

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM :

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

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.14124 of 2019 and
W.M.P.Nos.14177 & 14179 of 2019

1 R.Sarasu Ammal
2 R.S.Sri Shivakumar Chetty
3 R.Senthil Kumar Chetty
4 M.Jayakumari Ammal
5 E.Amudha Ammal
6 S.Anitha Ammal
7 P.Murthy Chetty
8 P.Ravichandran Chetty
9 P.Sarasu Ammal
10 M.Rathi Ammal
11 D.Vasugi Ammal
12 V.Navaneetham Ammal
13 V.Anand Karthick
14 O.Srio Lakshmi Ammal
15 Y.Subhashini Ammal
16 M.Marimuthu Chetty @ Ashok K
17 S.Kamala Ammal
18 S.Jamuna Ammal

.. Petitioners

Vs.

1 Arulmigu Drowpathiamman Kovil,
Drowpathiamman Kovil Street, Kasimedu,
Royapuram, Chennai.

Rep. by the Administrator,
Pushpa,
S/o. Karuna,
No.53, Kasipuram, 3rd Street,
Kasima Nagar, Royapuram,
Chennai - 600 013.

2 Pushpa
3 Rajesh
4 Kattandi
5 R.Mohanasundaram
6 R.Raji
7 K.Ganesan
8 A.Gnanasekaran

9 M.Kaliamoorthy

10 Assistant Engineer
Corporation of Chennai
Division 050,
Chennai.

11 Assistant Executive Engineer,
Unit 12, Corporation of Chennai,
Chennai.

12 Executive Engineer,
Zone 05, Corporation of Chennai,
Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Mandamus, directing the respondents 10 to 12 to implement the order dated 22.03.2019 made in Letter No.05/04383/2019 on the file of the 12th respondent.

For Petitioners : Mr.R.Loganathan
For Respondents : Mr.S.D.Ramalingam - for R4
Mr. Anantha Narayan - for R10 to R12
No Appearance - for R1 to R3 & R5 to R9

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of Mandamus, directing the respondents 10 to 12 to implement the order dated 22.03.2019 on the file of the 12th respondent.

2. It is the case of the petitioners that the respondents 2 to 4 without obtaining planning permission and that the 12th respondent issued a Notice under sections 56 and 57 of the Town and Country Planning Act, 1971 calling for the approved plan. Thereafter, on 22.03.2019, the 12th respondent, issued the Lock and Seal and Demolition Notice under sections 56 and 57 read with section 85 of the Town and Country Planning Act. The petitioners have filed the above Writ Petition to direct the respondents 10 to 12 to implement the order dated 22.03.2019 by demolishing the construction put up by the respondents 2 to 4.

3. The learned counsel appearing for the respondents 10 to 12 submitted that the petitioners had already filed a Civil Suit in O.S.No.642 of 2019 on the file of the III Additional Judge, City Civil Court, Chennai, for the relief of declaration,

permanent injunction and for mandatory injunction, directing the defendants (respondents) to remove the structure illegally made by the respondents 1 to 4.

4. When the petitioners have filed the Civil Suit for the very same relief sought for in the Writ Petition, they cannot be allowed to prosecute both the matters simultaneously. From the available records, it could be seen that the suit was filed in the month of January 2019, whereas, the Writ Petition has been filed on 06.05.2019. Therefore, it is clear that the petitioners have filed the Writ Petition only after the institution of the Civil Suit in O.S.No.642 of 2019.

5. Since the petitioners have already chosen the alternative remedy by way of Civil Suit, the Writ Petition cannot be entertained. However, it is open to the petitioners to prosecute the Civil Suit in O.S.No.642 of 2019, in accordance with law.

With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Assistant Executive Engineer,
Unit 12, Corporation of Chennai,
Chennai.
- 2 The Executive Engineer,
Zone 05, Corporation of Chennai,
Chennai.
- 3 The Assistant Engineer,
Corporation of Chennai, Division - 050, Chennai.

+1 cc to M/s.R.Loganathan, Advocate Sr.No. 71372
+1 cc to Mr.S.D.Ramalingam, Advocate SR.No.70792

AKM/20.09.19/3P-6C /

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