

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.3002 of 2019
and
W.M.P.No.3271 of 2019

Amrit Ambirajan

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai-600 009.

2. The Greater Corporation of Chennai,
Represented by its Commissioner,
Ripon Building,
Chennai-600 003.

3. Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Building,
Egmore,
Chennai.

4. Kamala Kasturi

5. Lakshmi Srinath

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents 1 to 3 to maintain 16 feet Road running North to South and East to West in R.S.No.1585/1(Part) by considering and passing necessary orders on the representation of the Petitioner dated 08.01.2019.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.B.Anand
Govt.Advocate [For R1]
Mrs.Karthika Ashok [For R2]
Mr.Karthik Rajan [For R3]
Mr.V.P.Raman [For R4 & R5]

O R D E R

The grievance of the petitioner is that the respondents 4 and 5 are attempting to encroach the common passage between the petitioner and the respondents 4 and 5. Hence, the petitioner filed the writ petition for the aforesaid prayer.

2. The learned counsel appearing for the 2nd Respondent-Corporation would submit that the aforesaid disputed passage is a private passage. The dispute is only between the petitioner and the respondents 4 and 5 and therefore, Corporation cannot interfere and pass any orders in the representation given by the petitioner. She further submits that the writ petition is not maintainable under Article 226 of the Constitution of India.

3. The learned counsel for the respondents 4 and 5 denied the averments of the petitioner and he has also filed counter, wherein, paragraph 17 and 18 reads as follows:

'17. It is also relevant to point out that the petitioner has not filed the latest sanction plan dated 30.08.2017 issued to the 4th and 5th respondents which subsumes the passage within the 4th and 5th respondents property. Instead the petitioner has attempted mislead this Hon'ble Court by showing an earlier sanctioned plan dated 25.02.2014. Since the property is undeniably a private property, the Corporation of Chennai, the 2nd Respondent herein does not have any jurisdiction over the said passage. Moreover, it is to be noted that the 4th and 5th Respondents have not constructed any building over the disputed 16 feet road as mentioned by the Petitioner. This is apparent from the Sanctioned Plan filed by the 4th and 5th Respondents. The Petitioner has wilfully attempted to misdirect this Hon'ble Court by making untenable allegations against the 4th and 5th Respondents.

18. I state that the contents of paragraph 6 of the petitioner's affidavit are denied as false. It is reiterated that the passage running east to west belongs exclusively to the 4th and 5th respondent herein and the petitioner does not have any rights over the same. The petitioner has access to his

property through the passage running from North to South wherein the petitioner has a big gate to enter into his property and the said easement continues to be enjoyed by the petitioner till date. However the petitioner's rights are only in the nature of the easement for the purpose of access to his property. The passage running from East to West is not necessary for the petitioner to access his property. The petitioner by merely adding a wicket gate in the said passage cannot gain easementary rights over the said passage. The 4th and 5th respondents are at complete liberty to use both 'L' shaped passage running from north to south and east to west, subject to the petitioner's easementary right to have ingress and egress to and from his property. It is not worthy to mention that the Sanctioned Plan of the Petitioner on which reliance has been placed is self-defeating, as it clearly shows that the said 16 feet Road is a private road.'

4. The submissions made by the learned counsel for the parties and the above paragraph Nos.17 and 18 of the counter filed by the respondents 4 and 5 are recorded.

5. As rightly pointed out by the learned counsel for the 2nd respondent, the said dispute is purely a private dispute between the petitioner and the respondents 4 and 5, therefore, this writ petition is not maintainable, under Article 226 of the Constitution of India.

6. In view of the above, this writ petition is dismissed. If the petitioner is having any grievance, he can approach before the concerned Civil Court and workout his remedy, if permissible under law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai-600 009.

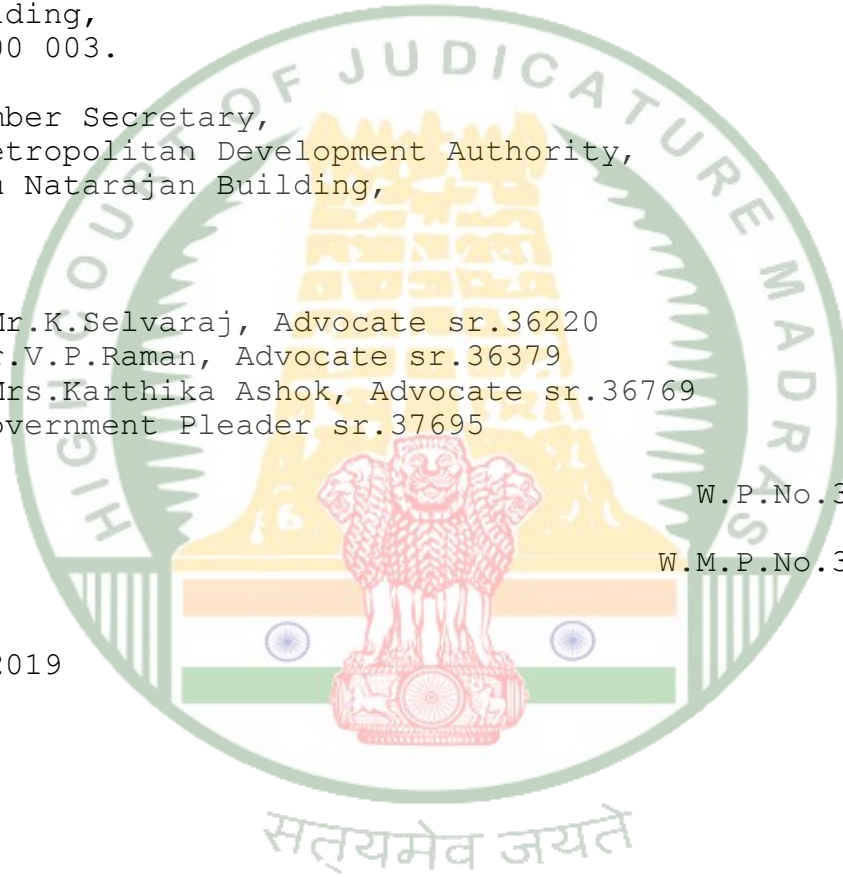
2. The Commissioner,
Greater Corporation of Chennai,
Ripon Building,
Chennai-600 003.

3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore,
Chennai.

+1cc to Mr.K.Selvaraj, Advocate sr.36220
+1cc to Mr.V.P.Raman, Advocate sr.36379
+1cc to Mrs.Karthika Ashok, Advocate sr.36769
+1cc to Government Pleader sr.37695

W.P.No.3002 of 2019
and
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kj(co)
nr 19/06/2019



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