

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.23162 of 2018 and
WMP Nos.27063 and 27064 of 2018

P.Muzhumathi

.. Petitioner

Vs.

- 1) The Secretary,
Municipal Administration,
Government of Tamilnadu
Secretariat, St.George Fort,
Chennai - 9
2. The Commissioner,
Chennai Corporation,
Ribbon Building, Chennai-3
3. The Zonal Officer,
New Zone X, Chennai Corporation,
Chennai - 600 024
4. The District Collector,
Chennai District,
Chennai - 600 001
5. The Tahsildar,
Guindy-Mambalam Taluk,
Chennai
6. The General Manager,
Southern Railways,
Chennai - 600 003

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notice of the 3rd Respondent dated 27.07.2018 vide Ref. Ma.A.10 Na.Ka.No.6971/2018 and quash the same as illegal and consequently issue a direction to the respondents to allot alternative shop in the locality to do business and forbear the

Respondents, their officers, subordinates, or any other person acting under them from any manner interfering with the fundamental rights of the Petitioner.

For Petitioner : No appearance

For Respondents : Mr.S.N.Parthasarathy for R1, R4
and R5 Government Advocate
Mr.Arunmozhi, for R2 and R3
Standing Counsel
Mr.P.T.Ramkumar for R6
Standing Counsel

O R D E R

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

The Petitioner has filed the present Writ Petition assailing the notice of the 3rd Respondent / Zonal Officer, New Zone X, Chennai Corporation, Chennai - 600 024 dated 27.07.2018 whereby an action was initiated in respect of sudden removal of her Shop No.20 situated in Survey T.S.No.5496/1 in the T.Nagar Village, Mambalam Guindy-Taluk of Chennai District on the western side of the T.Nagar Railway Border Road within the time limit of new Zone X of the Chennai Corporation.

2. The averment of the Petitioner in the Writ Petition is that she was informed by means of a proceedings of the 5th Respondent dated 02.08.1992 to the effect that he had encroached an extent of 36 Sq.Ft., and the said portion of the land is used for commercial purpose and that the encroachments were regularised with back assessment. In fact, she had paid property tax to the 2nd Respondent, Land Tax to the 5th Respondent and paid Water Tax to the Chennai Metrowater Supply and Sewerage Board, despite electricity charges in respect of Shop No.20.

3. The principle plea of the Petitioner is that Shop No.20 in question is situated under the control of the Revenue Department of the Government of Tamilnadu, wherein the 5th Respondent collected land tax from the Petitioner and document shows that the land is under the control of Tahsildar of Mambalam Guindy Taluk of Chennai District and the issuance of impugned notice by the 3rd Respondent relating to the removal of his Shop No.20 is an illegal and discriminatory one. Hence, the Petitioner has filed this Writ Petition seeking to quash the notice of the 3rd Respondent dated 27.07.2018 and for a issuance of consequential direction by this Court to the Respondents to allot alternative shop in the locality to carry on business etc.,

4. It is the stand of the 3rd Respondent / Zonal Officer, Chennai- 600 024 that as per the revenue records, the Ranganathan street and Railway Border Road are connecting the Mambalam Railway Station and T.Nagar Bus Terminus, which are the business streets in the Chennai City and around 50,000 people are daily using the said streets and during the festival seasons around 1.5 lakh people were using the said streets for ingress and egress to the Mambalam Railway Station with T.Nagar Bus Terminus. In fact, the Greater Chennai Corporation has proposed to construct a Skywalk connecting the T.Nagar bus terminus with the existing Railway Foot Over Bridge at Mambalam Railway Station for facilitating the passengers to reach the bus terminus and the railway station by avoiding the shoppers in the Usman Road and Ranganathan Street.

5. The Learned Counsel for the 3rd Respondent brings it to the notice of this Court that on 12.12.2017 a Joint meeting was conducted with the officials of Divisional Railway Manager and during that meeting it was informed that the Railway Department has proposed to widen the Foot Over Bridge at Mambalam Railway Station and a request was made to the Greater Chennai Corporation to give No Objection Certificate to provide escalator and staircase at the Market Road [Railway Border Road]. Further, Joint Site Inspection was made on 06.02.2018, by the Revenue Department of Government of Tamilnadu and it was found that the width available is 8.30m only. A vacant plot measuring 44.96 m X 7.47 M in the Eastern side of the Railway Border Road [from the junction of Ranganathan Street up to the Lane where a Public Convenience Exists] belongs to the 2nd Respondent / Greater Chennai Corporation and being used as part of the Railway Border Road. Moreover, it was found that the Railway land is up to the existing Railway compound wall only, as per the revenue records.

6. The Learned Counsel for the 3rd Respondent points out that since the width of the Railway Border Road is only 8.30m, the Stair Case and Escalator could not be provided as requested by the Railway and therefore, the Railway Department, requested to extend the Railway Foot Over Bridge towards Eastern side of the Railway Border Road to provide staircase at the vacant land of Greater Chennai Corporation [Now part of Railway Border Road] and to provide the escalator adjacent to the Railway compound wall along the Railway Boarder Road on Western Side upon the junction of Natesan Street. Added further, the Railways were requested to furnish the General Arrangement Drawing incorporating the aforesaid facilities. Moreover, the 2nd Respondent / Greater Chennai Corporation had passed a resolution on 07.06.2018 seeking for construction of Skywalk connecting

the Railway Foot Over Bridge to T.Nagar Bus Terminus and also sanctioning the request of the Railway Authorities for construction of the staircase and escalator and also for removal of the encroachment at the junction of the Railway Border Road and Ranganathan Street. The Petitioner has encroached the land belonging to the Greater Chennai Corporation and put up shop by encroaching the road margin. Therefore, he was issued with a notice under Section 220 read with Section 222 Chennai City Municipal Corporation Act, 1919 dated 27.07.2018, which was served to him and to other encroachers in the said land.

7. In reality, the 2nd Respondent / Greater Chennai Corporation had initiated action and removed other encroachments, numbering Twenty Two Shops including Petitioner's shop in the Railway Border Road on 28.08.2018 with the help of Railway Police Force, Tamilnadu Police Department and TANGEDCO on the Railway Border Road Junction of Ranganathan Street.

8. The 3rd Respondent informs this Court that the 5th Respondent / Tahsildar, Mambalam - Guindy Taluk had identified the Petitioner and others, who encroached the Government land and taken action under the Tamilnadu Land Encroachment Act, 1905 and levied FCT, which would not confer any right and title over the Government land under the occupation of encroachment. Further, he had informed that when the Land is required by the Government, the 'Encroachers' should handover the same to the Government for the usage of common public.

9. The Learned Counsel for the 3rd Respondent takes a clear cut stand that the land in Survey No.5496/1 Part, Block No.126, T.Nagar Revenue Village at Ranganathan Street Junction of Railway Border Road, comes under the classification of Sarkar Land and usage of the said land is being classified as 'Road' [vide Extract of Town Survey Land Register]. In short, the Petitioner is a mere encroacher in respect of the land belonging to the 2nd Respondent / Greater Chennai Corporation.

10. In view of the fact that the Petitioner is an 'Encroacher' was issued with a notice dated 27.07.2018 by the 3rd Respondent / Zonal Officer, Greater Chennai Corporation whereby and whereunder she was clearly informed that she had encroached 5 feet X 6 feet (30 sq.ft.), of land. She was also informed to remove the encroachment at the Railway Border Road, T.Nagar, within 7 days from the date of receipt of copy of the notice. In fact, the notice was issued under Sections 220 and 222 of Chennai Municipal Corporation Act, 1919. Also that, the Petitioner and other encroachers were removed on 28.08.2018 with the help of Tamilnadu Police Department and TANGEDCO in Railway Border Road Junction, T.Nagar. Since the Petitioner is an 'Encroacher', this Court comes to an resultant conclusion that

she is not entitled to seek the relief as sought for by her in the Writ Petition. Consequently, the Writ Petition fails.

In fine, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ssd

To

- 1) The Secretary,
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6. The General Manager,
Southern Railways,
Chennai - 600 003

+1CC Mr.R.Arunmozhi Advocate SR.NO.77325
+1CC Mr.P.T.Ramkumar Advocate SR.NO.76893
+1CC GOVERNMENT PLEADER SR.NO.77032

W.P.No.23162 of 2018 and
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PRS (CO)
KAK (29/11/2017)