

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 25.01.2019

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

W.P.No.10456 of 2016
and WMP No.9193 of 2016

C. Jayapalan

... Petitioner

Vs

1. The Chairman/The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 600 005

2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 600 002

3. The Assistant Engineer,
Tamil Nadu Electricity Board,
Foreshore Estate Division,
Chennai - 600 028

4. K. Raji

5. E. Suresh

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the First Respondent to remove the encroachments made by the respondents 4 and 5 from their Automobile Garage Shed situated across the road diagonally opposite of the Petitioner's Block No.7, Srinivasapuram, Foreshore Estate, Chennai - 600 028 and consequently to forebear the respondents 2 and 3 from granting new electricity supply to the respondents 4 and 5 automobile garage shed or from allowing them to draw the illegal energy from the domestic supply given to the nearby tenements or residents of Srinivasapuram by considering the Petitioner's representation dated 22.02.2016.

For petitioner : Mr.J. Doraiswamy for
M/s P. Arivudainambi

For R.1 : Mr.S. Prabhu

For R.2 & R.3 : Mr.P.R. Dhilipkumar

ORDER

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

Heard the Learned Counsel for the Petitioner, Learned Counsel for the First Respondent/Tamil Nadu Slum Clearance Board and the Learned Counsel for the Respondents No.2 and 3/Tamil Nadu Electricity Board.

2. In respect of Fourth Respondent, Court Notice was served as early as on 07.04.2016 and today, there is no representation on his behalf either in person or through Learned Counsel. In respect of Fifth Respondent, the Court Notice got returned with an endorsement 'No such person' in the address given. To avoid an avoidable delay, the court Notice to the Fifth Respondent is dispensed with.

3. No counter is filed on behalf of the Respondents No.1 to 4.

4. According to the Petitioner, he is an allottee in respect of Flat No.7/1, at Srinivasapuram, Foreshore Estate, Chennai - 600 028 and ever since the date of allotment made by the First Respondent, he is permanently residing. According to the Petitioner, in his Block No.7, there are 6 flats situated at the Ground Floor and 6 flats at the First Floor. Adjacent to the Petitioner's flat, K. Raji/Fourth Respondent herein, S/o Kapali, is residing in respect of Flat No.7/4.

5. As a matter of fact, the Fourth Respondent has recently encroached the vacant land measuring about 1500 sq.ft as shown in the rough diagram annexed along with Petitioner's representation. Now, the Fourth Respondent is stealthily making arrangement to establish Automobile Workshop and to let out to the Fifth Respondent, who is a technical person, to attend all the faulty vehicles i.e., Cars, Autos and Tempos etc and to do tinkering and painting jobs for the above said vehicles apart from electrical and mechanical faults etc. The Respondents No.4 and 5 do reside in the same address and they collude together in all their illegal acts.

6. The Petitioner is a Senior Citizen and if the Fourth Respondent is allowed to run the automobile workshop in the near future by encroaching on the First Respondent's land, the Petitioner and other similarly situated persons in the nearby flats will be put to irretrievable hardship on account of nuisance/pollution, apart from the indiscriminate parking of vehicles to be repaired, painted and tinkered on the public road and in and around the Petitioner's block No.7. If the automobile shop is allowed to come up illegally on the vacant land vest with the First Respondent, the Petitioner will be put to great loss and hardship apart from the other similarly placed persons.

7. At this stage, the Learned Counsel for the Petitioner takes an emphatic plea that the Petitioner had made a representation to the Respondents 1 to 3 highlighting and narrating all the above said facts, but till date, no action has been initiated by the Respondents for his Representation dated 22.02.2016. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing the First Respondent to remove the encroachments made by the respondents 4 and 5 from their Automobile Garage Shed situated across the road diagonally opposite of the Petitioner's Block No.7, Srinivasapuram, Foreshore Estate, Chennai - 600 028 and consequently to forebear the respondents 2 and 3 from granting new electricity supply to the respondents 4 and 5 automobile garage shed or from allowing them to draw the illegal energy from the domestic supply given to the nearby tenements or residents of Srinivasapuram by considering the Petitioner's representation dated 22.02.2016.

8. Per contra, it is the submission of the Learned Counsel for the Respondents 1 and 2 that the Respondents No.1 and 2 will look into the representation of the Petitioner dated 22.02.2016 within a period of two weeks from the date of receipt of a copy of this order and they will see to it that the encroachment as mentioned in the representation of the Petitioner dated 22.02.2016 will be removed at an early date.

9. In this connection, it is to be pointed out that as per Sec.58 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, 'the prescribed authority may, by order in writing, direct any person carrying on any dangerous or offensive trade in a slum area to remove the trade from that area within such time as may be specified

in the Order. Further, prior to passing of the order under Sec.58 of the Act, the prescribed authority shall issue show cause on the trade carried on by the offending person and after obtaining his objections/remarks/representations may pass final orders as he deems fit and proper based on the facts and circumstances that flout on the surface.

10. In view of the fact that the Petitioner's representation dated 22.02.2016 addressed to the First Respondent/The Chairman/The Managing Director, Tamil Nadu Slum Clearance Board, Kamarajar Salai, Chennai - 600 005, the Second Respondent/The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai-600 002 and others has not seen the light of the day and no tangible steps have been taken to remove the encroachment by the First Respondent, this Court, without traversing upon the merits of the Representation of the Petitioner and also not expressing any opinion in one way or other, simpliciter, at this stage, directs the First Respondent to depute a responsible Officer of the Tamil Nadu Slum Clearance Board to inspect the place opposite to that Petitioner's Block No.7, Srinivasapuram, Foreshore Estate, Chennai - 600 028 within one week from today and to obtain his Report in regard to the encroachment, if it is found, and later to act swiftly and diligently to remove the encroachment made by the Respondents No.4 and 5 from their Automobile Garage Shed situated across the road diagonally opposite of the Petitioner's Block No.7, Srinivasapuram, Foreshore Estate, Chennai - 600 028 without any further loss of time. If any Police assistance is required to remove the encroachment, in question, then, it is open to the First Respondent to get the assistance from the jurisdictional Police and to restore the place to its normal position.

11. Furthermore, if there is an existing electricity supply to the Respondents No.4 and 5 for the Automobile Garage Shed, then, the same shall be disconnected forthwith by the The Assistant Engineer, Tamil Nadu Electricity Board, Foreshore Estate Division, Chennai - 600 028/Third Respondent forthwith.

12. With the aforesaid observations and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sr

To

1.The Chairman/The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 600 005.

2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 600 002.

3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Foreshore Estate Division,
Chennai - 600 028.

W.P.No.10456 of 2016

PA(CO)

rrs 20/02/2019



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