

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.2858 of 2018 and WMP.No.3526 of 2018

K.Shanthi

.. Petitioner

Versus

- 1.The Government of Tamil Nadu
rep.by its Secretary
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
- 3.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai-600 005.
- 4.The Executive Engineer,
Zone-9, Corporation of Chennai,
No.1, Lake Area, 2nd Street,
Nungambakkam,
Chennai-600 034.

सत्यमेव जयते

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the 2nd to 4th respondents i.e., The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai-600 003, The Chairman, Tamil Nadu Slum Clearance Board, Chennai-600 005, the Executive Engineer Zone-9, Corporation of Chennai, No.1, Lake Area, 2nd Street, Nungambakkam, Chennai-600 034 not to take any coercive steps to demolish the buildings put up in plot No.337, Door No.196, East Namachivayapuram, Chennai-600 094, except under due process of law.

For Petitioner : Mr.K.Balakrishnan

For Respondents : Mr.A.N.Thambidurai, Spl GP for R1
Mr.K.Soundarajan for R2 & R4
Mr.S.Prabhu for R3

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 claims that a site/plot admeasuring to an extent of 450 sq.ft at No.196, East Namachivayapuram, Chooladimedu, Chennai-600 094, bearing plot no.337 was allotted in favour of her husband viz., Karmegam, in the year 1994 and thereafter, the land was surveyed by the 3rd respondent, after issuing a notice dated 13.05.1994 in H.S./217/1994, the petitioner was also called upon to pay a sum of Rs.40/- as survey charges and he has paid also.

3. It is the claim of the petitioner that she is residing in the plot by putting up superstructure from the year 1995 onwards and the said property is also subjected to statutory levies and the premises in question have been given electricity connection and she has also issued with Aadhar card and given other benefits by the State Government.

4. The Grievance of the petitioner is that all of a sudden, steps are being taken to dispossess her from the site/superstructure, without recourse to due process of law and therefore, constrained to approach this Court by filing this writ petition.

5. The writ petition was entertained and notices were ordered.

6. The 3rd respondent has filed a counter affidavit stating among other things that East Namachivayapuram street, Choolaimedu, Chennai-600 094 was initially taken by Chennai Metropolitan Development Authority and later, was transferred to Tamil Nadu Slum Clearance Board and now comes under the control of Estate Office-5 and in the said scheme, on the western side of Plot No.338, Southern side of the temple and northern side of the Children's nutrition Centre, there is an unnumbered plot meant for Public well and the total extent of said area is 199.5 sq.m and in that plot, the petitioner had encroached upon 36 sq.m of land without the permission of Tamil Nadu Slum Clearance Board and put up superstructure consisting of ground + First and

Second floor and she is residing there. It is further averred by the 3rd respondent that plot No.337 is not encroached by the petitioner and it is in occupation of Chennai Corporation School and combined Children's Development Center.

7. The 4th respondent has filed the counter affidavit stating that disputed property belongs to Tamil Nadu Slum Clearance Board. The petitioner is in occupation of the same without getting any proper allotment order and she has also put up superstructure consist of ground + First and Second floor and Head room in the Third Floor with a total plinth area of 1712 sq.ft in the year 2012. Insofar as the claim of the petitioner that she has preferred an appeal as to the threat of locking and sealing and demolition is concerned, the 4th respondent has denied that no such appeal is pending on the file of the Tamil Nadu Housing and Urban Development, Greater Chennai-89 and prays for dismissal of the writ petition.

8. The learned counsel appearing for the petitioner would submit that since the land in question is allotted in favour of the petitioner's husband and by way of succession, she is in possession and enjoyment of the same along with superstructure from the year 1992 onwards. She cannot be dispossessed except under due process of law and would further aver that an appeal was submitted by her with regard to threat of locking and sealing and demolition of the superstructure and it may be directed to be disposed of by the appellate authority within a time frame.

9. Per contra, the learned counsel appearing for the 3rd respondent would submit that land in question is reserved for public well and the petitioner has encroached upon the land admeasuring to an extent of 36 sq.m without any authorisation and she has put up superstructure.

10. The learned standing counsel appearing for the 4th respondent would submit that the petitioner without any planning permission has put up unauthorised structure having total plinth area of 1712 sq.ft. As far as the site is concerned, she is not the owner.

11. This Court has carefully considered the rival submission and also perused the materials placed before it.

12. Insofar as the submission made by the learned counsel appearing for the petitioner that she has filed an appeal against the threat of locking and sealing and demolition is concerned, the letter of Tamil Nadu Housing and Urban Development Department, Secretariat, Chennai-9, bearing no.5751/UD-VI (1)/2018-1, dated 14.03.2018 would disclose that

no such appeal is pending on their file. Counter affidavit of the 2nd respondent would indicate that the petitioner is in unauthorised occupation of 36 sq.m of land and as per the counter of the 4th respondent, she has put up unauthorized superstructure consisting of ground + First and Second Floor with head room in the Third Floor with total plinth area of 1712 sq.ft without any planning permission. In the light of the same, it is open to the 2nd respondent to follow the due process of law and evict the petitioner from the land in question within a period of eight weeks from the date of receipt of copy of this order and it is also open to the 3rd and 4th respondent to follow the due process of law and demolish the unauthorised construction put up by the petitioner, within a period of ten weeks from the date of receipt of a copy of this order and decision in this regard shall be communicated to the petitioner.

13. With the above direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

14. Call on 21.04.2018 for filing status report of Tamil Nadu Slum Clearance Board as well as Corporation of Chennai.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sk/rka

To

- 1.The Secretary
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
- 3.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai-600 005.

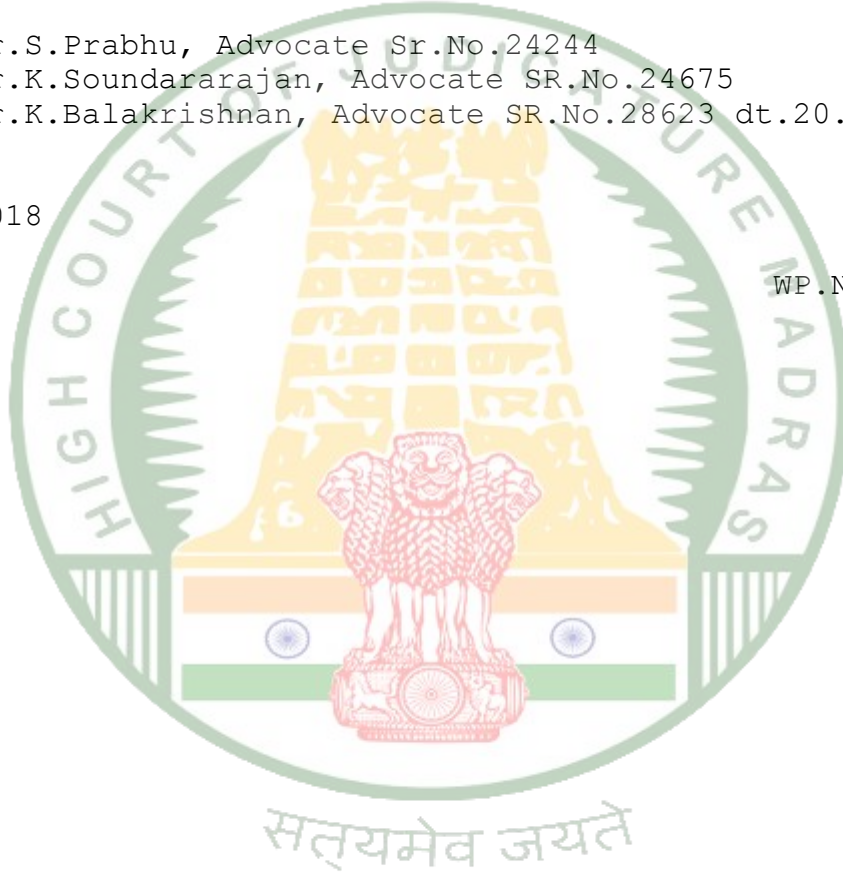
4.The Executive Engineer,
Zone-9, Corporation of Chennai,
No.1, Lake Area, 2nd Street,
Nungambakkam,
Chennai-600 034.

Copy to:The Section Officer,
Writ Section,
High Court, Madras
(Post on 21.4.2018 and to
watch status report)

+1cc to Mr.S.Prabhu, Advocate Sr.No.24244
+1cc to Mr.K.Soundararajan, Advocate SR.No.24675
+1cc to Mr.K.Balakrishnan, Advocate SR.No.28623 dt.20.4.2018

GJII(CO)
sm:19.4.2018

WP.No.2858/2018



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