

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.12741 AND 12742 OF 2018
AND WMP NOS.14929 AND 14930 OF 2018

Nagavalli Petitioner in
W.P.No.12741 / 2018

Bhoolokam Petitioner in
W.P.No.12742 / 2018

Versus

1.Regional Deputy Commissioner (C)
Corporation of Chennai
Ripon Building,
Chennai.

2.Superintendent Engineer (C)
Corporation of Chennai
Ripon Building,
Chennai.

3.Zonal Officer - VI
Corporation of Chennai
Ripon Building,
Chennai.

4.Executive Engineer - VI
Division No.71, Unit No.16,
Zone - IV, Anderson Road,
Ayanavaram, Chennai.

5.Assistant Executive Engineer
Division No.71, Unit No.16,
Zone -IV, Anderson Road,
Ayanavaram, Chennai.

... Respondents 1-5 in
both WPs'

PRAYER : Writ Petitions filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorarified
Mandamus, to call for the records of the proceedings on the file
of the respondents 1 to 5 in impugned notice reference
Z.O.VI.C.Nos.3441/14/2008 Corporation of Chennai Dn71, Unit -

16, Zone - VI and Z.O.VI.C.Nos.3441/13/2008 Corporation of Chennai Dn71, Unit - 16, Zone - VI respectively, dated 18.04.2018 and quash the same and to direct the respondents to provide alternative place for accommodation to the petitioners based on the representations dated 10.05.2018.

For Petitioner : Mr. B.Rajkumar Ashok Singh
(in both Wps')
For Respondents : Mr. G.Anantha Rangan
Standing Counsel for Corporation

COMMON ORDER

(ORDER OF THE COURT WAS MADE BY M.SATHYANARAYANAN,J.)

By consent, both the writ petitions are taken up for final disposal and disposed of by this common order, as the points urged to be adjudicated, are one and the same.

W.P.NO.12741 OF 2018

2. The petitioner claims that she had purchased the land admeasuring to an extent of 199 sq.ft in S.No.1 at Othavadai Street, Nammalwarpet, Chennai - 12, with a superstructure of Hut, through a registered sale deed, bearing Document No.4086/1979, dated 11.12.1979 and claims to be in possession and enjoyment of the same ever since the date of purchase. She would further aver that the said property is also subject to statutory limit.

W.P.NO.12742 OF 2018

3. The petitioner alleges that she had purchased the undivided share of the ground and first floor situated in R.S.No.90, Block No.37, admeasuring to an extent of 250 sq.ft out of 380 sq.ft, bearing door No.146/1, Old No.95/18, Sankarabathan Street, Nammalwarpet, Chennai-12, through two registered sale deeds, dated 16.12.2002 and 26.12.2002 and claims to be in possession and enjoyment of the same. She would further aver that the said property is also subject to statutory limit.

4. The grievance expressed by both the petitioners is that all of a sudden, the respondents had issued the impugned notices dated 18.04.2018, under Section 220 read with 222 of the Chennai City Municipal Corporation Act, 1919 (in short 'CCMC Act') alleging the petitioners as encroachers and calling upon them to remove the encroachment, within a period of fifteen days from the service of the said notices, failing which, action will be taken for removing the above encroachments, as per the provisions of the CCMC Act. Making challenge to the said notices, they came forward to file these writ petition.

5. The learned counsel for the petitioners would submit that it is wrong to allege that the petitioners are encroachers, in the light of the fact that they have purchased the properties in question, through registered sale deeds and continued to remain in possession for a long time and also the properties are subject to statutory limit and they have been issued with Aadhaar Card, Ration Card and also given the benefits of the Government in the form of freebies and therefore, prays for quashment of the impugned notices.

6. Per contra, Mr.G.Anantha Rangan, learned Standing Counsel for the respondents would submit that the petitioners had encroached upon the road margin and as such, action has been taken strictly in accordance with law and prays for dismissal of the writ petitions.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. It is relevant to extract Section 220 read with 222 of the Chennai City Municipal Corporation Act, 1919.

"220. Prohibition against obstructions in streets.-

No one shall build any wall or erect any fence or other [obstruction or projection or make any encroachment] in or over any street [or any public place, the control of which is vested in the corporation] except as hereinafter provided.

222. Removal of encroachments. -(1) The commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar, or ground-floor window) situated against or in front of such premises and in or, over, any street [or any public place, the control of which is vested in the corporation].

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a perspective title [or where such period is less than thirty years, for a period of thirty years] or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

9. As per sub-section (2) of Section 222 of the Act, if the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a perspective title or where such period of is less than thirty years, for a period of thirty years or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the Corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

10. This Court, taking into consideration the claim made by the petitioners and without going into the merits of the same, permits the petitioners to submit a detailed representation, enclosing all relevant and authenticated documents, in response to the impugned notices issued by the respondents, within a period of four weeks from the date of receipt of a copy of this order to the first respondent, who upon receipt of the same, shall entertain the same and thereafter, dispose of the said representation, on merits and in accordance with law, within a further period of four weeks thereafter, and communicate the decision taken to the petitioners.

11. Till such time, the respondents shall defer further decision to remove encroachment / dispossess the petitioners from the properties in question. It is also made clear that the petitioners, till the disposal of the representation by the first respondent, shall not create any third party rights, in respect of the lands in question, said to have been in their possession and shall not alter physical features also.

12. Both the writ petitions stand disposed of accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

TK

To

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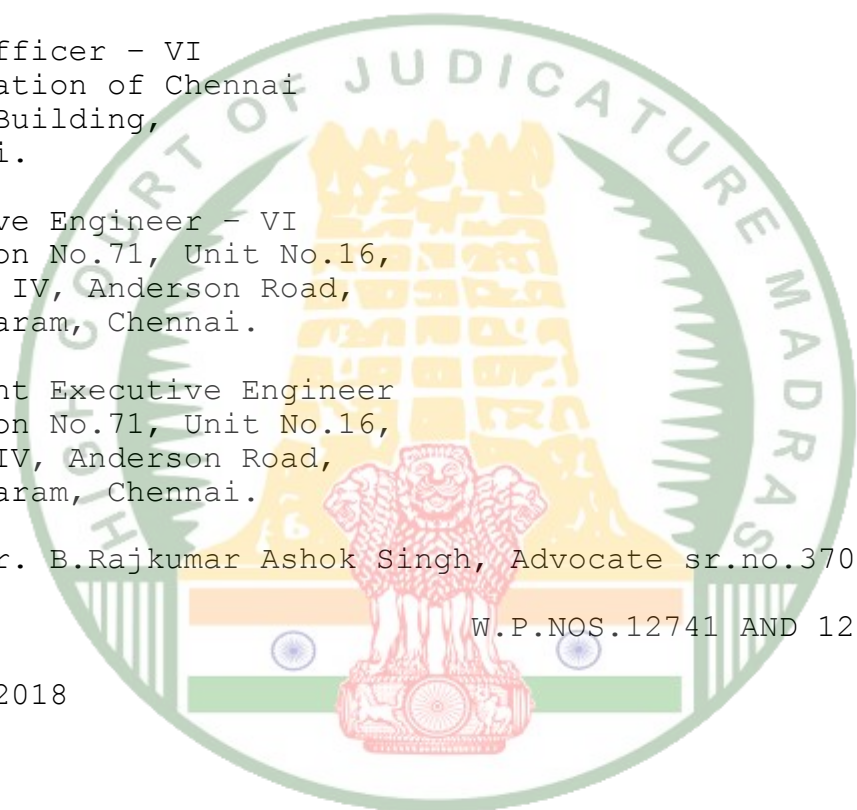
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+2cc to Mr. B.Rajkumar Ashok Singh, Advocate sr.no.37053,37052

W.P.NOS.12741 AND 12742 OF 2018

nr 21/06/2018

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant capital. The entire emblem is set against a green background with a white border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular path around the emblem. At the bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed in Devanagari script.

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