

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.28229 of 2017
and WMP No.30350 of 2017

V. Ethirajan

... Petitioner

Vs

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
EVR Salai,
Periamet,
Chennai - 600 003.
2. The Assistant Revenue Officer,
Corporation of Chennai,
Lake Area 4th Street,
Nungambakkam,
Chennai - 600 024.
3. The Executive Engineer,
Zone-X, Corporation of Chennai,
New No.117 Old No.64,
NSK Salai, Kodambakkam,
Near Power House Bus Stop,
Chennai - 600 024.
4. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irvin Road, Egmore,
Chennai - 600 008.
5. S.M. Fazal Mohammed
6. Mrs.N.A. Janeera

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the Respondents 1 to 4 to consider the Petitioner's representation dated 14.08.2017 and to initiate action against the unlawful and illegal construction effected by the Respondents 5 and 6 in the property bearing Door No.48-C, then No.112-A, presently Door No.132, Kodambakkam High Road, Chennai - 600 034, comprised in Survey No.627/1, 628, Kodambakkam Village and direct them to initiate appropriate action to demolish the illegal construction put up by them.

For petitioner : Mr.T. Velumani

For R.1 to R.3 : Mr.K. Soundararajan

For R.4 : Mr.Karthick Rajan

For R.5 & R.6 : Tapal returned "unclaimed".

ORDER

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

Heard the learned counsel for the Petitioner, Learned Standing Counsel for the Respondents No.1 to 3 and the learned Standing Counsel for the Fourth Respondent/Chennai Metropolitan Development Authority. Insofar as the Respondents No. 5 and 6, the Court Notice got returned with an endorsement 'unclaimed'. Hence, in respect of the Respondents No.5 and 6, the service is held sufficient.

2. According to the Petitioner, the property bearing No.48-A, New Door No.112, then No.134, Kodambakkam High Road, T. Nagar, Chennai - 600 017, measuring an extent of 2538 sq.ft., is forming part of the Estate of his grandfather Mr.Chellappa Chettiar. His grandfather had purchased the said property by means of two sale deeds of the year 1924 and 1929 respectively. The total extent of the property mentioned in the said document is only 1944 sq.ft., besides the aforesaid property, his grandfather also possessed further properties viz., (i) property bearing Door No.34 Veera Perumal Mudaliar Street, Mylapore, Chennai - 600 004, (ii) property bearing Door No.89, Kodambakkam High Road, T. Nagar, Chennai - 600 017 and (iii) a property at Kottivakkam Village. His grandfather expired in the year 1944, leaving behind his father Mr.Veerabadran Chettiar to inherit the properties.

3. The categorical stand of the Petitioner is that during the life time of his father, on 12.07.1959, his father had conveyed an extent of 464 sq.ft., in favour of one Louis and the balance extent of properties available in Door No.48-A, then Door No.112-A, presently Door No.134, Kodambakkam High Road, Chennai - 600 017, is only measuring 960 sq.ft.

4. In fact, in the year 1966, one Dilli and Mr.Ganesan, claiming rights, as they are the children, born through one Mrs.Veerammal claimed partition in the property and filed a Civil Suit in C.S.No.3 of 1966 on the file of this Court. In the said suit, the Petitioner's father had entered appearance and at that point of time, the Petitioner and his brother were minors, were represented through their father and their father had contested the matter. In the said suit, a compromise was entered into and since they were minors at that point of time, they were not aware about the events which coerced his father to enter into a compromise. A Compromise Decree was passed in C.S.No.3 of 1966 on 20.03.1968 and it was agreed that the property bearing Door No.48-A, Kodambakkam High Road, T. Nagar, Chennai-600 017 and as well as the property bearing Door No.34, Veera Peruaml Kovil Street, Mylapore, Chennai - 600 004 was allotted to the share of Mr.Dilli and Mr.Ganesan.

5. It comes to be known that as against the compromise decree dated 20.03.1968 in C.S.No.3 of 1966, Mr.Dilli and Mr.Ganesan filed Appeal in O.S.A No.3 of 1970 contending that they are also eligible for profit in the ' Laundry Business ' carried on by his father and the said claim was negatived and O.S.A.No.3 of 1970 was dismissed on 27.03.1974. Thereafter, the Petitioner's brother filed O.S.No.7613 of 1977 on the file of the trial Court seeking the relief of recovery of possession of B Schedule property in O.S.No.2815 of 2005 and to direct the Defendants therein to pay damages and for a permanent injunction restraining the Defendants from altering or dealing with the B Schedule property and for costs. The said suit was dismissed by the Learned XII Assistant Judge, City Civil Court, Chennai on 30.11.2009.

6. At this stage, the Learned Counsel for the Petitioner points out that the Petitioner's mother entered into an Agreement of Sale with Louis for purchasing the property measuring an extent of 464 sq.ft of built up area in old Door No.48-C, then No.112-A, present Door No.132, Kodambakkam High Road, Chennai - 600 034 comprised in Survey No.628, together with building, as well as in respect of the land measuring an extent of 1204 sq.ft, comprised in T.S.No.627/1. Inasmuch as the said Louis failed to execute the sale deed in favour of

Petitioner's mother, the Petitioner's mother has filed a suit against the said Louis in O.S.No.4160 of 1984 for the relief of Specific Performance. The said suit was decreed on 02.02.1985 by the learned XI Assistant Judge, City Civil Court, Chennai, in favour of Petitioner's mother in respect of Door No.48-C, then No.112-A, presently bearing Door No.132, Kodambakkam High Road.

7. Pursuant to the Decree passed in the Suit, the said Mr.Louis passed as per the Sale Deed dated 25.12.1985 had conveyed to items of properties viz., (i) all that land and house bearing Municipal Door No.112-A, (Old No.48-C-), present Door NO.132, Kodambakkam High Road, Nadras -34 in Corporation Division No.108, comprised in T.S.No.628 of Block No.36 of Nungambakkam village, measuring 464 sq.ft thereabouts (built up area 464 sq.ft.,) of patta land. (ii) All that superstructure house bearing Door No.112-A, old Door No/48-C. New No.132, Kodambakkam High Road Madras -600 034 in Corporation Division No.108, together with the lease-land. (Poramboke land rights to the land, comprised in T.S.No.627/1, extent 1204 sq.ft (built up area 464 sq.ft) bounded on the North by Corporation Road, South by Chellappa Chettiar's shop; east by Dhakshinamurthy's shop and west by Rajeswari's house in favour of Petitioner's mother.

8. The Learned Counsel for the Petitioner proceeds to point out that the property purchased by his mother in Door No.48-C, then No.112-A, New Door No.132, Kodambakkam High Road, Chennai - 600 034 is situated on the Northern side to the property allotted to Mr.Ganesan and Mr.Dilli in C.S.No.3 of 1966 viz., No.48-A, then Door No.112 and presently bearing Door No.134, Kodambakkam High Road, T.Nagar, Chennai - 600 017 and they are in exclusive possession of the property bearing 48-C, then No.112-A, New Door No.132, Kodambakkam High Road, Chennai - 600 034.

9. Indeed, the said Ganesan and the legal heirs of the deceased Dilli, the decree holder in C.S.No.3 of 1966 had jointly conveyed half undivided share in the entire property bearing Door No.48-A, New Door No.112, present Door No.134, Kodambakkam High Road, T. Nagar, Chennai - 600 017 comprised in Survey No.628, measuring 1944 sq.ft. In favour of one S.M. Fazal Mohammed (Fifth Respondent), as per Sale Deed dated 23.10.1996 (vide registered Document No.714 of 1996). Likewise, another half undivided share in the said property was executed in favour of Mrs.N.A.Janeera (wife of the Fifth Respondent) as per Registered Sale Deed dated 23.10.1996 (vide registered Document No.715 of 1996) on the file of Sub Registrar, Thousand Lights.

10. Continuing further, the Learned Counsel for the Petitioner bring it to the notice of this Court that the Petitioner came to know about the Sale Deed executed in favour of Mrs.N.A.Janeera and S.M. Fazal Mohammed (Sixth Respondent and Fifth Respondent) respectively and that the Petitioner filed separate suits to set aside the Sale Deed dated 23.10.1996, executed by Mr.Ganesan and Legal heirs of Dilli in favour of Mrs.N.A.Janeera (Sixth Respondent) in O.S.No.4700 of 2002 and to cancel the Sale Deed executed in favour of S.M. Fazal Mohammed (Fifth Respondent) executed by Mr.Ganesan and legal heirs of Dilli, in O.S.No.4701 of 2002.

11. When the suits were pending before the trial Court, the Fifth and Sixth Respondents (subsequent purchasers) filed a separate suit in O.S.No.2815 of 2005, seeking for recovery of possession in respect of 432 sq.ft., of built up area alleged to have been encroached by the Petitioner and others, which forms part of 1944 sq.f., in Door No.48-A, Kodambakkam High Road which was purchased by them as per Sale Deed dated 23.10.1996.

12. After contest, all the four Civil Suits in O.S.No.7613/1977, O.S.No.7938/2000, O.S.Nos.4700 & 4701/2002 were dismissed and a Decree was granted in favour of the 5th Respondent in O.S.No.2815 of 2005 by the Learned XII Assistant Judge, City Civil Court, Chennai. Being dissatisfied with the judgment and decree of the trial Court in O.S.No.2815 of 2005, the Petitioner and his brother projected a First Appeal in A.S.No.222 of 2010 before the Learned XV Additional Judge, City Civil Court, Chennai and the said Appeal came to be dismissed on 30.01.2015 etc.

13. In the interregnum, the Respondents No.5 and 6 projected Execution Proceedings to take possession of the 432 sq.ft., forming part of the property bearing Door No.48-A, present Door No.112, present Door No.134, comprised in R.S.No.628. However, the Respondents No.5 and 6 had taken possession of the entire/old property belonging to the Petitioner in Door No.48-C, then Door No.112-A, New Door No.132, Kodambakkam High Road, Nungambakkam, Chennai-600 034, comprised in Survey No.627/1 measuring 1204 sq.ft., in Survey No.628.

14. The prime plea of the Petitioner is that since the location of the property is disputed and excessive possession of the property was taken in Survey No.627/1, the Petitioner filed an Execution Application for re-delivering the property and the same is pending before the trial Court. Besides this, the Petitioner filed E.A.No.3178 of 2016 in E.P.No.1586 of 2010, in which, an Advocate Commissioner was appointed by an Executing

Court and the Advocate Commissioner filed his report, mentioning that there are two properties that exist in the schedule.

15. In this factual back ground, the grievance of the Petitioner is that the Respondents No.5 and 6 are hurriedly effecting construction in his property without obtaining any sanction plan from the concerned Authorities. In reality, the Petitioner is in possession and enjoyment of the said property.

16. The Petitioner had addressed a representation dated 14.08.2017 to the the First Respondent/Greater Corporation of Chennai and the Fourth Respondent/Chennai Metropolitan Development Authority with a request to take action against the Respondents No.5 and 6 for the unauthorisd and illegal construction put up by latter. The authorities have received the representation of the Petitioner on 05.09.2017, but have not taken any action. Hence, the Petitioner has filed the present Writ Petition, praying for an order of this Court directing the Respondents No.1 to 4 to consider the Petitioner's representation dated 14.08.2017 and to initiate action against the unlawful and illegal construction effected by the Respondents No.5 and 6 in the property bearing Door No.48-C, then No.112-A, presently Door No.132, Kodambakkam High Road, Chennai - 600 034, comprised in Survey No.627/1, 628, Kodambakkam Village and direct them to initiate appropriate action to demolish the illegal construction put up by them.

17. Per contra, it is the submission of the Learned Standing Counsel appearing for the Third Respondent that the disputed property, in question, was inspected by the Junior Engineer on 24.11.2017 and it came to light that the Board exhibiting the particulars of the planning permission and building permission has not been placed at the construction site and therefore, a 'stop work notice-cum-calling for approved plan' has been served on the Site Engineer on 24.11.2017 and a separate notice to the owner of the building has been sent by registered post with acknowledgment due on 09.01.2018.

18. The Learned Standing Counsel appearing for the Third Respondent/Greater Corporation of Chennai points out that the Site Engineer orally informed that as on that date, they do not have any approved plan and informed that they had applied for planning permission. Further more, at the time of inspection, it was found that the building is under construction with Stilt plus two floors. Thereafter, a lock and seal and demolition notice was issued on 05.01.2018 intimating about unauthorised development made by the Respondents No.5 and 6.

19. The Learned Standing Counsel appearing for the Greater Chennai Corporation comes out with a plea that de-occupation notice was issued on 22.02.2018 to the Site Engineer and a copy was served on the Fifth Respondent on 05.03.2018. Infact, the Third Respondent/Executive Engineer, Zone-X, Greater Corporation of Chennai had instructed the Fifth Respondent not to proceed with the construction. Thereafter, proper approval has been obtained from the First Respondent/The Commissioner, Corporation of Chennai for sealing the premises on 05.03.2018 and thereafter, the building was locked and sealed on 12.03.2018. As on date, there is no construction activity and the building is also under lock and seal.

20. It is also represented on behalf of the Respondents No.1 to 3 that the Fifth Respondent's disputed building is under Lock and Seal as on date.

21. Be it noted, that C.R.P.(NPD).No.214 of 2016 filed by the present Writ Petitioner (as Petitioner) and others against the Respondents No.5 and 6 before this Court (as against the order dated 07.12.2015 in unnumbered Petition in E.A.Sr.45976 of 2015 in E.P.No.1586 of 2010 in O.S.No.2815 of 2005 passed by the Learned X Assistant Judge, City Civil Court, Chennai) was dismissed by this Court on 29.01.2016. However, this Court, while dismissing the said Civil Revision Petition had directed the Learned X Assistant Judge, City Civil Court, Chennai to dispose of the Execution Petition in E.P.No.1586 of 2010 in O.S.No.2815 of 2015 on merits and in accordance with Law within a period of two months from the date of receipt of copy of this order. Later, this Court, on the Administrative Side, had extended the time for disposal of the C.R.P.(NPD).No.214 of 2016, by six weeks on 10.06.2016 and the same was communicated by this Court on 13.06.2016 in M.C.No.41/2016/Judl., [based on the letter of the Learned X Assistant Judge, City Civil Court, Chennai dated 06.07.2016] and ultimately, the Execution Petition No.1586 of 2010 was dismissed on 04.07.2016.

22. Considering the fact that the First Respondent/The Commissioner, Greater Corporation of Chennai had taken necessary action of lock and seal of disputed property, wherein, unauthorised development was made by the Respondents No.5 and 6 and as on date, there is no construction activity, this Court directs the Respondents No.1 to 3 to take such necessary follow up action to its logical end consequent to the issuance of Lock and Seal and Demolition Notice dated 05.01.2018 and also De-occupation notice issued on 22.02.2018 and to see that action is taken against the Respondents No.5 and 6 (alleged violators) in the interest of Justice, in accordance with Law. If any, criminal prosecution is to be launched against the Respondents

No.5 and 6 for the unauthorised construction put by them, it is open to the Respondents No.1 to 3 to take final call in the subject matter, in issue, as they deem fit and proper, based on the facts and circumstances of the case which float on the surface.

23. Also that, the Respondents No.5 and 6 are directed to keep the disputed property, where unauthorised development was made in a Lock and Seal condition and in the said property, they shall not create any third party rights or mortgage or carry out Alterations or Additions or let the property for occupation of tenants/strangers for Rent. In case, if the Respondents No.1 to 3 come to a definite conclusion that the unauthorised development made by the Respondents No.5 and 6 require demolition, then, they are directed to take such action in this regard, in accordance with Law. In respect of the violated portion of the building, Electricity and Water Supply connections shall be disconnected by the Area Engineer of TANGEDCO/TNEB and by the concerned Officer of the Chennai Water Supply and Sewerage Board and in this regard, the Respondents No.1 to 3 shall intimate the aforesaid Officers diligently and without fail. Further, for the expenses incurred towards demolition in respect of unauthorised construction put up by the Respondents No.5 and 6, the Respondents No.1 to 3, after meeting out the same, at the first instance can fasten the liability to the said expenses on the Respondents No.5 and 6 by serving due notice to them and if they fail to pay requisite charges therefor, Liberty is granted to the Respondents No.1 to 3 to proceed under the ingredients of 'The Revenue Recovery Act' as the case may be.

24. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected WMP is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
EVR Salai,
Periamet,
Chennai - 600 003.

2. The Assistant Revenue Officer,
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3. The Executive Engineer,
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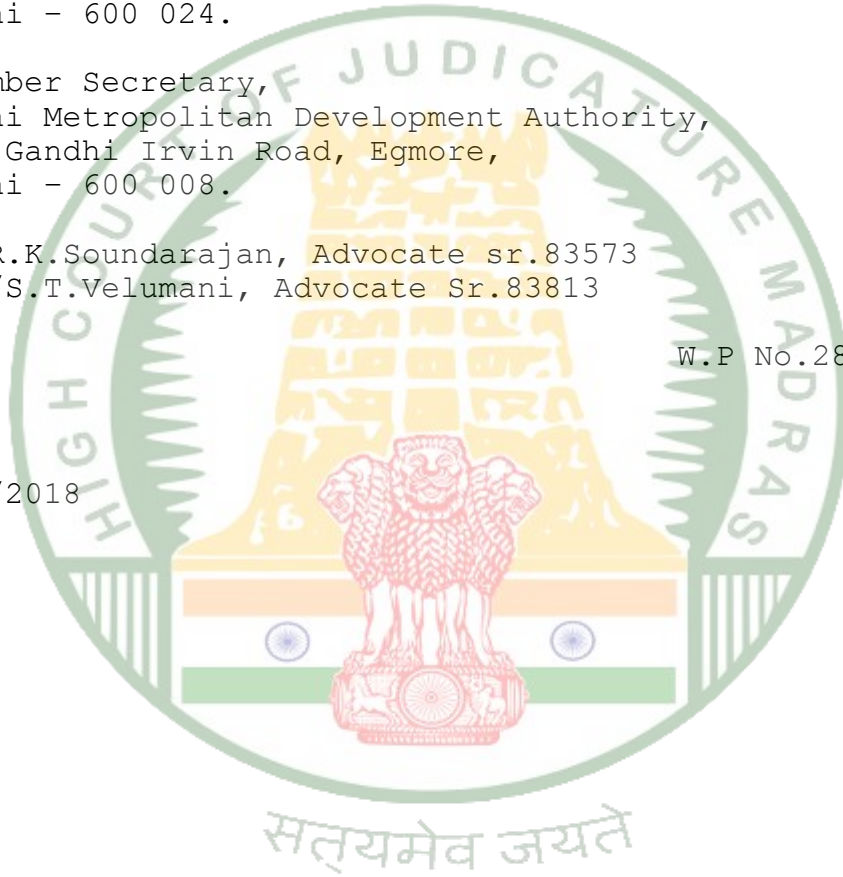
4. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irvin Road, Egmore,
Chennai - 600 008.

+1cc to MR.K.Soundarajan, Advocate sr.83573

+1cc to M/S.T.Velumani, Advocate Sr.83813

W.P No.28229 of 2017

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