

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.32999 of 2018

Vijayakumar G Dhas

.. Petitioner

v.

1 The Commissioner
Poonamallee Municipality
Thiruvallur District

2 C.Daniel Praveen Raj

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 1st respondent to consider the petitioner's representation dated 08.10.2018 and to take further action in pursuant to the order in NA.KA.No.BA/81/2015/F1 and NA.KA.No.PP/86/2015/F1, dated 22.05.2018 regarding the construction made by the 2nd respondent in the property comprised in Survey No.874/1, James Street, Poonamallee Taluk, Thiruvallur District.

For Petitioner : Mr.P.Sesubalan Raja

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus to direct the 1st respondent to consider the petitioner's representation dated 08.10.2018 and to take further action pursuant to the order dated 22.05.2018 regarding the construction made by the 2nd respondent in the property comprised in Survey No.874/1, James Street, Poonamallee Taluk, Thiruvallur District.

2. It is the case of the petitioner that in the 2nd week of March, 2016, the 2nd respondent started construction in his property and while making construction, he has encroached some portions of the petitioner's property. Besides, the 2nd respondent had not left any space enabling the petitioner to get light and air.

3. It is also brought to the notice of this Court that the petitioner has filed a suit in O.S.No.140 of 2016 before the District Munsif Court, Poonamallee seeking for declaration and other reliefs.

4. On a perusal of the plaint filed in O.S.No.140 of 2016, it could be seen that the petitioner has also sought for a decree for mandatory injunction directing the 1st respondent herein [2nd defendant in the suit] to take necessary action against the 2nd respondent herein [1st defendant in the suit] for making unauthorized construction in the suit property. In the said suit, the petitioner has also filed an application in I.A.No.271 of 2016 seeking for temporary injunction restraining the 2nd respondent from disturbing his possession by making illegal construction. The Trial Court, by order dated 21.04.2016, also granted an order of status quo.

5. In spite of filing a suit before the District Munsif court, Poonamallee, for the identical relief, the petitioner choose to file the present Writ Petition under Article 226 of the Constitution. The petitioner cannot prosecute the Civil Suit as well as the Writ Petition simultaneously.

6. When the petitioner has approached the Civil Court seeking for the relief of mandatory injunction to take action against the 2nd respondent for the alleged illegal construction put up by him, the petitioner should not have filed the present Writ Petition. In these circumstances, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

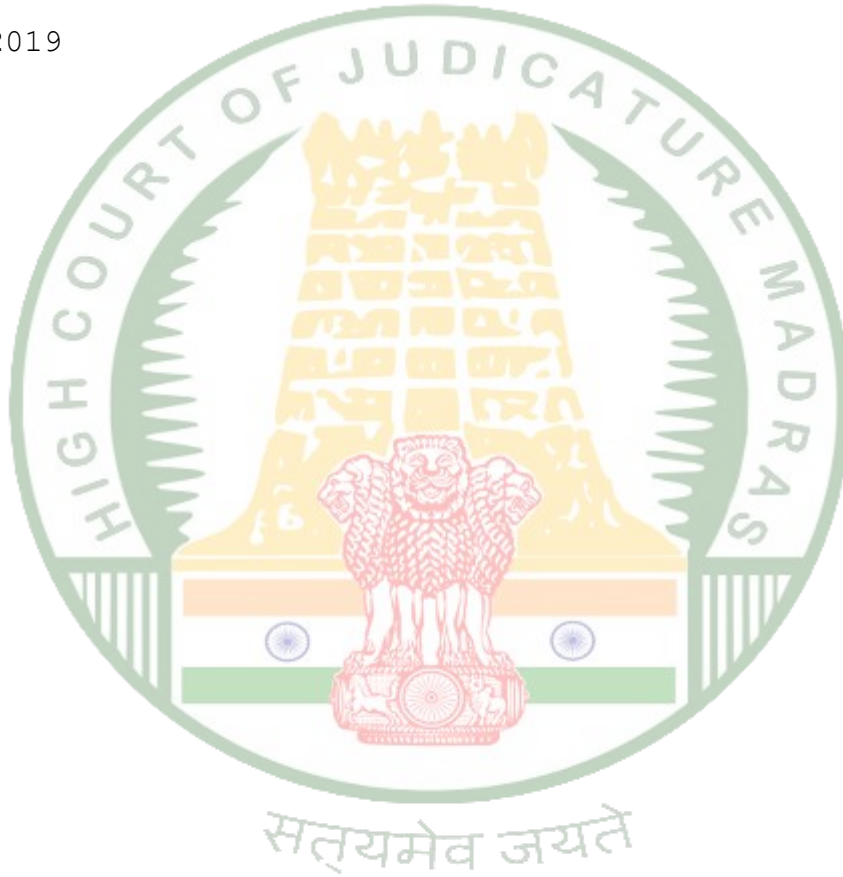
To

The Commissioner
Poonamallee Municipality
Thiruvallur District

+1cc to Mr.P.Sesubalan Raja, Advocate sr.no.87994
+1cc to Mr.R.Sivakumar, Advocate sr.no.87515

W.P. No.32999 of 2018

rji(co)
nr 07/01/2019



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