

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.24693 of 2010
and
M.P.Nos.2 of 2010, 2 of 2015 and 3 of 2015

S.Mahalakshmi ... Petitioner

Vs.

1. The President,
Nerkundram 1st Grade Panchayat,
Villivakkam, Panchayat Union,
Chennai-107.

2. The Executive Officer,
Nerkundram 1st Grade Panchayat,
Villivakkam, Panchayat Union,
Chennai-107.

3. M.Venkatesan
(Third respondent impleaded vide order
dated 10.01.2018 passed in
W.M.P.No.786 of 2018
in W.P.No.24693 of 2010)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondents eviction notice in Na.Ka.No.04/2010, dated 08.10.2010 and quash the same.

For petitioner : Mr.S.Jimraj Milton

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for R-1
Ms.Karthikaa Ashok for R-2
Mr.V.Stalin for R-3

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the

records of the respondents 1 and 2's eviction notice in Na.Ka.No.04/2010, dated 08.10.2010 and quash the same.

2. Since the third respondent is residing in S.No.304 of Nerkundram Village belonging to the Tamil Nadu Housing Board where the writ petitioner had encroached 20 feet Road and constructed her house and prevented others from using the road, and during the pendency of the Writ Petition, as there was no objection on behalf of the writ petitioner and the respondents 1 and 2, the third respondent is impleaded, vide order dated 10.01.2018 passed in W.M.P.No.786 of 2018 in W.P.No.24693 of 2010.

3. It is the case of the petitioner that she is residing in the property in S.No.304 and had been paying house tax to the local body and obtained the electricity service connection and that she has not encroached the road. She was in possession and enjoyment of the property for more than twenty years and that there is a patta issued to two persons. There is a patta in the name of the petitioner. According to the petitioner, the respondent-authorities are trying to evict the petitioner and also trying to demolish the property. It is further stated by the petitioner that an eviction notice dated 17.09.2010 was issued to the petitioner stating that she had encroached the road and constructed the house and that if the petitioner fails to vacate the premises on his own, proper steps would be taken to evict him. It is further averred by the petitioner that no proper procedures had been followed before issuing the said eviction notice and without verification of the Revenue Records, steps have been taken to evict the petitioner. According to the petitioner, there is no mention about the survey number and the road in which the petitioner has encroached, which would entitle the petitioner to succeed and this Court may quash the impugned order. It is further submitted that the property is a private property and that the respondents 1 and 2 have no right whatsoever to evict the petitioner from the private property. It is also stated that there is violation of principles of natural justice and that the petitioner has not encroached upon the property and hence, the impugned notice dated 08.10.2010 is liable to be quashed.

4. The Nerkundram 1st Grade Panchayat / Villivakkam Panchayat Union, got merged with the Corporation of Chennai, which has filed counter affidavit stating that the land comprised in S.No.304 in Nerkundram Village, Maduravoyal Taluk, belongs to the Tamil Nadu Housing Board as per the Revenue Records. The writ petitioner has encroached 20 feet which had neither been handed over nor gifted to the Corporation of Chennai. However, the Tami Nadu Housing Board has given No Objection Certificate dated 18.10.2016 for laying the road in the land comprised in S.No.304. In fact, there was a complaint from one Mr.Venkatesan (impleaded third respondent) to the District Registrar on the issuance of purported sale deed, based

on which, the writ petitioner has encroached upon the land. The petitioner has occupied 20 feet road and the impugned notice to evict the petitioner who is an encroacher, is not illegal. As the prayer fought for by the petitioner is devoid of merits, the Writ Petition may be dismissed.

5. Learned counsel for the impleaded third respondent submitted that the third respondent is one of the residents and that he has given a complaint, based on which, action has been taken and there is also a suit in O.S.No.100 of 2017 pending on the file of the District Munsif Court, Poonamallee, which is filed by the writ petitioner much later to the filing of the present Writ Petition and that after verification of the files and records, the authorities have decided to remove the encroachment made by the writ petitioner.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner has not produced any document to show that she is the owner of the property to the extent of land that has been encroached by her, as contended by the respondents. In the said civil suit, an interlocutory application in I.A.No.226 of 2017 in O.S.No.100 of 2017 is filed by the writ petitioner herein who is the plaintiff in the said suit and in the affidavit filed in support of the said I.A., she has stated that the property in question is a Government poramboke land. The petitioner is taking a different stand before different Courts, as in the present writ petition, she has stated that the property is a private property, but in the affidavit filed in the said I.A., she has stated that the property is a Government poramboke land.

8. That apart, the petitioner has not produced any document before this Court to show that she is the owner of the property to the extent of the land which she has encroached. As per the records produced by the respondents and pleadings made therein, it is clear that the petitioner has encroached upon the road. The petitioner contended that during the pendency of the Writ Petition, she has filed a petition to amend the prayer in the Writ Petition and also filed a petition to raise additional grounds in the Writ Petition. During the operation of interim order, the building had been demolished and that she has approached the Civil Court by filing the said suit and that the prayer in the Writ Petition needs to be amended and that compensation of Rs.5 lakhs need be awarded to her.

9. Even assuming that the petitioner is entitled to amend the prayer in the Writ Petition, the relief sought for by the petitioner either in respect of the original prayer sought for in the writ petition filed for issuance of a Writ of Certiorari or in the amendment petition to amend the prayer into one of issuance of a Writ of Certiorarified Mandamus, cannot be granted, as the petitioner has encroached the road and constructed building. The petitioner is a rank encroacher and

that due opportunity has been given to her to remove the eviction on her own, failing which, it was observed that action would be taken. For the sake of convenience, Section 220 of the Chennai City Municipal Corporation Act is extracted below:

"Section 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."

10. From the above extracted Section 220, it is clear that any land abutting a public road, will be a public place within the meaning of Section 220 and merely because the Corporation has collected the licence fee, it cannot make the occupation of the petitioner as lawful, when it is proved that the original occupation of the petitioner was without the prior permission of the authorities of the Corporation or Government.

11. Such being the case, and there being no permission granted for the petitioner to occupy the land and since there is prohibition as contemplated under Section 220 of the said Act, it is clear that the petitioner has encroached upon the street, which is a public place, and hence, no indulgence can be shown to the petitioner. Since we are not granting the relief sought for by the petitioner in the Writ Petition as filed originally for writ of Certiorari before this Court before seeking for amendment of the prayer in the Writ Petition, we find that there is no need to amend the relief sought for initially by the petitioner, as the prayer sought to be amended is not going to help the petitioner in any manner and it is for the petitioner to work out her remedy before the appropriate forum, as there are disputed questions of fact. Except admitting the fact that the petitioner is an encroacher, the petitioner has stated that there is custodial assail by the third respondent, and hence, this is not the forum where the petitioner is seeking relief to quash the eviction notice.

12. Though the petitioner has also filed a petition in M.P.No.3 of 2015 to raise additional grounds in the Writ petition, the same is also not relevant to the facts and circumstances of the case.

13. Moreover, it is to be noted that as we come across several cases of encroachment on the roads, the Corporation of Chennai/other Corporations/Panchayats/Municipalities/Panchayat Unions/Town Panchayats, as the case may be, will have to depute staff to all the areas under their control, to measure the land (s) of the persons after asking the residents to produce the schedule of the property, by verifying the original documents available in the Sub-Registrar Office, based on the earliest lay out and the authorities must ensure that the width of the road

is restored. For this purpose, the Taluk/Firka Surveyor and other concerned persons, in the presence of the respective residents, shall measure the land(s) in question from the rear portion of the property, so that the length and breadth of the respective sites of those persons would come to light and it will be easy for the authorities to identify the width of the road and based on that, the encroachers can be asked to remove the encroachment, failing which, the authorities may inform the respective Area Engineer of TNEB/TANGEDCO and request them to disconnect the electricity supply, as this Court, in a number of cases, held that if the construction is in violation of the plan or if there is road encroachment, the electricity supply shall be disconnected forthwith. The residents may be asked to rectify the defects and if they fail to do it, till the rectification takes place, there shall not be any electricity supply to the whole building.

14. Further, the appellate authorities are able to pass interim orders few hours of receipt of an application/appeal from the violator, questioning the lock and seal notice, without even hearing the authority who has passed the order of lock and seal and also without hearing the complainant, if any. There is no reason as to why such speedy action is not done in disposing of the appeal one way or the other. As per the provisions of the Tamil Nadu Town and Country Planning Act for passing interim order, there cannot be any blanket order, and the authorities concerned must ensure that the violated portions shall be kept under lock and seal till the disposal of the appeal, and as noted above, if required, request the Tamil Nadu Electricity Board/TANGEDCO to disconnect the electricity supply to the violated portion till the appeal is decided. If these kinds of interim orders are passed, the violators would be keen in getting a final order at the earliest. Otherwise, by means of the interim orders or keeping the appeal pending, the law abiding citizens are made a laughing stock before the violators and the authorities, including the appellate authority under the said Tamil Nadu Town and Country Planning Act.

15. Further, it is to be remembered that alternative remedy is not a bar to entertain the Writ petition for removal of encroachments, if a person encroaches the public road, Open Space Reserve, lake, park, etc; so also, the alternative remedy is not a bar to seek for demolition of building if constructed in violation of the plan or there is no plan at all. The District Municipalities Act, The Tamil Nadu Town and Country Planning Act, The Tamil Nadu Panchayats Act and the Tamil Nadu Land Encroachment Act, are all not dynamic in nature. Instead of evicting the illegal persons, it gives room for the violators to continue by approaching this Court and stall the entire proceedings. These enactments try to regulate the illegalities, rather than curtailing it. Otherwise, as observed earlier, the law abiding citizens who follow the legal procedures, become a

mockery before the violators. In this context, it is worthwhile to quote a decision of the Supreme Court reported in 2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma), in which the Apex Court held as follows:

"15. An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law....."

(emphasis supplied)

Though the said verdict of the Supreme Court is one under the Industrial Disputes Act, the principle laid down by the Apex Court is that every citizen should be law abiding person and no one shall violate the law.

16. In Priyanka Estates International Pvt. Ltd. Vs. State of Assam (2010 (2) SCC 27), the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storied buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

17. In yet another decision pertaining to the construction of buildings in violation of Rules, in the case of Shanti Sports Club v. Union of India reported in 2009 (15) SCC 705, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

18. As rightly pointed out by a Division Bench of this Court (Madurai Bench) consisting of Hon'ble Mr. Justice N. Kirubakaran and Hon'ble Mrs. Justice R. Tharani, in W.P.(MD).No.1798 of 2018, vide order dated 30.01.2018, the corrupt officials will corrupt the society. It is useful to extract the relevant portion of the said order of the Madurai Bench of this Court, as follows:

".... If the public post are purchased using money power, the person who purchase will not keep quiet as an officer and he will try to get back his money with interest. In the process, he will make

public office only to earn money illegally. This would affect the Government administration" Without the help of the officials, there can't be any violations in constructions/encroachment.

19. We are also reminded of a French proverb, "when money speaks, truth is silent."

20. Furthermore, if the violators contend that the authority cannot ask the Tamil Nadu Electricity Board to disconnect the supply of electricity, no interim order need be passed and that the violated portions shall be kept under 'lock and seal'.

21. Unless the law is stringent, the violators will continue to violate and that the Courts/Authorities must be very slow in granting interim orders and only after getting the details/status report from the respective authorities, including the Courts/Appellate Authorities/The Secretary, Revenue Department, Secretariat, Chennai, Commissioner of Corporation of Chennai, The Secretary, Housing and Urban Development Department, Secretariat, Chennai, The Member Secretary, Chennai Metropolitan Development Authority, Egmore, Chennai, The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai, The Director of Town and Country Planning, Chennai, and after verifying the Revenue Records, which will give a Bird's eye view on the entire issue on hand and after hearing the complainant, if any, and others concerned, a decision shall be taken by the above Authorities/Courts. These authorities shall circulate a copy of this order to other Authorities, namely the Municipalities/Panchayats/Panchayat Unions/Town Panchayat/Corporations, etc., who deal with the removal of encroachment and illegal construction.

22. For the foregoing reasonings, the Writ Petition is dismissed. The petitioner shall vacate the premises in question within a period of 15 days from the date of receipt of a copy of this order, failing which it is open for the Corporation of Chennai (since the Nerkundram 1st Grade Panchayat / Villivakkam Panchayat Union merged with the Corporation of Chennai) to remove the encroachment in question made by the petitioner, if the petitioner still continues in the same and the Corporation of Chennai is at liberty to collect necessary charges from the petitioner for removing such encroachment and if necessary, the Police assistance shall be given to the Corporation of Chennai for such removal of encroachment.

23. No costs. Consequently, the Miscellaneous Petitions are closed.

24. Post before us on 16.03.2018 "for reporting compliance".

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The President,
Nerkundram 1st Grade Panchayat,
Villivakkam, Panchayat Union,
Chennai-107.
2. The Executive Officer,
Nerkundram 1st Grade Panchayat,
Villivakkam, Panchayat Union,
Chennai-107.
3. The Commissioner,
Corporation of Chennai, Chennai.
4. The Secretary, Revenue Department, Secretariat, Chennai.
5. The Secretary, Housing and Urban Development Department,
Secretariat, Chennai.
6. The Member Secretary, Chennai Metropolitan Development
Authority, Egmore, Chennai.
7. The Chairman, Tamil Nadu Electricity Board, Anna Salai,
Chennai.
8. The Director of Town and Country Planning, Chennai
9. The Section Officer, Writ Section, High Court, Madras

+1cc to Mr.S.Senthamil Selvan, Advocate Sr.No.7573

+1cc to Mr.V.Stalin, Advocate Sr.No.7628

+1cc to M/s.Karthikaa Ashok, Advocate Sr.No.7914

SS(CO)

sm:22.2.2018

W.P.No.24693 of 2010

सत्यमेव जयते

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