

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.32515 of 2016
and
W.M.P.No.28188 of 2016

P.Thangamariappan

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai-600 003.
2. The Chairman,
Zonal Office, Zone No.8,
Shenoy Nagar,
Chennai-30.
3. The Assistant Engineer,
Corporation of Chennai,
Ward No.96, Zone No.8,
Shenoy Nagar,
Chennai-600 030.
4. The Assistant Commissioner of Police,
Veppery, Chennai-600 007.
5. The Inspector of Police,
Ayanavaram Police Station,
Ayanavaram, Chennai-600 023.
6. Mr.A.Gajendran
7. P.Govindarajan
8. C.Rajendran
9. C.Raji
10. M.Babu
11. J.Siva Maistry

.. 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 3 to remove the road side Encroachment committed either by the Respondent Nos.6 to 11 or by any other

persons on the Somasundaram 2nd Street, Ayanavaram, Chennai-600 023, in the name of construction of any Temple or putting up any shelter over the said road under any reasons and to maintain the said road free for public access for ever.

For Petitioner : Mr.V.Manohar

For Respondents: Mr.V.C.Selvasekaran for RR-1 to 3
Mr.J.Pothiraj, Spl.G.P. for RR-4 and 5
Mr.C.Murali for R-6
Notice returned unserved with endorsement
"absent" for RR-7 to 9 and 11
Notice served on R-10, No appearance

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 3 to remove the road side Encroachment committed either by the Respondent Nos.6 to 11 or by any other persons on the Somasundaram 2nd Street, Ayanavaram, Chennai-600 023, in the name of construction of any Temple or putting up any shelter over the said road under any reasons and to maintain the said road free for public access for ever.

2. Heard the Learned Counsel for the Petitioner, the Learned Standing Counsel for the Respondent Nos.1 to 3, the Learned Special Government Pleader for the Respondent Nos.4 and 5 and the Learned Counsel for the Sixth Respondent. In respect of the Respondent Nos.7 to 9 and 11, Notice returned unserved with endorsement "absent" and in respect of Notice on the Tenth Respondent, the same was served, but he is not present either in person or through a Learned Counsel. Counter of the Greater Chennai Corporation/Respondent Nos.1 to 3 is filed.

3. The stand of the Petitioner is that he is in peaceful possession and enjoyment of the property inherited from his grandfather situated in corner of junction of Konnur High Road and that of Somasundaram Second Street at Ayanavaram, Chennai-600 023. His property had access from the Main Road of Konnur High Road and also adjacent Road of Somasundaram Second Street. The said property is being used for commercial as well as residential purposes and consists of ground plus two floors. Apart from the Petitioner's usage, there are portions let out to various persons for their enjoyment for many years together.

4. When that be the fact situation, the Respondent Nos.6 to 11 had established an Auto parking stand at the junction in the corner of Somasundaram Second Street, numbering about 15 to 20 Autos, which were used to be parked in the narrow lane and

misused the place for their activities. The Respondent Nos.6 to 11, with a view to have a permanent status, had come forward to form a Sangam (Association) in the name of Muthamizh Arignar Dr.Kalaignar Narpani Mandram and erected a huge Display Board on the side of the Road. Out of the said Board, they have erected the said person and also installed a God's caricature on the wall of opposite side of the Petitioner's property. Some time later, the wall of the other side Petrol Bunk was altered and a frame was put up and thereof many caricatures representing the Hindu Gods being erected and periodical Poojas were done and the Prasadams were distributed.

5. Added further, the Respondent Nos.6 to 11 had increased their activities by installing a Road side Temple by encroaching upon the Road itself, namely Somasundaram Second Street and full-fledged activities were going on and further, one of the parking of many Autos and the visitors of the said Road side Temple became swelled due to the reason that there was distribution of food items periodically. They have also decided to erect a projection by covering the entire Street and the roof to be provided with support of Pillars covering the entire Somasundaram Second Street from the end of the Road side Temple to that of the other side of the Petitioner's property. They have also dug the front yard of the Petitioner's property with the use of Jumper machine and in overnight, they had put up a foundation so as to wrest the Pillars to support the roof to be installed. The activities of the Respondent Nos.6 to 11 are nothing but road grabbing and high-jacked the front portion of the Somasundaram Second Street, which is the adjacent Road of the Petitioner's property. Even though the situation was taken up before the Respondent Nos.1 to 4 on many occasions then and there when there was disturbance being created for the Petitioner's enjoyment of the property, however, no action has been taken by the concerned Authorities.

6. At this stage, the Learned Counsel for the Petitioner submits that taking assistance of the Local Police, the Encroachers on the Road had started their work of installing the permanent structures by erecting the heavy iron posts and cross-bars with the help of girders and had built infrastructures on 27.08.2016 and the Fifth Respondent had supervised the erection work made by the Respondent No.6 to 11 and threatened out inmates from interfering with the work in progress. In fact, the Respondent Nos.6 to 11 had completed the roofing also by using welding and clenches to hold the infrastructures. The said provision at the height of 20 feet from the ground level, touches the edges of the Petitioner's property and rendered the safety of the Petitioner's living become a questionable one. In spite of the fact that the Assistant Engineer of Greater Chennai Corporation had made the site inspection and that along with the other officials, nothing tangible came out, under these

circumstances, the latest complaint was submitted by the petitioner on 20.08.2016 before the Third Respondent/Assistant Engineer, Corporation of Chennai, Zone 8, Ward 96, Shenoy Nagar, Chennai, in the evening after 6 p.m., but no action has been taken. Hence, the Petitioner has filed the present Writ Petition for the relief stated supra.

7. Per contra, it is the submission of the Learned Standing Counsel for the Respondent Nos.1 to 3 that on receipt of the complaint from the Petitioner, the site in question was inspected by the Assistant Executive Engineer, Unit-21, Zone-VIII and the Assistant Engineer, Division-96, Unit-21, Zone-VIII of the Greater Chennai Corporation and it was found that the Respondent Nos.6 to 11 had put up iron posts in the Road margin covered up by the Zinc sheets. Immediately, after inspecting the site, a notice under Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919, dated 05.10.2016 was issued to the Sixth Respondent and further action against the said Encroachment would be taken as per the provisions of the said 1919 Act.

8. 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.

9. In view of the above categorical assurance given by the Zonal Officer-VIII of Greater Chennai Corporation in his counter affidavit to the effect that after issuance of notice under Section 220 read with Section 222 of the said 1919 Act, dated 05.10.2016, further action would be taken against the Encroachment as per the provisions of the said 1919 Act, this Court, to prevent the aberration of Justice and in furtherance of substantial cause of Justice, directs the Respondent Nos.1 to 3 to follow the action taken by them pursuant to the said Notice dated 05.10.2016 to its logical end and to see that the offending construction/Encroachment is removed within a period of six weeks from the date of receipt of a copy of this order,

if not already removed.

10. The Respondent Nos.1 to 3/Greater Chennai Corporation (including the Commissioner) shall follow the ingredients of the relevant provisions of the Chennai City Municipal Corporation Act, 1919 and to see that the Encroachment in question made by the Respondent Nos.6 to 11 is removed within the time adumbrated above by this Court. If the Respondent Nos.1 to 3/Greater Chennai Corporation opines that any notice is to be given to the owners/occupiers/Encroachers, then they are at liberty to do so, and after hearing their objections, the Respondent Nos.1 to 3 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 Respondent Nos.1 to 3 to seek the assistance of the Law Enforcing Machinery (Police) to remove the Encroachment in question made by the Respondent Nos.6 to 11. In this regard, Assistant Commissioner of Police, Ayanavaram Range, Chennai-600 023, is directed to provide necessary assistance to the Respondent Nos.1 to 3 in carrying out the removal of Encroachment pursuant to the above order passed by this Court.

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

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town,
Chennai-600 003.

2. The Chairman,
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Zone No.8,
Shenoy Nagar,
Chennai-30.

3. The Assistant Engineer,
Corporation of Chennai,
Ward No.96,
Zone No.8,
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Chennai-600 030.
 4. The Assistant Commissioner of Police,
Veppery, Chennai-600 007.
 5. The Inspector of Police,
Ayanavaram Police Station,
Ayanavaram,
Chennai-600 023.
 6. The Assistant Commissioner of Police
Ayanavaram Range
Chennai 23.
- +1 CC to Mr.V.Manohar, Advocate sr 5290.
+1 CC to Govt. Pleader sr 6033.

W.P.No.32515 of 2016

PP(CO)
SP(15/02/2019)