

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26331 of 2017

and

W.M.P.Nos.27987 of 2017 and 1776 of 2018

Manish Agarwal

.. Petitioner

Vs.

1. Pallavapuram District Municipality,
Rep. by its Commissioner,
Chromepet, Chennai-44.

2. Arun Kumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Na.Ka.No.2021/2017/F1, dated 07.09.2017 issued by the first respondent and quash the same and permit the petitioner to put up construction in accordance with the planning permission dated 10.06.2016 issued by the first respondent.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.P.Srinivas for R-1

M/s.T.Velumani for R-2

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Na.Ka.No.2021/2017/F1, dated 07.09.2017 issued by the first respondent and quash the same and permit the petitioner to put up construction in accordance with the planning permission dated 10.06.2016 issued by the first respondent.

2. It is represented by the learned counsel for both the respondents that the suit in O.S.No.886 of 2012 on the file of the District Munsif Court, Alandur, filed by the petitioner herein is for declaration that the sale deeds stated therein are null and void, for consequential injunction restraining the defendants therein from in any manner from further encumbering

or alienating the suit property and also for permanent injunction restraining the defendants from claiming through them from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. It is further stated that O.S.No.1891 of 2017 on the file of the Principal District Court, Chengalpet, filed by the second respondent for declaration of title and for recovery of possession, is pending and the petitioner has no title to the property in question.

4. Further, one more suit was filed by the second respondent in O.S.No.14 of 2016 on the file of the District Munsif Court, Alandur for injunction restraining the writ petitioner and Mrs.Aarthi Agarwal from disturbing the second respondent's peaceful possession and enjoyment of the property.

5. It is seen that this Court has passed interim order dated 22.12.2017 in the Writ Petition as follows:

"2. It is seen that a civil suit is pending between the parties in O.S.No.886 of 2012 on the file of the District Munsif Court, Alandur. The pendency of the said suit before the Civil Court is not a bar for sanctioning the planning permission to the petitioner for the building in question. It is open for the petitioner to construct the building, but the construction of the building cannot be shown as proof for his possession. This order cannot be treated as if the rights of the parties had been decided with regard to the issue that is pending in the civil Court. If any adverse order or decree is passed against the petitioner by the Civil Court, the petitioner shall forthwith vacate the premises in question and hand over the same to the first respondent and the petitioner's further continuance in the property on the ground that the building exists and that the superstructure has also been constructed, will not be a ground for the petitioner to claim possession. Knowing that the dispute is pending, if the petitioner's construction is found to be fault, the petitioner has got to be blamed. If there is any planning permission for the building, the same shall be constructed by the petitioner in accordance with the plan."

6. It is to be observed that without prejudice to the above said three suits, the construction made by the petitioner is at his own risk and that he shall not encumber the property in any manner and he shall not create any third party rights to make the pending suit(s) complicated.

7. Further, without prejudice to the rights of the parties, it is seen that a petition has been filed for transfer of the relevant suit(s) to be tried by single Court. It is needless to mention that the trial Court that is hearing the suits, is expected to decide the matter without prejudice to the rights of the parties and without adjourning the suit(s) beyond ten working days at any point of time. In case of any appeal(s) filed by any of the aggrieved person(s) against the judgment and decree of the trial Court, the lower appellate Court also shall follow the procedure of adjourning the appeal(s) as per the days mentioned supra. In case the second respondent herein succeeds in the suits filed by him, the cost of construction incurred by the petitioner herein, cannot be demanded by the petitioner.

8. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Assistant Registrar
Dt.15.2.18

//True Copy//

Sub Assistant Registrar

To
The Commissioner,
Pallavapuram District Municipality,
Chromepet, Chennai-44.

+1 cc to Mr.R.Subramanian, advocate, sr.5151

+1 cc to Mr.T.Velumani, advocate, sr.5038.

Krd 17/2

W.P.No.26331 of 2017

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