

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.26043 of 2017
and
W.M.P.No.27643 of 2017

S.Thirunanasambanda Murthy
@ Thirumurthy,
s/o.Shanmugasundaram

... Petitioner

Vs

- 1.The Chairman
Tamil Nadu Slum Clearance Board,
Rajaji Salai, Chennai.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town,
Chennai - 600 003.
- 3.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
H.L.L.Nagar, Sunami Housing Board,
AA, Tondiarpet, Chennai - 600 081.
- 4.The Executive Engineer,
Corporation of Chennai, Zone IV,
266, T.H. Road, Old Washermenpet,
Chennai - 600 021.

5.Mahalakshmi
W/o.Sriramulu

6.Pradeep Kumar
S/o.Late P.Govindan
(R6 impleaded as per order dated 22.11.2017
in W.M.P.No.32583/2017 in W.P.No.26043/17)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 4 to remove the unlawful construction in the ground and first floor on the western and northern side of her property at No.342, 'B' Block, 28th Cross Street, VOC Nagar, Tondiarpet, Chennai - 600 081, which was left open to sky by the first respondent and occupying the same.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.S.Prabhu [R1 & R3]
Mr.K.Soundararajan [R2 & R4]

ORDER

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

By consent, the writ petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of the petition, would aver among other things that the property in the first floor at No.350, 'B' Block, 28th Cross Street, VOC Nagar, Tondiarpet, Chennai - 600 081, was allotted by the first respondent in favour of one Late P.Govindan. Similarly, 15 other flats

in the ground and first floors in the said tenement were allotted to various persons. The petitioner would state that he was permitted to occupy the first floor by the legal heirs of the deceased P.Govindan and he paid the entire installments to them and that he is in possession and occupation of the first floor portion ever since the year 1999. It is also stated by the petitioner that as per the original allotment, the northern area was measuring an extent of 350 sq.ft. and due to passage of time, the occupants had extended their portion on the front and rear side which was left open and the petitioner has also done so. The grievance now expressed by the petitioner is that the fifth respondent, being an encroacher, has started encroaching the vacant space left open by the first respondent for common usage, thereby affecting free flow of light and air and in this regard, he has submitted a representation dated 01.08.2017 to the respondents 1 to 4 followed by a legal notice dated 16.08.2017. Despite receipt and acknowledgment, no orders have been passed and the petitioner is constrained to approach this Court by filing this writ petition.

3. The writ petition was entertained and notice was ordered. The respondents 1 and 3 had filed their counter affidavit stating, among other things, that the petitioner is residing in tenement No.350 in Block 'B' in the first floor and the fifth respondent is residing in tenement No.342 in the ground floor, over a period of time and the original allottees for the tenement

Nos.341 and 350 were Lalitha and Govindan respectively and the petitioner as well as the fifth respondent, without any permission from the Tamil Nadu Slum Clearance Board, said to have purchased the said tenements. It is also averred in the said counter that the petitioner, who lives in the first floor in tenement No.350 and the fifth respondent, who lives in the ground floor in tenement No.342, had encroached front, rear and western sides of Block 'B' by putting up superstructures. The fifth respondent is now constructing additional staircase in the western side of the Block 'B' which was objected by the petitioner and vacant notices under Form 'A' and 'B' was issued to her and it was refused to be received. Therefore, it is stated that all encroachments around Block 'B' are to be removed immediately with police protection and in that event, Tamil Nadu Slum Clearance Board is ready to remove the encroachments.

4. The fourth respondent has filed his report dated 23.02.2018 stating that since the land belonged to the first respondent, they can also initiate proceedings to retrieve the land on which the fifth respondent has put up unauthorized construction and they are also ready to extend their co-operation to the respondents 1 and 3 to remove the unauthorized construction.

5. This Court has considered the rival submissions and perused the materials placed before it.

6. The fact remains that the petitioner as well as the fifth respondent, without any planning permission or necessary permission, had put up further construction in their respective tenements. Though the writ petitioner made a complaint as to the alleged encroachment and unauthorized construction on the part of the fifth respondent, he equally has done so.

7. It is also the stand of the respondents 2 and 3, in their counter affidavit, that all the encroachments around Block 'B' are to be removed in full with police protection. The fourth respondent, in his report dated 23.02.2018, stated that they are ready to extend their co-operation to respondents 1 and 3 to do that exercise.

8. The respondents 1 and 3 are permitted to issue 'A' and 'B' notices to all the encroachers which include the petitioner as well as the fifth respondent to remove the encroachment and the said notices have to be issued within a period of four weeks from the date of receipt of a copy of this order and depending upon the response received from the encroachers, shall take further action in accordance with law in removing the encroachment and it is to be carried out within a further period of twelve weeks thereafter and the decision taken/communication in that regard shall be issued/given to the encroachers.

9. Since the learned standing counsel for respondents 1 and 3 also made a submission as to the law and order problem while carrying out the encroachment, the Joint Commissioner (North), Deputy Commissioner (Law and Order) as well as the jurisdictional police station are directed to extend maximum co-operation and also the fourth respondent.

The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.N., J]

[P.R.M., J]

04.04.2018

Index: Yes/No
Internet: Yes
gm

Note: Issue order copy on 06.04.2018

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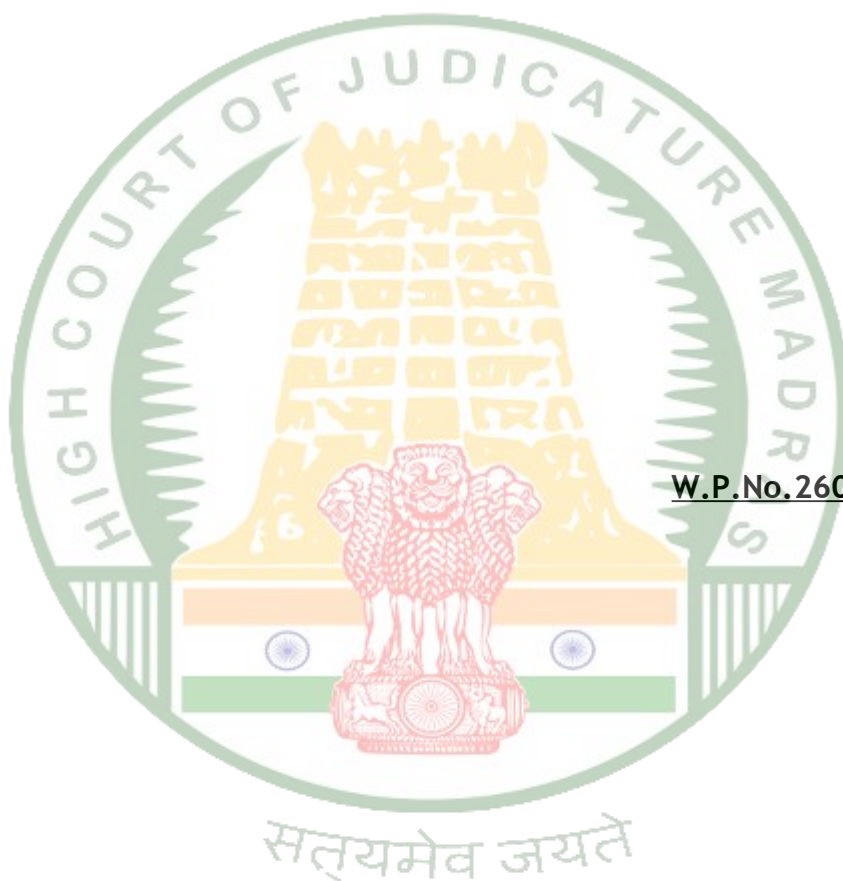
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To

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- 5.The Joint Commissioner of Police,
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Egmore, Chennai - 600 008.
- 6.The Deputy Commissioner of Police (Law and Order),
Washermenpet,
Chennai - 600 081.

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AND
P.RAJAMANICKAM, J
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