

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

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

W.P.No.29755 of 2016
and
W.M.P.No.25734 of 2016

P.Ramakrishnan ... Petitioner

Vs.

1. The Commissioner,
Greater Corporation of Chennai,
Chennai-600 003.
2. The Junior Engineer,
Greater Corporation of Chennai,
Alandur Zone-XII,
Division No.156, Part-35,
Mugalivakkam,
Chennai-600 125.
3. The Tahsildhar,
Sriperumbudur Taluk,
Kancheepuram District.
4. The Tahsildar,
Alandur,
Kancheepuram District.

(Fourth respondent is impleaded as per
order dated 23.09.2016 in W.M.P.No.28231
of 2016 in W.P.No.29755 of 2016)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent's proceedings dated 16.08.2016, quash the same and thereby forbear the respondents in any way evict the petitioner from the property

situated at Old No.1/542, New No.1/746, Sabari Nagar, A.G.S.Colony, Mugalivakkam, Chennai-600 125, comprised in Survey No.48/4 without due process of law.

For petitioner : Mr.Durai Gunasekaran

For respondents: Mr.R.Arun Mozhi for RR-1 and 2

Mr.R.Prathap Kumar, Addl.G.P. for R-3

Mr.A.N.Thambidurai, Spl.G.P. for R-4

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 Certiorarified Mandamus to call for the records of the second respondent's proceedings dated 16.08.2016, quash the same and thereby forbear the respondents in any way evicting the petitioner from the property situated at Old No.1/542, New No.1/746, Sabari Nagar, A.G.S.Colony, Mugalivakkam, Chennai-600 125, comprised in Survey No.48/4 without due process of law.

2. The petitioner was issued with a notice with regard to the removal of encroachment as early as in the year 1998 itself and S.No.48/4 in which the petitioner is said to have been in occupation, is 'Vaikkal' (tha;f;fhy;) and that the petitioner had a dispute with the third party, for which a civil suit was filed in O.S.No.460 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur (since transferred from District Munsif Court, Poonamallee in O.S.No.127 of 2003) and ultimately, it was withdrawn. Even though the civil suit is between two private parties, the petitioner has not produced any proof to establish his title to the property in question. Learned Additional Government Pleader appearing for the third respondent produced Tahsildar's Certificate, dated 31.08.2016 issued to the Junior Engineer, Division 156, Part 35, Mugalivakkam, Alandur Zone-12, Chennai-600 125, from which it is clear that the property in question does not belong to the petitioner and the petitioner has been paying necessary charges and B-Memo receipt has also been issued to the petitioner.

3. It is trite from a catena of decisions of the Apex Court that possessing Family Ration Card, obtaining electricity connection, paying statutory taxes before the authorities, etc., cannot be a ground to demand possession or claim right over the property, which actually belongs to the Municipality/Panchayat/Corporation/Government.

4. It is also to be noted that the Supreme Court observed in number of cases that the authorities cannot and shall not regularise the Open Space Reserve (OSR) and set-backs, as they are like lung space of the area.

5. The case of the petitioner is that no opportunity has been given, is not correct, as there was notice as early as on

15.07.1998. Nearly two decades have gone-by. The contention of the petitioner that there is violation of principles of natural justice, also cannot also be accepted, as no prejudice had been caused to the petitioner all along and that, at present, even a public park has come up in the place in question and the petitioner cannot be permitted to occupy the place. The contention of the petitioner that the impugned notice dated 16.08.2016 has got to be quashed, and that the respondents shall be prevented from evicting the petitioner from the place, cannot also be countenanced. As stated supra, as S.No.48/4 belongs to the Government/Corporation and even though the petitioner was paying necessary charges/taxes under the head B-Memo, the relief sought for by the petitioner cannot be granted, more particularly, when the portion encroached upon by the petitioner is an OSR, which is evident from the impugned letter dated 16.08.2016 of the said Junior Engineer of Alandur Zone-12, Mugalivakkam, Chennai, addressed to the petitioner.

6. If the petitioner has still not been evicted, the respondents are directed to take steps to evict the petitioner from the place in question, within a period of one month from the date of receipt of a copy of this order.

7. With the above observations and direction, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Commissioner,
Greater Corporation of Chennai,
Chennai-600 003.

2. The Junior Engineer,
Greater Corporation of Chennai,
Alandur Zone-XII,
Division No.156, Part-35,
Mugalivakkam,
Chennai-600 125.

3. The Tahsildhar,
Sriperumbudur Taluk,
Kancheepuram District.

4. The Tahsildar,
Alandur,
Kancheepuram District.

+1cc to Mr.S.Vijayakumar, Advocate Sr.No.836
+1cc to M/s.R.Arunmozhi, Advocate SR.No.843
+1cc to Government Pleader Sr.No.1117

KJ(co)
sm:7.2.2018

W.P.No.29755 of 2016



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