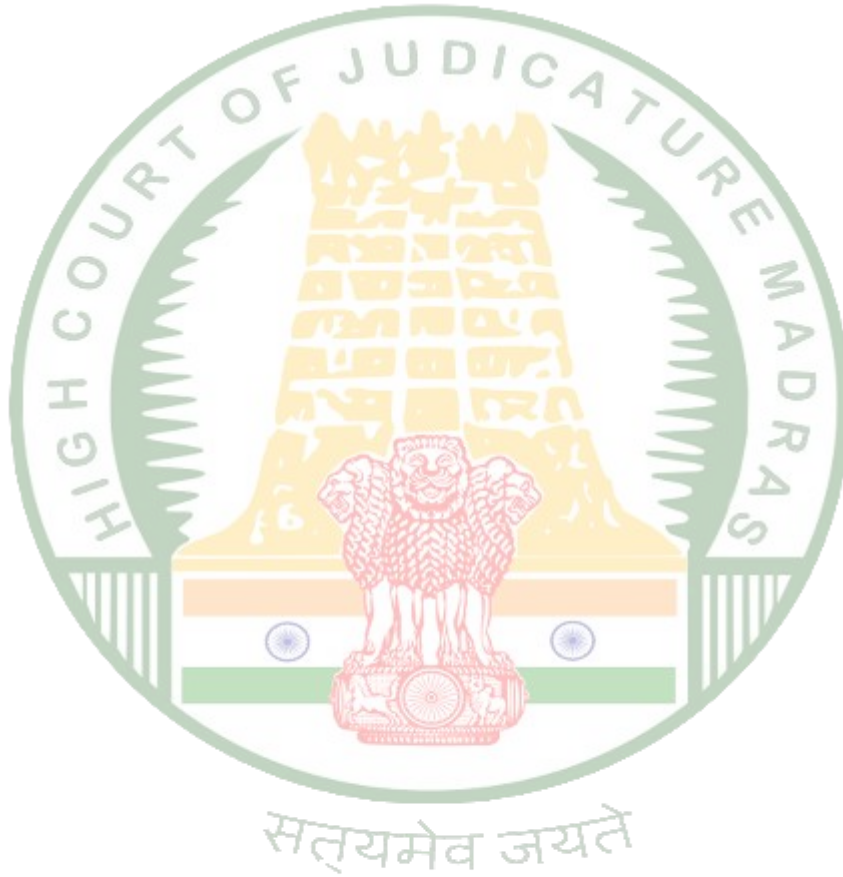
2.The Ward Officer
Chennai Corporation Ward IV
No.266, Tandiarpettai High Road
Tandiarpet, Chennai 600 081.

3.The Executive Engineer
Chennai Corporation, Ward IV
No.266, Tandiarpettai High Road
Tandiarpet, Chennai 600 081.

+1cc to Mr.K.Soundararajan, Advocate SR.No.35561
+1cc to Mr.S.Thenmozhi Shivaperumal, Advocate SR.No.34755

WP.No.12379/2018

GN(11/06/2018)



WEB COPY