

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2019

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

W.P.No.31190 of 2016
and
W.M.P.No.27063 of 2016

1. G.P.Lord Mannan
2. Christopher (alias) Christopher Prabakaran
3. Dhanraj alias Francis Dos .. Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary,
Highways & Minor Ports Department,
Fort St.George, Chennai-600 009.
2. The District Collector,
Chennai District,
"Singaravelar Maaligai"
Collectorate Buildings,
Rajaji Salai, Chennai-600 001.
3. The Chief Engineer (Highways),
State Highways Department,
No.2-D, "Panagal Building",
No.1, Jennis Road,
Saidapet, Chennai-600 015.
4. The Corporation of Chennai,
Rep. by its Commissioner,
"Ripon Building",
Park Town, Chennai-600 003.
5. The Chennai Metropolitan Water Supply and
Sewerage Board,
Rep. by its Chairman,
Pumping Station Road,
Chintadripet, Chennai-600 002.
6. The Divisional Engineer,
Zone No.IV,
The Chennai Metropolitan Water
Supply and Sewerage Board,
Tondiarpet, Chennai-600 081.

7. The Tamil Nadu Generation and
Distribution Corporation,
Rep. by its Chairman,
No.144 Anna Salai,
Chennai-600 002.

8. Mahadevan

9. S.Amudha

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the Respondent Nos.1 to 7 to remove the illegal Encroachments made by the Respondent Nos.8 and 9 in the vacant site belonging to the Highways Department, situated in front of Lebanonpuram, near Moolakadai, Erukkancherry, Chennai, within the limits of 35th Ward of Corporation of Chennai, North Chennai, Chennai-600 118, by considering and passing orders on the Representations of the Petitioners, dated 16.08.2016 and 30.08.2016.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.S.N.Parthasarathy,
Govt. Advocate for RR-1 to 3

Mr.V.C.Selvasekaran for R-4

Mr.Raja Srinivas for RR-5

Mr.S.K.Rameshwar for R-7

Mr.M.J.Senthil Kumar for R-8

सत्यमेव जयते
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 Respondent Nos.1 to 7 to remove the illegal Encroachments made by the Respondent Nos.8 and 9 in the vacant site belonging to the Highways Department, situated in front of Lebanonpuram, near Moolakadai, Erukkancherry, Chennai, within the limits of 35th Ward of Corporation of Chennai, North Chennai, Chennai-600 118, by considering and passing orders on the Representations of the Petitioners, dated 16.08.2016 and 30.08.2016.

2. Heard the Learned Counsel for the Petitioner, learned Government Advocate for the Respondent Nos.1 to 3, the respective Learned Standing Counsels for the Respondent Nos.4 to 7 and the Learned Counsel for the Eighth Respondent. No Counter Affidavit is filed on behalf of the Respondents. In respect of the Ninth Respondent, the Court Notice sent by the Office of the Registry, was refused to be received by him on 14.09.2016, and hence Service of Notice is held sufficient insofar as the Ninth Respondent is concerned.

3. The Petitioner has come out with a plea that in the said Lebanonpuram situated near Moolakadai, Erukkancherry, Chennai, within the limits of 35th Ward of Corporation of Chennai, North Chennai, Chennai-600 118, there are 200 families residing in the said Lebanonpuram and more than 1000 persons are living in the said area. All the residents are Christians except the First Petitioner herein who is coming under the minority people and they are also socially and educationally backward people. There is a Church, by name St.John's Church (C.S.I) in Lebanonpuram. The Moolakkadai Flyover (bridge) was constructed at G.N.T.Road (Grand National Trunk Road). All the illegal Encroachers in the land belonging to the State Highways at Moolakkadai and along the site of the State Highways had been properly and duly removed by the Tamil Nadu Highways Authorities as well as by the Revenue Officials with the help of the Police officials by issuing proper Notice to the Encroachers. While doing so, the Encroachers in front of Lebanonpuram area and abutting the Highways, were also removed by the Authorities. In reality, the Authorities have demolished the illegal buildings and constructions put up in the Land belonging to the Highways in front of Lebanonpuram area and in other places.

4. The stand of the Petitioner is that while removing the Encroachments, the Metrowater pipeline laid through the said area, has also been damaged and there is no Metrowater supply through the pipeline to the Petitioner's area. The Metrowater Authorities, at the request of the residents of their area, had placed Sintex Water Tank in the Land belonging to the Highways in front of Lebanonpuram area. The Officials had also placed two more Sintex Tanks at Paul Street and Peter Street as a temporary measure, and the Officials of the Metrowater had also assured the residents of the Petitioner's area that the water supply would be restored and the Metrowater would flow the Land belonging to the Highways within a short time.

5. Apart from the above, the Electricity Board Authorities had laid three Poles in the vacant Land belonging to the Highways during August 2016 and the residents were under the hope that the electricity supply to them would come without any interruption with the help of the new Transformer and they would get Metrowater supply through the new pipeline to be laid by the Metrowater Authorities in the vacant site in front of Lebanonpuram.

6. The grievance of the Petitioners is that the Encroachers, namely Suresh and his wife, Amudha of Venkateshwar Nagar Main Road, Anjugam Nagar, had illegally and against the earlier order of removal of Encroachments, had put up Asbestos Shed in the Land of the Highways which was earmarked to locate the Electrical Transformer by the TANGEDCO Authorities. The said persons have also again encroached the same place even today. The Electricity Poles laid by the Authorities are in the said vacant site. Another Encroacher, namely Mahadevan of Ponniyammanmedu had dug the Earth to erect column post in the Land belonging to the Highways in front of Lebanonpuram area in order to put up a Pucca Construction with concrete Pillars. He has also stored the building materials for that purpose in the vacant site. The Petitioners had addressed a written Representation, dated 16.08.2016 to the Special Cell, Office of the Honourable Chief Minister, Government of Tamil Nadu, Chennai-9 in person and the same was acknowledged by the Officials. In fact, the said Representation was forwarded to the District Collector, Chennai/Second Respondent herein. Till date, no action had been taken by the Authorities to prevent the illegal Encroachments made by the said persons in the vacant site and to prevent any illegal construction that is being put up by the said Encroachers.

7. It is the further stand of the Petitioners that their Association, on their request, sent a detailed Representation, dated 30.08.2016 to the Respondent Nos.2 to 7 and the Commissioner of Police, Vepery, Chennai, making a request to remove the illegal Encroachment and to prevent any illegal construction in the said Land of the Highways Department. But the Respondent Nos.2 to 7 and the Commissioner of Police had not taken any action so far. Hence, the Petitioners have filed the present Writ petition for passing of an order by this Court in directing the Respondent Nos.1 to 7 to remove the illegal Encroachments made by the Respondent Nos.8 and 9 in the vacant site belonging to the Highways Department, situated in front of Lebanonpuram, near Moolakadai, Erukkancherry, Chennai, within the limits of 35th Ward of Corporation of Chennai,

North Chennai, Chennai-600 118, by considering and passing orders on the Representations of the Petitioners, dated 16.08.2016 and 30.08.2016.

8. Per contra, it is the submission of the learned Standing Counsel for the Fourth Respondent/Greater Chennai Corporation that the Tahsildar, Perambur Taluk, had given a Letter, dated 28.12.2016, to the Corporation of Chennai Officials stating that the Erukkancherry Road near Lebanonppuram, is a Chennai Corporation Road and the Eighth and Ninth Respondents herein had Encroached upon the said Road of an extent of 360 Sq.Ft. Further, in that Letter, it was mentioned that Form-7 was issued to the Eighth and Ninth Respondents by the Tahsildar, Perambur Taluk and requested the Chennai Corporation to initiate further action against the said Encroachment. After receipt of the abovesaid Letter from the Tahsildar, Perambur Taluk, the Officials of Greater Chennai Corporation had inspected the site and took measurements and stated that further action would be taken by issuing notice under Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919, to the Eighth and Ninth Respondents.

9. It is to be noted that Section 220 of the Chennai City Municipal Corporation Act, 1919, provides that no one shall build up or erect any obstruction or project or make any Encroachment in or over any Street. Section 222 of the said Act enjoins a duty on the Commissioner of Corporation to remove such Encroachments or obstructions on any Street. Also that Section 222(3) of the said Act specifies that no licence can be granted if such projection or construction causes public inconvenience or otherwise materially interfere with the use of the Road. In fact, every Municipal Corporation has a statutory obligation to provide free flow of traffic and pedestrians right to pass and re-pass freely and safely. As a logical corollary, the Corporation/Municipality has a statutory duty to have the Encroachments removed. Apart from that, Section 220 of the said Act authorises every City Municipal Corporation to issue notice and remove any unauthorised occupation of a public place, the control of which is vested in the City Municipal Corporation.

10. In view of the fact that the Fourth Respondent/Greater Chennai Corporation has come out with a categorical plea that after inspection made by the Corporation Officials as regards the site, and taking measurements, further action would be taken as per Section 220 read with Section 222 of the said 1919 Act, against the Eighth and Ninth Respondents, this Court, simpliciter, directs the Fourth Respondent/Greater Chennai Corporation

to take necessary steps by removing the offending construction as per Section 220 of the 1919 Act and to remove the said Encroachment as per Section 222 of the 1919 Act, if not already removed, within a period of six weeks from the date of receipt of a copy of this order.

11. The Fourth Respondent/Greater Chennai Corporation shall follow the ingredients of the relevant provisions of the Chennai City Municipal Corporation Act, 1919 and to see that the Encroachments in question made by the Eighth and Ninth Respondents are removed within the time adumbrated above by this Court. If the Fourth Respondent/Commissioner of Greater Chennai Corporation opines that any notice is to be given to the owners/occupiers/Encroachers, then he is at liberty to do so, and after hearing their objections, shall take a final call in the matter by passing a reasoned speaking order in a free, fair, just, dispassionate and unbiased manner, within the time prescribed by this Court above, of course, by adhering to the Principles of Natural Justice and also in the manner known to Law and in accordance with Law. It is open to the Fourth Respondent to seek assistance of the Law Enforcing Machinery (Police) to remove the Encroachment in question made by the Eighth and Ninth Respondents.

12. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary,
Highways & Minor Ports Department,
Fort St.George,
Chennai-600 009.

2.The District Collector,
Chennai District,
"Singaravelar Maaligai"
Collectorate Buildings,
Rajaji Salai,
Chennai-600 001.

3.The Chief Engineer (Highways),
State Highways Department,
No.2-D, "Panagal Building",
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4.The Commissioner,
The Corporation of Chennai,
"Ripon Building",
Park Town, Chennai-600 003.

5.The Chairman,
The Chennai Metropolitan Water Supply and
Sewerage Board,
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6.The Divisional Engineer,
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The Chennai Metropolitan Water
Supply and Sewerage Board,
Tondiarpet, Chennai-600 081.

7.The Chairman,
The Tamil Nadu Generation and
Distribution Corporation,
No.144 Anna Salai,
Chennai-600 002.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.5016
+1cc to the Government Pleader, S.R.No.6032

W.P.No.31190 of 2016

SAI (CO)

rrs 20/02/2019

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