

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.29297 of 2016
and
W.M.P.No.25326 and 32507 of 2016

V.Elumalai

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Chennai.
2. The Assistant Executive Engineer,
Corporation of Chennai,
Zonal Office, Saidapet, Chennai-15.
3. D.Palani
4. A.Ramakrishnan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first and second respondents to take action on the third and fourth respondents not to encroach and put up any constructions on the public Road in front side of the petitioner's shops situated at 20/10, Pillaiyar Koil Street, Ekkatuthangal, Chennai-32 on the petitioner's representations, dated 15.07.2016 and 10.08.2016.

For Petitioner : Mr.N.Suriyamuthu

For Respondents : Mr.R.Arun Mozhi,
Standing Counsel for RR-1 and 2

Mr.G.Jayachandran for RR-3 and 4

ORDER

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

The Petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the First and Second Respondents to take action against the Third and Fourth Respondents not to Encroach and put up any Constructions on the Public Road in the front side of the Petitioner's Shops situated at 20/10, Pillaiyar Koil Street, Ekkatuthangal, Chennai-32, on the Petitioner's Representations, dated 15.07.2016 and 10.08.2016.

2. Heard both sides and perused the materials available on record. No counter affidavit is filed by the Respondents.

3. According to the Petitioner, he is the absolute and exclusive owner of the Property measuring an extent of 2500 Sq.Ft. situated at No.20/10, Pillaiyar Koil Street, Ekkatuthangal, Chennai-32. As a matter of fact, the said Property was inherited by the Petitioner from his father as Ancestral Property. While making an access to the Property, there exists Lord Ganesha Temple, which is administered by the Respondent Nos.3 and 4.

4. The stand of the Petitioner is that on both sides of the Temple, there is a Ten Feet Public Road, which further connected to the Five Feet Passage, in which the Respondent Nos.3 and 4 had constructed a Wall during last month, leaving 1.5 Feet, and thereby, prevented the Public tranquillity. On an enquiry, they informed the Petitioner that they wanted to occupy the Ten Feet Public Road to build an additional building to the Temple and were attempting to prevent the entrance to his shops, which were occupied by the Petitioner's tenants.

5. At this juncture, the Learned Counsel for the Petitioner emphatically points out that the aforestated Public Road is used by the residents of the area for more than 50 years and that the Respondent Nos.3 and 4 want to Encroach upon the Temple in question. Indeed, the Respondent Nos.3 and 4 marked holes which totally obstructed the Petitioner's access to his gate-way. Due to the nuisance committed by the Respondent Nos.3 and 4, one of the Petitioner's tenants vacated and the Respondent Nos.3 and 4 want to do the same thing in regard to the other tenants also.

6. According to the Petitioner, he made a Representation in person, dated 15.07.2016 before the Second Respondent/Assistant Executive Engineer, Corporation of Chennai, Zonal Office,

Saidapet, Chennai-600 015. But the same ended in vain. No inspection was carried out in respect of the "Public Road" to safeguard the interest of the public movement, particularly, the Petitioner who is a direct victim at the hands of the Respondent Nos.3 and 4.

7. Moreover, the construction of the Temple was proceeded with by the Respondent Nos.3 and 4 and since the Petitioner has no other option against the attitude of the Respondent Nos.3 and 4, he is perforced to project the present Writ Petition for the relief stated supra.

8. On behalf of the Respondent Nos.1 and 2/Greater Chennai Corporation, a Status Report, dated 08.01.2019 is filed, based upon which, the Learned Counsel appearing for the Respondents 1 and 2 brings it to the notice of this Court that the Second Respondent has addressed a Letter, dated 17.12.2018 to the Tahsildar, Mambalam-Guindy Taluk, to earmark the Pillaiyar Koil Street, Ekkatuthangal, Chennai-600 032, and to furnish a report for filing the same before this Court. A reminder, dated 03.01.2019 was also sent with a copy marked to the District Revenue Officer, Chennai and also the Revenue Divisional Officer, Chennai.

9. It is the stand of the Second Respondent in the said Status Report that on receipt of the said Letter, the Tahsildar, Mambalam-Guindy Taluk had furnished a report, dated 07.01.2019, stating that the Third and Fourth Respondents had Encroached upon the Street portion and had put up the Temple therein. Further, the Petitioner herein had also Encroached upon the Street portion and had put his building. Moreover, further action was taken against the Respondent Nos.3 and 4 as well as the Petitioner, under the provisions of the Chennai City Municipal Corporation Act, 1919.

10. In view of the aforestated Status Report of the Second Respondent, and also this Court, taking note of the entire conspectus of the attendant facts and circumstances of the present case in an encircling manner, is of the considered view that the Tahsildar, Mambalam-Gundy Taluk had submitted a report, dated 07.01.2019 stating that the Respondent Nos.3 and 4 had Encroached upon the Street portion and had put up the Temple in question. That apart, it is the stand of the Second Respondent that the Petitioner has also encroached upon the Street portion and had put up his building, and as such, this Court directs the Respondent Nos.1 and 2 to take necessary enforcement action against the Respondent Nos.3 and 4 for encroaching upon the Street portion and for erecting the Temple and such action must see the result of the day and it must be taken to its logical end.

11. Further, it is open for the Respondent Nos.1 and 2 to demolish the said Temple put up by the Respondent Nos.3 and 4 and to remove the debris at their expense in the first instance and later on to saddle the said expense on the Respondent Nos.3 and 4 jointly.

12. The above exercise shall be carried out by the Respondent Nos.1 and 2 within a period of three weeks from the date of receipt of a copy of this Order. It is open for the Respondent Nos.1 and 2 to seek the assistance of Law Enforcement Machinery (Police) to remove the Encroachment of the Temple in question, put up by the Respondent Nos.3 and 4.

13. Before parting with the case, this Court makes it lucidly clear that as the Petitioner is also found to be a person who had Encroached upon the Street portion and had put up his building, it is open for the Respondent Nos.1 and 2 to take necessary follow-up action against the Petitioner herein, as per relevant ingredients of the Chennai City Municipal Corporation Act, 1919.

14. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Commissioner,
Corporation of Chennai, Chennai.
2. The Assistant Executive Engineer,
Corporation of Chennai,
Zonal Office, Saidapet, Chennai-15.

+1 cc to Mr.G.Jayachandran, Sr.No.2012

W.P.No.29297 of 2016

VGI (CO)
CSL/31.01.2019