

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.8598 of 2019

Vedhachalam Avenue Residents

Welfare Association (Regd),
Rep by its Secretary, K.R.Rajedran,
24 Vedhachalam Avenue, Thiruvottiyur
Chennai 600 019

.... Petitioner

v.

1 District Collector,
Office of the District Collector,
Thiruvallur 602 001

2 The Commissioner,
Corporation of Chennai,
Poonamalee High Road
Chennai 600 003

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

4 M.Swamy kannu

5 G.Balamurugan Maneksha

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachment made on the western side by the 4th and 5th respondents in the Tiruvottiyur C.R.Vedhachalam Avenue, Public east-west 30 feet Road, joining the Thiruvottiyur East Ellaiammam koil Street.

For Petitioner : Mr.K.Balakrishnan

For Respondent : Mr.V.Jayaprakash Narayanan
Govt. Pleader (i/c) - for R1
Mr.C.Ravichandran - for R2
Mr.P.S.Ganesh - for R3
Mr.K.Pramkumar - for R4 & R5

O R D E R

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

The Petitioner-Association has filed the above Writ Petition to issue a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachment made on the western side by the respondents 4 and 5 in the Tiruvottiyur C.R.Vedhachalam Avenue, Public East-West 30 Feet Road, joining the Thiruvottiyur East Ellaiamman Koil Street.

2. The filing of the present Writ Petition by the Petitioner-Association is a clear case of abuse of process of Court. Earlier, the Petitioner-Association has filed a Writ Petition in W.P.No.20818 of 2007 to issue a writ of Mandamus directing the respondents 1 to 3 therein to remove the encroachment caused by third parties, viz., respondents 4 and 5 on the public road between Plot Nos.18-21 and 22-25 of C.R. Vedachalam Avenue, Thiruvottiyur, Chennai - 600 019.

3. The learned counsel appearing for the Petitioner-Association admitted that the relief sought for in the Writ Petition in W.P.No.20818 of 2007 and in the present Writ Petition are one and the same.

4. It is pertinent to note that the Division Bench of this Court, by order dated 03.04.2008, dismissed the Writ Petition and the observations made by the Division Bench reads as follows:-

"... 5. Learned counsel for the petitioner has relied upon the earlier order passed by the Division Bench W.P.No.38026 of 2005, wherein a direction was issued for removal of the encroachment. It is worthwhile to note that in the said writ petition, the present 4th and 5th respondents were not parties. Learned counsel for the petitioner has relied upon the counter filed by the 2nd respondent in the said disposed of writ petition in support of his contention that there has been encroachment on the public road. Since 4th and 5th respondents were not parties to the

said writ petition and it is not known as to whether the land, which they are now claiming as their own property, was the subject matter of issue, it would be obviously hazardous to pass any order on the basis of such earlier decision. From the materials on record including the photographs produced, it appears that the alleged encroachment of Respondents 4 and 5 must have existed much before filing of the said writ petition. It is not that the Respondents 4 and 5 have made sudden constructions over night, which is required to be demolished in a summary manner. The petitioner had not impleaded the Respondents 4 and 5 in the earlier writ petition. Since the Respondents 4 and 5 were not parties to the said writ petition, obviously the order passed by the Division Bench cannot be said to be binding on those respondents.

6. Respondent Nos. 4 and 5 have filed separate counter affidavits stoutly denying the allegations stated in the writ petition. They have pleaded their own right over the land under their possession. Even though, in law, a duty is cast on the authorities to clear encroachments from the public roads, before taking any such action, it is necessary for the authorities concerned to satisfy themselves regarding the existence of the public roads.

7. In the present case, serious disputed questions of fact have been raised by Respondents 4 & 5. We do not think it is a fit case where in exercise of jurisdiction under Article 226 of the Constitution, a direction can be issued regarding demolition of the structures of the Respondents 4 and 5. These matters can be more appropriately gone into by a Civil Court where it would be necessary to adduce evidence and also it may be necessary to take out Commission for measurement of the lands. Merely because the petitioner has couched the present writ petition as public interest litigation, we cannot lose sight of the basic principle that where serious disputed questions of fact are raised, the remedy under Article 226 of the Constitution, even if it is a public interest litigation, would not be appropriate.

8. In such view of the matter, we decline to issue any direction as sought for in the present

writ petition. However, it is made clear that it would be open to the petitioner or any other person interested to seek for appropriate remedy before the Civil Court by impleading all the concerned parties in accordance with law. It is also made clear that if any appropriate suit or proceeding before the Civil Court is initiated, such matter would be decided on its own merits without being influenced by any of the observations made in the present order.

5. When this Court had dismissed the Writ Petition giving liberty to the Petitioner-Association to seek for appropriate remedy before the Civil Court by impleading all the concerned parties, the Petitioner-Association has filed the present Writ Petition seeking for the very same relief. The Petitioner-Association cannot file petition after petition for the same relief. While disposing of the Writ Petition, the Division Bench also took into consideration the order passed in the Writ Petition in W.P.No.38026 of 2005, dated 20.02.2006, filed by one V.Babusami.

6. It is also pertinent to note that after the disposal of the Writ Petition in W.P.No.20818 of 2007, the Petitioner-Association also filed a Civil Suit in O.S.No.3321 of 2008 on the file of the District Munsif Court, Thiruvottiyur for removing the encroachment made by the respondents 4 and 5. The Trial Court, by Judgment and Decree dated 12.10.2018, dismissed the suit after full-fledged trial.

7. Now, after the disposal of the suit in O.S.No.331 of 2008 on 12.10.2018, the Petitioner-Association, ventured into a fresh litigation by filing the present Writ Petition. The conduct of the Petitioner-Association cannot be appreciated in any manner whatsoever. When this Court had already dismissed the Writ Petition in W.P.No.20818 of 2007, for the very same relief sought for in the present Writ Petition, we are not inclined to entertain the Writ Petition. The Writ Petition is devoid of merits. Accordingly, the Writ Petition is dismissed. However, we are not imposing any costs on the Petitioner-Association.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 District Collector,
Office of the District Collector,
Thiruvallur 602 001.
- 2 The Commissioner,
Corporation of Chennai,
Poonamalee High Road
Chennai 600 003.
- 3 Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building, Egmore
Chennai.

+1cc to Mr.K.Balakrishnan, Advocate Sr.47987
+2cc to Mr.K.Premkumar, Advocate Sr.48355
+1cc to the Government Pleader Sr.48552
+1cc to Mr.P.S.Ganesh, Advocate Sr.47915
+1cc to Mr.C.Ravichandrasn, Advocate Sr.47970

W.P. No.8598 of 2019

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srg 10/07/2019

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