

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

W.P.No.2856 OF 2018

1. D.Lakshmi
2. D.Krishnakumar
3. D.Premkumar ... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.
2. The Executive Engineer,
Corporation of Chennai,
Zone VI,
Anderson Road,
Ayanavaram,
Chennai 600 023.
3. The Assistant Executive Engineer,
Corporation of Chennai,
Zone - VI,
Arunachalam Street,
Purasaiwakkam,
Chennai 600 007.
4. The Assistant Engineer,
Corporation of Chennai,
Zone-VI, Ward No.75,
Venkatathiri Street,
Kosapet,
Chennai 600 012.
5. R.Murugan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 23.06.2017 sent to the Chief Minister's Special Cell and send representation to all the Respondents herein and on 19.07.2017 to the 1st Respondent herein and to take action against Mr.R.Murugan, who has carried out unlawful, unauthorized construction over the public land by encroaching the

public land on the western side of his land in No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600 012 and hindered the free flow of amenity, such as sunlight, air to the Petitioners' house and it has to be demolished.

For Petitioner :Mr.D.Gubendraguna Balan
For Respondents 1 to 4 :Mr.A.Nagarajan
For 5th Respondent :Mrs.Meera Gnanasekar

O R D E R

(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioners have preferred the present Writ Petition praying for passing of an order by this Court in restraining the 5th Respondent, his Contractor, his men, Agents, Administrators, Executors or anyone claiming through him from carrying out construction works over the Corporation public land at No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600 012, pending disposal of the Writ Petition.

2. Heard the Learned counsel for the Petitioner, the Learned Standing Counsel appearing for Respondents 1 to 4 and the Learned Counsel appearing for the 5th Respondent.

3. According to the Petitioners, they are permanent residents at Door No.18/2, Narayana Maistry Main Street, Otteri (Zone - VI, Ward No.75), Chennai 600 012. The 5th Respondent is residing at Door No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600 012. According to the 5th Respondent's Sale Deed, the total extent of premises is only 1258 sq. ft. On the western side of the 5th Respondent's premises, there exists a vacant space of 19 feet width and that he had encroached on the western side measuring an extent of 2 ½ feet, which is the Common Land belonging to the Government. The 5th Respondent had constructed his house in 21 ½ feet. Further, in the Sale Deed, the measurement was mentioned only as 19 feet on the western side.

4. The 1st Petitioner's son viz. D.Premkumar (3rd Petitioner) had lodged a complaint against the 5th Respondent before the 1st Respondent/Commissioner, Corporation of Chennai and also in person, he met the 1st Respondent and explained the subject matter in issue. A reply dated 30.03.2013 was furnished by the Information Officer (under Right to Information Act) to the 1st Petitioner's son, stating that the encroachment of the 5th Respondent was accepted and an assurance was given that action would be taken against him.

5. At this stage, the Learned Counsel appearing for the 5th Respondent submits that the Right to Information Officer/Executive Engineer, Corporation of

Chennai, Zone-VI, Anderson Road, Ayanavram, Chennai 600 023, wrote a letter to the 3rd Petitioner on 31.05.2013, informing him that in the enquiry conducted by the higher official, it came to light that the 5th Respondent has a valid Sale Deed only for an extent of 19 feet and that the Building Sanction was issued in his favour only for 19 feet on the western side. However, no permission was obtained by the 5th Respondent from any Officer to put up construction over 2 ½ feet of the public property. Further, the Chief Right to Information Commissioner of Tamil Nadu had issued Summons and called the 3rd Petitioner for an enquiry and registered a case in Ref.No.33647/D/2010.

6. While that be the fact situation, the 5th Respondent had encroached a further extent of 246 sq. ft. without digging any foundation and without obtaining proper sanction from the competent authority and had carried out construction work to the height of 25 ft. Because of the 5th Respondent's unauthorised construction over the Public Land, the Petitioners are unable to use their house door and the illegal construction had completely prevented them to receive sunlight, air and also prevented them in enjoying the easement rights.

7. The Learned Counsel for the Petitioners contends that the 3rd Petitioner addressed a communication dated 26.12.2015 to the 1st Respondent/Commissioner, Corporation of Greater Chennai. However, no action was taken by the 1st Respondent. Therefore, the 2nd and 3rd Petitioners have issued a legal notice on 30.12.2015 through their Advocate to the 5th Respondent, narrating the encroachments made by him over public land and further directed him to demolish the unlawful construction carried out by him. But, he had neither chosen to send any Reply nor demolish the encroachments. A reminder was issued by the 2nd and 3rd Petitioners through their Advocate on 20.01.2016 to the 5th Respondent by means of R.P.A.D. The said reminder notice was also duly served on the 5th Respondent, for which, no reply has been received by the Petitioners. In fact, the 5th Respondent had not demolished the unlawful construction carried out by him.

8. The Learned Counsel for the Petitioners brings it to the notice of this Court that the 3rd Respondent sent a representation dated 04.02.2016 to the Honourable Chief Minister Cell and it was duly acknowledged. The said representation was duly furnished to the concerned authority and that the Assistant Engineer, viz. Muthuraman, had not taken any action on the said representation and also that the 5th Respondent was not called for the enquiry by the said Assistant Engineer. As a matter of fact, the 5th Respondent had not taken part in the Enquiry. The Advocate notice was issued to

the 5th Respondent on 09.06.2016, which was duly served upon him. However, in this regard, no reply was furnished.

9. The grievance of the Petitioners is that the Assistant Engineer of the Corporation of Chennai, viz. Muthuraman, only supported the 5th Respondent, etc. In fact, the said Assistant Engineer confirmed that the 5th Respondent had carried out the construction in a rightful manner. Since, the said Assistant Engineer threatened the 1st Petitioner with dire consequences, that the henchmen of the 5th Respondent would do away with them, the Petitioners preferred a complaint dated 22.07.2016 addressed to the Hon'ble Chief Minister of Tamil Nadu. Even after that, no action was taken based on the said representation.

10. An enquiry was conducted by the Assistant Executive Engineer, Zone -VI, Corporation of Chennai, but, in the said enquiry, the Assistant Executive Engineer, only supported the Assistant Engineer. Hence, a Legal Notice was issued through the Petitioners' Advocate on 05.09.2016 to the Executive Engineer, Corporation of Chennai, Zone-VI, Ayanavaram; Assistant Executive Engineer, Corporation of Chennai, Zone-VI, Purasawalkam and the Assistant Engineer, Corporation of Chennai, Zone-VI, 75th Ward, Kosapet, Chennai 600 012, putting forth their grievance.

11. It appears that the 5th Respondent had stopped construction work for a short while and since no action was taken against him by the Respondents, the Petitioners take a stand in the Writ Petition that the 5th Respondent had started construction works very near to their building wall, by using Drilling machine and other heavy duty equipments, demolishing the common wall and due to the heavy waves, their building wall is shaking, etc. According to the Petitioners, they have three months, 1 ½ year babies in their house and due to the thunder noise, the children are crying like anything. The 5th Respondent and his wife Thangam had started abusing the Petitioners and threatened them with dire consequences. Hence, a written representation dated 19.07.2017 was addressed by the 1st Petitioner to the 1st Respondent/Commissioner, Corporation of Chennai, narrating the incidents. However, no action is taken till date against the 5th Respondent and he continues his building work in the Corporation lands. Since the Petitioners have no option but to invoke the jurisdiction of this Court, they have filed the present Writ Petition.

12. Per contra, it is the submission of the Learned Counsel appearing for Respondents 1 to 4 that the 1st Petitioner gave a complaint on 19.07.2017 to the 1st

Respondent/Commissioner, Corporation of Chennai, stating that the 5th Respondent is putting up construction without any Approved Plan in the common passage between the Petitioners' and the 5th Respondent's premises and due to the usage of the machinery, the Petitioners' family is affected and also there are cracks in the Petitioners' building.

13. The Learned Counsel for Respondents 1 to 4 proceeds to point out that the 2nd Respondent/Executive Engineer, Corporation of Chennai, Zone - VI, Ayanavaram, Chennai 600 023, had conducted an enquiry on 15.09.2017 (without reference to the complaint of the 1st Petitioner dated 19.07.2017), calling upon the Petitioners as well as the 5th Respondent to attend the enquiry along with supporting documents. As a matter of fact, the 1st Petitioner along with her two sons, i.e. the 2nd and 3rd Petitioners, had attended the enquiry and employed unparliamentary words. Besides that, they had not submitted any documents to support their claim and had left the enquiry in the midway.

14. The Learned Counsel for the Respondents 1 to 4 contends that the 5th Respondent had attended the enquiry and furnished supporting documents viz. Sale Deed/copy of Patta and Approved Plan and upon scrutiny of the documents submitted by the 5th Respondent, it was found out that there is no common passage between the Petitioners' premises and the 5th Respondent's premises and that the 5th Respondent had also acquired 2 ½ x 20 feet through an unregistered document from the neighbour for laying a drainage line over the said space.

15. It is represented on behalf of the Respondents 1 to 4 that on a perusal and scrutiny of the Approved Plan submitted by the 5th Respondent, it was found that the 5th Respondent had put up his building by deviating the Approved Plan. Action was initiated against the 5th Respondent and a Lock and Seal and Demolition Notice under Section 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971, dated 27.09.2017 was issued to him. After the expiry of the statutory period of the aforestated notice, further action was initiated by issuing a 'De-occupation Notice' dated 08.12.2017, under Section 56 sub-Section 2(A) and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971.

16. The Learned Counsel for Respondents 1 to 4 points out that the 5th Respondent being dissatisfied with the action taken against him, gave a complaint on 15.09.2017 against the Petitioners' requesting to take action against their building, as they have not let any front set back area in the continuous built-up area. In fact, on receipt of the complaint from the 5th Respondent,

action was initiated against the Petitioners by issuing a Stop Work Notice/Notice dated 21.09.2017, calling for Approved Plan under Section 56(1) and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, to the 1st Petitioner herein. Since the 1st Petitioner had failed to comply with the aforesaid notice, further action was initiated by issuing a Lock and Seal and Demolition Notice dated 21.10.2017 under Section 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971. After the lapse of the statutory period of the aforesaid notice, further action was initiated against the Petitioners by issuing a 'De-occupation Notice' dated 08.12.2017 under Section 56 sub-Section 2(A) and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971.

17. The Learned Counsel for Respondents 1 to 4 strenuously projects an argument that the Petitioners' premises at Door No.18/2, Narayana Maistry Main Street, Otteri, Chennai-600012 and the 5th Respondent's premises at Door No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600012 was locked and sealed by the officials of Greater Chennai Corporation on 07.02.2018.

18. Aggrieved by the Lock and Seal Notice, the 5th Respondent preferred an Appeal before the Secretary, Housing and Urban Development Department. The Additional Secretary (Technical), Housing and Urban Development Department, after carefully considering the Appeal, passed an order on 09.02.2018, which runs as under:

"5. In the circumstances stated above, after careful consideration, the Government has decided to accept the request of the appellant and the Government hereby grants a further period of 3 months time to rectify the defects and stay on enforcement action.

6. The Member Secretary, Chennai Metropolitan Development Authority/the Commissioner, Greater Chennai Corporation is directed to pursue action accordingly. ..."

19. Added further, as per the orders of the Additional Secretary (Technical), Housing and Urban Development Department, the 5th Respondent's premises at No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600 012 was de-sealed on 16.02.2018 for rectification. In the meanwhile, the petitioners filed the present Writ Petition and this Court, on 09.02.2018, had directed the Respondents 3 and 4 to file status report enclosing a copy of the Topo Sketch, FMB/Layout, as the case may be and the Petitioners were directed to implead the jurisdictional Tahsildar and the Area Officer of the TNEB/TANGEDCO, by then.

20. The Learned Counsel for Respondents 1 to 4 brings it to the notice of this Court that the Petitioners have not impleaded the jurisdictional Tahsildar and the Area Officer of TNEB/TANGEDCO. However, the Learned Counsel for Respondents 1 to 4 contends that a Letter dated 21.02.2018 was addressed to the Tahsildar, Purasawalkam Taluk, requesting to furnish the Topo Sketch, FMB/Layout and on receipt of the aforesaid Letter, the Tahsildar, Purasawalkam Taluk had furnished the Topo Sketch, Block Map and a copy of the sub-division of the land in S.No.2847/14, in which, it was clearly shown that there is no common passage between the Petitioners' premises and the 5th Respondent's premises.

21. At this juncture, the Learned Counsel for the 5th Respondent points out that the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai, had addressed a communication in Letter No.28759/UD-VI(2)/2017-1, dated 09.02.2018 to the Member Secretary, Chennai Metropolitan Development Authority, Chennai; the 1st Respondent/Commissioner, Greater Chennai Corporation, Chennai and the 5th Respondent (R.Murugan), inter alia stating that after careful consideration, the Government had decided to accept the request of the Appellant (5th Respondent, who preferred an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971) and the Government granted a further period of three months' time to rectify the defects and stay of enforcement action. Further, the Member Secretary of Chennai Metropolitan Development Authority and the 1st Respondent/Commissioner, Greater Chennai Corporation were directed to pursue action accordingly.

22. Based on the above, the Learned Counsel for the 5th Respondent draws the attention of this Court to the Letter dated 18.05.2018 vide No.28759/UD-VI(2)/2017-3, addressed by the Under Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9, whereby and whereunder, the Compliance Report with reference to Development Regulation was sought for from the 1st Respondent/Commissioner, Greater Chennai Corporation, Chennai - 600 003 and added further, a Report was directed to be sent to the Government immediately.

23. It is represented on behalf of Respondents 1 to 4 that a Report as sought for by the Under Secretary to Government vide Letter dated 18.05.2018 was sent by the 2nd Respondent/Executive Engineer, Corporation of Chennai, Zone-VI, Ayanavaram, Chennai-600 023 vide Letter dated 18.06.2018, stating that the 5th Respondent is still to complete the rectification works, inter alia to the effect, which runs as under:

"Based on the complaint received from neighbor Tmt. D.Lakshmi, the building premises at Door No.18/1, Narayana Maistry Main Street, Otteri, Chennai 600 012 owned by Th.R.Murugan was inspected and noticed that the building constructed with violation and deviation beyond the sanctioned plan and hence, it was locked and sealed on 07.02.2018 as per Town and Country Planning Enforcement Act, with due process of law.

In the above circumstances, the applicant Th.R.Murugan has preferred a 80A Application before the Secretary to Government, Housing and Urban Development Department. Based on the orders from the Housing and Urban Development Department, the applicant has made some rectification work carried out in the said premises and submitted the rectification plan to Secretary to Government, Housing and Urban Development Department vide ref (1) cited above and since it needs special sanction, the entire file was forwarded to Works department vide ref (2) cited above. After the scrutiny made by Works Department, remarks were offered from the Works Department vide ref (3) cited above stating that: "It is requested to instruct the applicant/building owner to rectify the defect noticed in deviation and restore the building as per the approved drawing within stipulated period as directed by the Government." and this remarks were communicated by a letter to the applicant Th.R.Murugan address vide ref(4) cited above and which was acknowledged by the applicant on 02.08.2018."

24. At this stage, it is to be mentioned that in the Letter No.28759/UD-VI(2)/2017-4, dated 18.06.2018 of the Additional Secretary (Technical) of the Housing and Urban Development Department, Secretariat, Chennai 600 009, the Government had granted stay on enforcement action of Greater Chennai Corporation for a further period of three months in the building in question.

25. Be that as it may, on a careful consideration of respective contentions and also taking note of the fact that the 5th Respondent was granted time till 16.09.2018 (based on his representation dated 14.06.2018) to rectify the defects, this Court directs the 5th Respondent to scrupulously adhere to the time limit prescribed by the concerned Authority.

26. Therefore, this Court, based on Equity, Fair play and Good Conscience, directs the 5th Respondent to rectify the defects on or before 16.09.2018 to avoid any further enforcement action by the 1st Respondent/Commissioner, Corporation of Chennai. It is abundantly made quite clear that if the 5th Respondent fails to adhere to the time granted by the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai-9 vide Letter dated 18.06.2018, then, it is open to the 1st Respondent/Commissioner, Corporation of Chennai, through the concerned officials to take necessary action in accordance with the Tamil Nadu Town and Country Planning Act, 1971, Building Rules and Regulations and Law and the said action must be taken to its logical end without fail.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.3524 of 2018 is closed.

Sd/-
Assistant Registrar (CSiv)

//True Copy//

Sub Assistant Registrar

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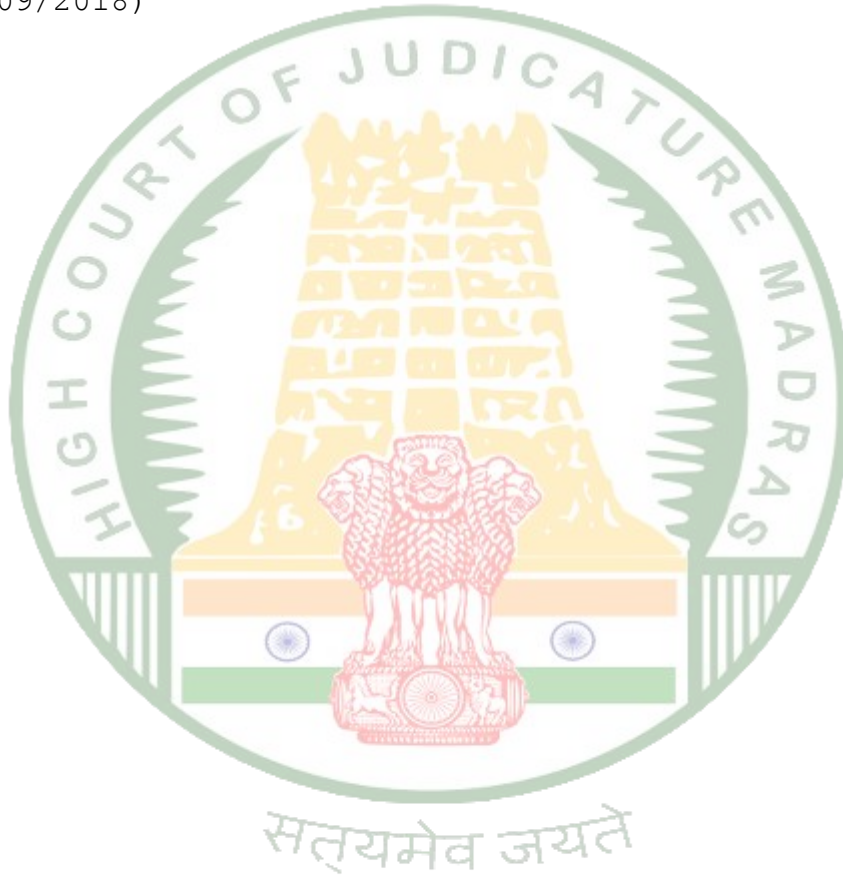
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+1cc to Mr.D.Gubendraguna Balan , Advocate SR.No. 57059
+1cc to Mrs.Meera Gnanasekar , Advocate SR.No. 57331

Order in
W.P.No.2856 of 2018

ASK(19/09/2018)



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