

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.8678 of 2017
and

W.M.P.Nos.9511 of 2017 and W.M.P.No.12126 of 2017

D.S.Mani alias D.Subramani

.. Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.

2.The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai - 8.

3.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

4.The Chairman,
Chennai Metropolitan Water Supply
and Sewerage Board, Pumping
Station Road, Chennai - 2.

5.The Executive Engineer,
Corporation of Chennai,
War-64 Office
Anjugam Nagar, 4th Street,
Kolathur, Chennai - 600 099.

6.The Assistant Engineer,
Corporation of Chennai,
War-64 Office
Anjugam Nagar, 4th Street,
Kolathur, Chennai - 600 099.

7.Jayavel (died)

8.A.N.Lokesh

9.M.Rajan

(R9 is substituted as LR of Jayavel, as per order dated 28.06.2018 in W.M.P.No.2456 of 2018 in W.P.No.8678/2017)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 1 to 6 to consider the representation given on 13.01.2017 consequently direct the respondents to take appropriate action to stop further construction activity in the petition premises in the event the construction is being carried out against law.

For Petitioner : Mr.R.Udayakumar
For RR 1, 5 & 6 : Mr.V.C.Selvasekaran
For R2 : Mr.S.N.Parthasarathy
Government Advocate
For R3 : Mr.P.R.Dilip Kumar
For R4 : Mr.N.Ramesh
For R7 : M/s.Vincent & Vincent
Christopher Kishore
For R8 : Mr.S.Annamalai

O R D E R

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

Heard both sides.

सत्यमेव जयते

2.The Petitioner in his representation/complaint dated 13.01.2017 addressed to the 6th Respondent/Assistant Engineer, Corporation of Chennai, War-64 Office, Anjugam Nagar, 4th Street, Kolathur, Chennai had stated that the property bearing No.15/29, 1st Street, Haridass Nagar, Kolathur, Chennai - 600 099, a vacant house site admeasuring about 4788 sq.ft. originally belonged to one Jayavel [7th Respondent - since deceased and his Legal Representative has been substituted as per order dated 28.06.2018 in W.M.P.No.2456 of 2018] and his wife Pappammal, they having jointly purchased the same by means of a registered Sale Deed. During their life time, they had constructed a house

and lived therein and the said Pappammal died leaving behind a Will bequeathing her one half undivided share of right in the schedule property in question in the name of his brother's son Sridhar (Petitioner's son) and appointed the Petitioner as the Executor under the Will etc.

3. Apart from that, the complaint of the Petitioner dated 13.01.2017 proceeds to point out that when the existence of Will was brought to the notice of the 7th Respondent (later died), he ignored the Will and claimed absolute ownership over the property. It appears that a pre-litigation notice was sent to one A.N.Lokesh S/o.A.S.Nagaiah, No.1A, Lakshmi Nagar 1st Street, Perambur, Chennai - 600 011 and to the 7th Respondent and they failed to adhere to the notice after receiving the same. In fact, they ventured upon an illegal construction which resulted in filing of the suit in O.S.No.4049 of 2016 on the file of the Learned XIII Assistant Judge, City Civil Court, Chennai. Furthermore, an Appeal was preferred and another original suit were filed by the respective parties.

4. In pith and substance, the complaint of the Petitioner dated 13.01.2017 addressed to the 6th Respondent/Assistant Engineer, Corporation of Chennai, Coimbatore makes a pertinent mention about the illegal construction being carried on at a lightening speed and a police complaint was lodged, but no action was initiated. Hence, the Petitioner was perforced to address the complaint dated 13.01.2017 to the 6th Respondent whereby and whereunder a request was made to take his complaint on file and initiate appropriate action to stop illegal construction being carried out any further.

5. On behalf of the 5th Respondent, it is represented that on receipt of complaint from the Petitioner, the site in issue was inspected by the Assistant Executive Engineer, Unit - 15, Zone - VI and the Assistant Engineer, Division - 64, Unit - 15, Zone - VI on 30.01.2017 and after due inspection, a notice under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 dated 30.01.2017 was issued to the 7th Respondent.

6. It is further represented on behalf of the 5th Respondent that the 7th Respondent (during his life time) furnished two numbers of sanctioned plan vide Planing Permit PPA/D6/3039/2016 & Building Approval vide BANO.D6/3259/2016 and Planning Permit PPA/D6/3041/2016 & Building Approval vide BANO.3260/2016 for the premises at Door No.15/29, Haridoss Nagar, First Cross Street,

Kolathur, Chennai - 600 099. On perusal of the sanctioned plan, it came to light that the 7th Respondent had put up the said building by deviating the approved plan and since the 7th Respondent during his life time had failed to comply with the spirit and tenor of the notice issued, further action was initiated by issuing Lock and Sealing and Demolition notice dated 24.03.2017.

7.It is to be noted that pending Writ Petition, the 7th Respondent had expired and his Legal Representative was duly substituted as per order passed by this Court in W.M.P.No.2456 of 2017 dated 28.06.2018 and he was brought on record.

8.In this connection, the Learned Counsel, who appears for the Legal Representative of the 7th Respondent, informs this Court that the Appeal preferred by the 7th Respondent against the Lock and Sealing and Demolition notice dated 24.03.2017 was dismissed for default.

9.The Learned Counsel for the 8th Respondent submits that the 7th Respondent during his life time had preferred an Appeal under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971 and further that, the building will be completed strictly in accordance with Law.

10.As far as the present case is concerned, the relief sought for by the Petitioner in the Writ Petition is that for passing of an order by this Court in directing the Respondents 1 to 6 to consider his representation dated 13.01.2017 and consequently direct the Respondents to take appropriate action to stop further construction activities in the petition premises in the event of a construction is being carried out against Law.

11.In the instant case, the 5th Respondent/Executive Engineer, Corporation of Chennai had, in his counter, clearly stated that since the 7th Respondent during his life time had failed to comply with the notice issued in regard to the unauthorised construction, further action was initiated by issuance of Locking and Sealing and Demolition notice dated 24.03.2017 and in fact, the lock and seal was done on 27.06.2017. In effect, the Corporation authorities had taken action in respect of the deviated construction put up by the 7th Respondent during his life time in terms of the ingredients of the Tamil Nadu Town and Country Planning Act and in fact, the lock and seal of the building was made on 27.06.2017. As such,

this Court is of the earnest opinion that the grievance of the Petitioner in his complaint dated 13.01.2017 has been addressed by the concerned authorities. As such, this Court comes to an irresistible and inescapable conclusion that nothing survives for further adjudication in the present Writ Petition.

12. Accordingly, the Writ Petition stands disposed of. Before parting with the case, this Court makes it quite conclusion that it is open to the parties to take further action in respect of the deviated construction put up by the 7th Respondent during his life time and strictly in accordance with Law and they are at liberty to take lawful action to its logical end with a view to secure the ends of Justice. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.
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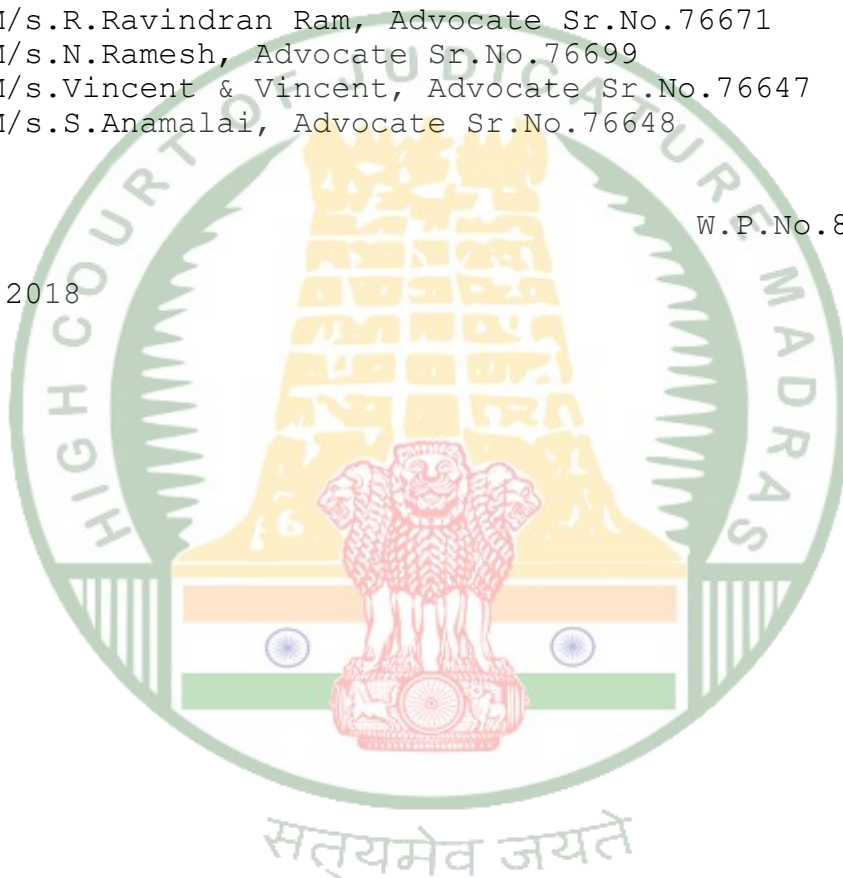
6.The Assistant Engineer,
Corporation of Chennai,
War-64 Office
Anjugam Nagar, 4th Street,
Kolathur, Chennai - 600 099.

7.The Government Advocate,
High Court, Madras.

+1 cc to The Government Pleader, Sr.No.77031
+1 cc to M/s.R.Ravindran Ram, Advocate Sr.No.76671
+1 cc to M/s.N.Ramesh, Advocate Sr.No.76699
+1 cc to M/s.Vincent & Vincent, Advocate Sr.No.76647
+1 cc to M/s.S.Anamalai, Advocate Sr.No.76648

KAN(CO)
CSL/28.11.2018

W.P.No.8678 of 2017



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