

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

WA.Nos.981 to 984 of 2018
and C.M.P.Nos.8402 & 8403 of 2018

1.S.Ravi

2.R.Subbulakshmi ...Appellants in all W.As

Vs

1.The Executive Officer,
Hindu Religious and Charitable Endowment Board
A/m Peeliamman & Ellamman Koil
Kotturpuram, Chennai 600 085.

2.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai.

...Respondents in W.A.No.981 of 2018

1.The Area Engineer
Chennai Metropolitan Water Supply and Sewerage Board,
Zone-13, Indira Nagar
First Main Road, Indira Nagar,
Chennai-600 020.

2.The Assistant Engineer,
Chennai Metropolitan Water Supply and Sewerage Board,
Kottur Garden,
Kottur, Chennai 600 085.

3.The Executive Officer,
Arulmigu Peeliamman and Ellamman Koil,
Kottur, Chennai 600 085.

4.The Inspector of Police,
J-4 Kotturpuram Police Station,
Kotturpuram, Chennai 600 085.

5.Govindasamy

6.UmaiyaI

7.Arivazhagan

8.Vasu

9.Narasimman

10.Peeli (alias) Nagaraj

11.Selvam ...Respondents in W.A.No.982 of 2017

1.The Commissioner,
Greater Corporation of Chennai
Chennai.

2.The Executive Engineer,
Zone-13,
Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai-600 020 ...Respondents in W.A.NO.983 of 2017

1.The Assistant Executive Engineer,
TANGEDCO,
SS Complex,
IIT Compound, Chennai-600 113.

2.The Assistant Engineer,
TANGEDCO
Eri Karai Street, Kottur
Chennai-600 095.

3.The Executive Officer,
Arulmigu Peeliamman and Ellamman Koil
Kottur, Chennai-600 085.

4.The Inspector of Police,
J-4 Kotturpuram Police Station,
Kotturpuram, Chennai 600 085.

5.Govindasamy

6.UmaiyaI

7.Arivazhagan

8.Vasu

9.Narasimman

10.Peeli (alias) Nagaraj

11.Selvam ...Respondents in W.A.No.984 of 2017

COMMON PRAYER:- Writ Appeal filed under Clause 15 of the Letter Patents prays to set aside the order dated 17.01.2018 made W.P.Nos.11470 of 2014, 43792 of 2016, 1658 of 2017, 43745 of 2016 and allow the writ petition.

Prayer in WP.No.11470/2014 : Writ Petition filed under Article 226 of the constitution of India, to issue a writ of mandamus directing the respondents to restore the street as per layout Peeliamman Koil Street Slum Kottur.

Prayer in WP.No.43792/206 : Writ Petition filed under Article 226 of the constitution of India, to issue a writ of mandamus directing the respondents 1 and 2 to provide metro water and drainage connection to the petitioner's residential building situated at Block No. 16 Peeliamman Koil Street Kottur, Chennai 600 085 within a reasonable time as may be fixed by this Honourable Court.

Prayer in WP.No.1658/2017 : Writ Petition is filed under Article 226 of the constitution of India, to issue a writ of certiorari to call for the records pertaining to the Letter No.Ma.Aa.13 Na.Ka.No.Na.Bi/PPA/3403/2014 dated 28.12.2016 of the 2nd respondent and quash the same.

Prayer in WP.No.43745/2016 : Writ Petition is filed under Article 226 of the constitution of India, to issue a writ of mandamus directing the respondents 1st and 2nd to provide electricity service connection to the petitioners residential building situated at Block No.16, Peeliamman Koil Street Kottur, Chennai-600 085 within a reasonable time as may be fixed by this Honourable Court.

For Appellants in all W.As : Mrs.Chitra Sampath,
Senior Counsel for Mr.K.Kannan

For Respondents in WA.981/2018: Mr.M.Maharaja
Special Government Pleader
(HR & CE) for R1
Mr.S.Prabhu for R2

For Respondents in WA.982/2018: Mr.G.Janakiraman for R1 and R2
Mr.DR.Sivakumar for R3
Mr.E.Manohar,AGP for R4
Ms.E.Angeyarkanni for R5 to R11

For Respondents in WA.983/2018:Mr.V.C.Selvasekaran for R1 and R2

For Respondents in WA.984/2018: Mr.S.K.Rameshuwar for R1 and R2
Mr.D.R.Sivakumar for R3
Mr.E.Manohar, AGP for R4
M/s.E.Angeyarkanni for R5 to R11

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

These writ appeals are preferred against the common order dated 17.01.2018 in W.P.Nos.11470 of 2014, 43792 of 2016, 1658 of 2017, 43745 of 2016 and connected miscellaneous petitions. It is relevant to extract the prayers sought for by the appellants in those writ petitions:

WP.No.11470 of 2014: writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to restore the street as per layout 'Peeliamman Koil Street Slum Kottur'.

WP.No.43745 of 2016: writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus Directing the 1st and 2nd respondents to provide electricity service connection to the petitioners residential building situated at Block No.16 Peeliamman Koil Street Kottur Chennai-600 085 within a reasonable time as may be fixed by this Honourable Court.

WP.No.43792 of 2016: writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus Directing the 1st and 2nd respondents to provide metro water and drainage connection to the petitioner residential building situated at Block No. 16 Peeliamman Koil Street Kottur Chennai 600 085 within a reasonable time as may be fixed by this Honourable Court.

WP.No.1658 of 2017: writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari To call for the records pertaining to the Letter No.Ma.Aa.13 Na.Ka. No.Na. Bi/PPA/ 3403/ 2014 dated 28.12.2016 of the 2nd respondent and quash the same.

2. It is the case of the appellants / writ petitioners that they are the absolute owners of the property measuring an extent of 10 ½ cents (5476 ½ Sq.ft comprised in T.S.No.85 and Survey No.64/2, Block No.16 of Kottur Village, Peeliamman Koil Street, Kottur, Chennai 600 085. It is their specific case that in the description of the property given in the registered Sale Deed dated 05.03.1984 of predecessor in title, Peeliamman Koil Street has been shown on western boundary in T.S.No.80 and from them, they have purchased the property through a registered Sale Deed dated 20.12.2014 and after obtaining necessary permissions / permit, they have developed the property by putting up superstructure and also obtained electricity service connection.

3. The appellants / writ petitioners filed W.P.No.11470 of 2014 (W.A.No.681 of 2018) praying for issuance of a Writ of Mandamus directing the Executive Officer of Peeliamman & Ellamman Koil to restore the street as per layout 'Peeliamman Koil Street Slum Kottur', as it was existing at the time of declaring the adjacent area as a slum by the Tamil Nadu Slum Clearance Board and initially, an interim order was granted on 23.04.2014.

4. The appellants / writ petitioners would further state that one Mr.R.Narashimman had filed a Public Interest Litigation in W.P.No.30669 of 2014, praying for appropriate direction to demolish the alleged unauthorized construction put up by the appellants, as they encroached upon the land belonging to Peeliamman Temple.

5. The Corporation of Chennai, after causing inspection, has filed a counter affidavit stating that the constructions put up by the appellants on their property was in accordance with the sanctioned plan and there was no encroachment on the land belonging to the Temple and the Public Interest Litigation was dismissed on 03.12.2014.

6. It is the case of the appellants / writ petitioners that they put up a superstructure consisting of Ground + First floor consisting of 6 dwelling units and the superstructure put up are also assessed to property tax and other statutory levies. However to the shock and surprise, the Corporation of Chennai, vide proceedings dated 28.12.2016, had cancelled the building plan on the ground that the concerned officials, who would sanctioned the plan, did not take note of the fact that there was no access.

7. It is also stated by the writ petitioners / appellants that the Assistant Executive Officer of TANGEDCO had filed their counter affidavit in W.P.No.43745 of 2016, wherein there was an admission that there are street lights in Peeliamman Street and

electricity connection was also given by taking power line through the said Street. The counter affidavit of the Area Engineer of Chennai Metropolitan Water Supply and Sewerage Board in W.P.No.43792 of 2016 would also disclose that the drainage and water connection are taken through Peeliamman Koil Street and therefore, prayed for interference by filing the above said writ petitions on behalf of the Corporation of Chennai. The writ petitions were entertained in W.P.Nos.11470 of 2018 etc., and the interim order dated 23.04.2018 was granted, in and by which, the appellants/writ petitioners were directed to use the passage in question and they should not put up any construction on the said passage. It was further made clear that the ownership in respect of the subject land lies only with the Hindu Religious and Charitable Endowment Department.

8. The Executive Engineer, Zone-13 has filed the counter affidavit and he took a stand that the right of passage claimed by the petitioners has not been crystallized either by consent of the Peeliamman Temple or from any Civil Court and the petitioners did not share any boundary with Peeliamman Temple Street as shown in the plan submitted by them in the building plan / approval. They also suppressed the fact that their land is linked to the Peeliamman Temple Street by a narrow piece of land which admittedly belong to the Temple. Accordingly, disciplinary action has been taken against the concerned Junior Engineer, Town Planning (South Region) under Section 9(9)(i) of the Chennai Corporation Class III & IV Services (Discipline and Appeal) Bye-laws 1983 and the said official was also placed under suspension. It is the further stand of the said official that subsequently, the planning permission has been revoked for want of appropriate access and it was put into challenge by filing the writ petition and in the light of the findings recorded by this Court in W.P.No.11470 of 2014, that the land in question belongs to the Peeliamman Temple, it is not open to the appellants / writ petitioners to put up any construction over the land and that the said land is being used as public street through which they have access.

9. The Tamil Nadu Slum Clearance Board has also filed a counter affidavit and they denied the specific allegation made by the writ petitioners that the street mentioned on the southern side which is the only ingress and egress to the petitioner's property. It is also the stand of the Tamil Nadu Slum Clearance Board that they acquired rest of the lands admeasuring to an extent of 16 grounds and 1728 sq.ft and the Sale Deed bearing Doc.No.1596 of 2015 was also executed on 11.06.2015 in favour of Tamil Nadu Slum Clearance Board and there is no street in the layout connecting the property of petitioners as alleged by them.

10. The Assistant Engineer, Operation and Maintenance, Tharamani (TANGEDCO) had also filed a counter affidavit stating that the Peeliamman Temple has raised objection for effecting service connection and the petitioners has already engaged temporary electricity service connection No.220-009-1970 under Tariff VI (Building Construction Purpose) and they will abide by the conditions imposed in this regard. On behalf of respondents 6 to 11, counter affidavit has been filed by stating that on March 2014 appellants / writ petitioners have dismantled the well, which exist over T.S.No.80 belonging to the said temple and immediately a compliant has also been launched against them by stating that they dismantled the well in order to convert the said land as pathway and prays for dismissal of the writ petitions.

11. The learned Single Judge after taking note of the materials found that prima facie the appellants / writ petitioners did not have the title and the planning permission has been granted in pursuant to the interim order granted by this Court in the writ petition and there were serious objections raised by the Peeliamman Temple as to the existence of the alleged street and therefore, the issues involve adjudication on the disputed question of fact and the Court cannot do that in exercise of it's jurisdiction under Article 226 of the Constitution of India. Insofar as the electricity service connection is concerned, the learned Judge has found that the said connection need not be disturbed till the petitioners obtain appropriate orders from the Civil Court and the same reasoning will be applied to further action to be taken by the Corporation of Chennai. Therefore, status quo have to be maintained till the appropriate orders from the Civil Court.

12. The learned Judge in Paragraph No.13 of the impugned order has dealt with the primordial issue as to the usage of the disputed land and street and found that the appellants / writ petitioners can seek such a relief in the Civil Court either temporary or permanent and if any findings given, it would affect the merits of the matter and therefore, disposed of by granting opportunity to approach the jurisdictional Civil Court by impleading all the necessary parties and till such time, TANGEDCO may not disturb the above electricity connection obtained by the appellants / writ petitioners.

13. The appellants / writ petitioners, aggrieved by the impugned order dated 17.01.2018 passed by the learned Single Judge, had filed these writ appeals.

14. Mrs.Chitra Sampath, learned Senior Counsel assisted by Mr.K.Kannan, learned counsel appearing for the appellants / writ petitioners has invited the attention of this Court to the

additional affidavit dated 03.12.2018 and would submit that in the description of the property given in the registered Sale Deed dated 05.03.1984 of the predecessor in title, western side is shown as Peeliamman Koil Street, T.S.No.80 and the said street is in existence for more than 30 years and also drawn the attention of this Court to the Patta and sketch and would submit that as per column no.1, the street is shown as Peeliamman Koil Street and in Column No.2, Survey Field is shown as 85. The said documents evidence the fact that T.S.No.85 is known as Peeliamman Koil Street in which slum dwellers having access so also the appellants. Attention of this Court was also invited to the layout for Peeliamman Koil Street prepared by Head Surveyor, Tamil Nadu Slum Clearance Board dated 14.05.2017. It is the submission of the learned Senior counsel appearing for the appellants that though in the said layout, there is no specific indication that T.S.No.85 is known as Peeliamman Koil Street, the fact remains that the predecessor in title of the appellants as well as the appellants and the slum dwellers are also having access to the said Street and the appellants alone have been targeted for denial and usage of the said street and would further submit that in the earlier legal proceedings, some of the official respondents took a contra stand by supporting the case of the appellants and since, access to the streets as well as having water, electricity service and drainage connection is fundamental rights of the appellants, an appropriate order can be passed by permitting the appellants to have access to the said street as well as to obtain water supply and drainage service connection.

15. Per contra, the learned Standing Counsel appearing on behalf of Arulmigu Peeliamman and Ellamman Koil, Kottur would submit that even in the interim order dated 22.04.2014 made in W.P.No.11470 of 2014, this Court has clearly recorded the fact that the ownership in respect of the subject land lies only with the Hindu Religious and Charitable Endowment Department. The appellants/writ petitioners, in violation of law, had deliberately dismantled the well situated in the said land and made attempts to convert the said land to have access to the property. The learned Judge has rightly taken note of the fact that the grounds urged in the writ petition revolves around disputed question of facts and therefore, granted liberty to the appellants to approach the civil forum and protected the rights insofar as the electricity connection is concerned and prays for dismissal of the writ appeals.

16. The respective learned counsel appearing for the Greater Chennai Corporation and other official respondents has drawn attention of this Court to the counter affidavit filed in the writ petitions and would submit that even from the revenue / sketch / layout documents produced by the appellants / writ

petitioners, there is no material to show that T.S.No.85 is known as Peeliamman Koil Street and it is a public street through which the appellants / writ petitioner and other slum dwellers are having access and therefore, the remedy open to the appellants, if any, is to approach the civil forum as directed in the writ petitions and prays for dismissal of the writ appeals with exemplary costs.

17. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

18. The learned Senior Counsel appearing for the appellants has placed heavy reliance upon the documents filed in additional affidavit dated 03.12.2018. In the description of the property in the registered Sale Deed dated 05.03.1984 pertaining to predecessor in title of the appellants/writ petitioners, the western pathway is shown as Peeliamman Koil Street in T.S.No.80. It is to be pointed out at this juncture that the Sub Registrar registers the documents based on the recitals in the documents. He is not under obligation to find out whether the description of the property given in the Sale Deed is correct or not. The appellants / writ petitioners came to have purchased the very same property subsequently through a registered Sale Deed and after obtaining necessary planning permission, claim to have put up a dwelling house.

19. The Mylapore/Triplicane Taluk Office has issued a certificate / extract of the town survey register and it shows S.No.85 as Peeliamman Koil Street and it was issued on 05.05.1987. It is the admitted case of the parties that the Tamil Nadu Slum Clearance Board had acquired in the form of purchase of the land admeasuring 16 grounds and 1728 sq.ft leaving Plot No.60 for Peeliamman Koil at the cost of Rs.6,90,954/- through registered Sale Deed bearing Doc.No.1596 of 2015 dated 11.06.2015 registered on the file of Sub Registrar Office, Adyar and subsequently permitted the lay out plan dated 14.12.2017. It is to be noted at this juncture that the layout is the latest document available on record and even as per the layout, T.S.No.85 have not been shown as Peeliamman Koil Street. The stand of the Corporation of Chennai also is that since the appellants had suppressed the said fact of access and obtained planning permission and against the concerned Junior Engineer, disciplinary action has been taken and he was placed under suspension and proceedings are issued cancelling the planning permission and challenge to the said proceedings have also been made in W.P.No.1658 of 2014.

20. Admittedly, contents of the typed set of documents disclosed the fact that the Executive Engineer of Zone No.13, Greater Chennai Corporation sent a communication dated

28.12.2016 to the appellants and it prima facie would disclose that before passing the said proceedings, cancelling the planning permission, opportunity had been afforded to the appellants / writ petitioners. The issue in these writ appeals is as to the existence of Peeliamman Koil Street in T.S.NO.85 and in the considered opinion of this Court, the existence of the said street through which the slum dwellers as well as the appellants having access, is the disputed question of fact and it require pleadings, oral and documentary evidences for effective and appropriate adjudication.

21. No doubt, some of the documents produced by the appellants prima facie disclose that it is shown as Peeliamman Koil Street. In the light of the stand taken by the Greater Chennai Corporation and Tamil Nadu Slum Clearance Board as well as the Temple authorities, this Court is of the considered view that the said issue cannot be adjudicated by this Court.

22. In the considered opinion of this Court, the learned Judge has rightly taken note of the said aspect and found that such disputed question of facts cannot be adjudicated by the Court in exercise of it's jurisdiction under Article 226 of the Constitution of India and therefore, granted liberty to the appellants / writ petitioners to avail Common Law remedy before the competent civil forum. In the light of the said opportunity granted, the appellants / writ petitioners are always at liberty to institute comprehensive Suit by impleading all the necessary and proper parties and get the adjudication. Insofar as the electricity service connection is concerned, the learned Judge has protected the same.

23. This Court, on an independent application of mind to the entire materials and on thorough consideration of the same, is of the view that there is no error apparent or infirmity in the reasons assigned by the learned Judge in disposing of the writ petitions with appropriate direction and finds no merits in this writ appeal.

24. In the result, the writ appeal is dismissed, confirming the common order dated 17.01.2018 passed in WP.Nos.11470/2014, 43745/2016, 43792/2016 & 1658/2017. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Executive Officer,
Hindu Religious and Charitable Endowment Board
A/m Peeliamman & Ellamman Koil
Kotturpuram, Chennai 600 085.
- 2.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai.
- 3.The Area Engineer
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9. The Executive Officer,
Arulmigu Peeliamman and Ellamman Koil,
Kottur, Chennai 600 085.
10. The Commissioner Greater of Corporation Chennai, Chennai.

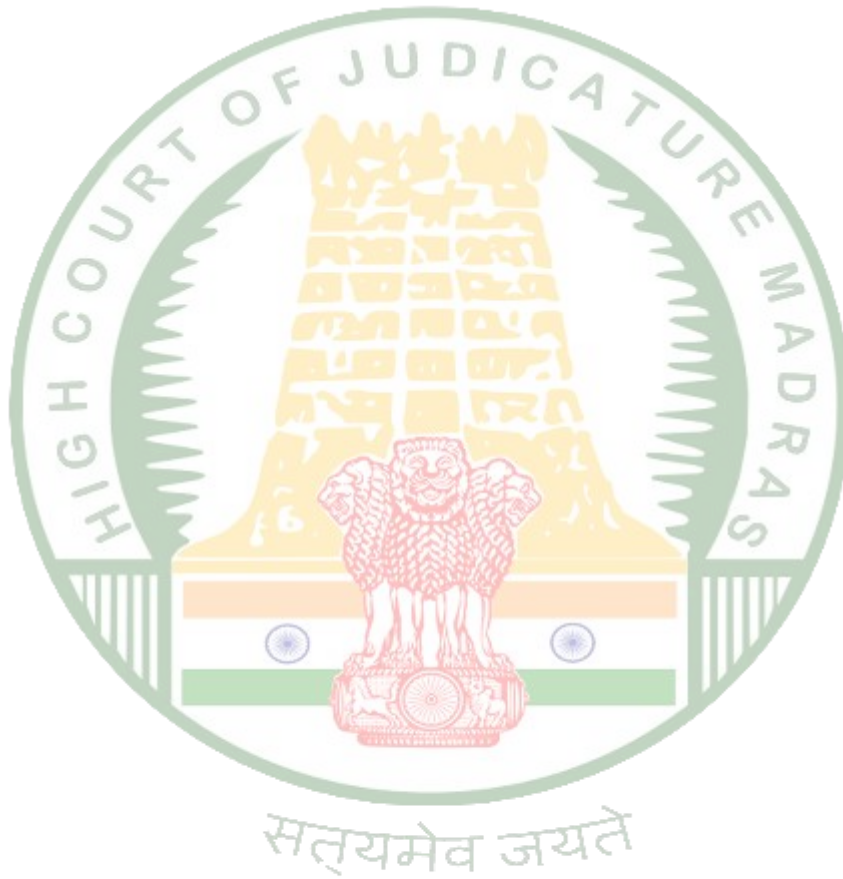
+1cc to Mr.S.K.Rameshuwar, Advocate SR.No.3876

+1cc to Mr.K.Kannan, Advocate SR.No.4747

+1cc to M/s.Angeyarkanni, Advocate SR.No.4227

WA.Nos.981 to 984 of 2018

AK (CO)
GMY (22/02/2019)



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