

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. No.14494 of 2019
and W.M.P.No.14510 of 2019

B.Jeyanthi

.. Petitioner

-vs-

1.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

2.The Assistant Engineer,
Division-30, Zone-3,
Corporation of Chennai,
Madhavaram, Chennai 600 060.

3.Munusamy

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the respondents 1 and 2 to take action on the petitioner's representations dated 07.01.2019 to demolish the building constructed by the 3rd respondent situated at Door no.117/77, Rajaji Street, Madhavaram, Chennai 600 060 and remove the encroachment made on Rajaji Street.

For Petitioner : Mr.AR.L.Sundaresan, Sr. Counsel
Mr.B.Senthilkumar

For Respondents : Mr.G.Anantharangan
Stdg. Counsel for RR 1 and 2
: Mr.M.R.Jothimanian for R-3

* * * * *

O R D E R

(Order of the Court was made by
The Hon'ble Acting Chief Justice)

The petitioner, B.Jeyanthi, W/o.S.Thirudevasenapathy, residing at No.96, Rajaji Street, Madhavaram, Chennai 600 060, has filed this writ petition in this Court alleging illegal construction by respondent no.3, Mr.Munusamy, S/o.Bashyam, without the due approval from the concerned Competent Authorities of the Corporation of Chennai.

2.Upon issuance of notices, the respondents including the officer of the Chennai Corporation have filed affidavits in this Court. In the affidavit dated 04.06.2019 of Mr.S.Devendiran, S/o.M.Sellakkannu, Zonal Officer, Zone-III, in paras 7 to 10, he has stated as under:

"7. I respectfully submit that the third respondent and Mr.B.Mahalingam had stopped the construction activity and have applied for planning permission to the Greater Chennai Corporation along with mandatory documents. After scrutinizing the same planning permission has been accorded to the third respondent and Mr.B.Mahalingam vide PPA/WDCNO3/01065/2019 and building approval vide BA/WDCNO3/0102/2019 dated 26.02.2019 and the third respondent and Mr.B.Mahalingam have commenced the construction activity thereafter.

8. I respectfully submit that while the matter stood thus the petitioner herein had filed the above Writ Petition and when the said case came up for hearing on 15.05.2019 this Hon'ble Court has granted interim injunction as follows:

"..2.It is the grievance of the petitioner that the 3rd respondent has been continuing with the acts of encroachments by putting up unauthorised constructions and trying to block the pathway at Rajaji Street. It is stated that the petitioner has received information under the Right to Information Act specifically informing that no approval had been given for the said constructions. He was also informed that proper action would be taken in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971, as against the unauthorised constructions. The Public Information Officer, Corporation of Chennai has furnished

such details under RTI Act on 28.12.2018. Thereafter, though nearly 5 months have elapsed, no action has been taken against the 3rd respondent for putting up the illegal constructions. Therefore, aggrieved over the same, the petitioner is before this Court with this Writ Petition.

3.Mr.G.Anantharangan, learned Counsel takes notice for the respondents 1 and 2. Notice to the 3rd respondent through Court as well as privately returnable by 12.06.2019.

4.Post the matter on 12.06.2019. In the meanwhile, there will be an order of interim injunction as prayed for by the petitioner in WMP.No.14510/2019 in W.P.No.14494/2019 till 12.06.2019.

5.Registry is directed to furnish a copy of this Order to the respondents 1 and 2 enabling them to enforce the said order... "

9.I respectfully submit that on receipt of the above case papers the building in question has been again inspected by the officials of Greater Chennai Corporation and found that the third respondent herein and Mr.B.Mahalingam has put their building as per the approved plan by leaving front set back since the building in question falls under the continuous area only front setback to be left. I further submit that the officials of Greater Chennai Corporation has intimated about the injunction order and directed the third respondent and Mr.B.Mahalingam to stop the construction activity until further orders from this Hon'ble Court and the third respondent stopped the construction activity.

10.I respectfully submit that with regard to the allegation of the encroachment in the 8 feet common passage a letter dated 23.05.2019 has been addressed to the Tahsildar, Madhavaram Taluk to inspect and to earmark the boundaries of the common passage connecting the Rajaji Street and to furnish a report. I further submit that on receipt of the above letter the Tahsildar, Madhavaram Taluk has furnished a report dated 30.05.2019 in Na.Ka.No.1051/2019/A1 stating that the field inspection has been carried out by the surveyor and there is no encroachment made by the third respondent in the 8 feet common passage as alleged by the petitioner herein and also furnished the copy of the block map and survey land register."

3.As per the said affidavit, the approval for construction of building by respondent no.3 was granted by the concerned authority on 26.02.2019, albeit, the construction has started prior to that. Therefore, an ex post facto approval has been given. Upon sending a letter dated 23.05.2019 in respect of encroachment in the common passage to the concerned authorities, the concerned Tahsildar, Madhavaram Taluk, vide his report dated 30.05.2019, stated, as in para 10 of the affidavit quoted above, that there is no encroachment of the common passage in the said case.

4.In view of these facts, we are satisfied that the grievance as stated in the present writ petition is not tenable. In case, the petitioner has any valid objection in this regard, she may either approach the Local Planning Authority in question or the higher authority, in accordance with law.

With these observations, the writ petition is disposed of. No costs. Consequently, W.M.P.No.14510 of 2019 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra
To

1.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

2.The Assistant Engineer,
Division-30, Zone-3,
Corporation of Chennai,
Madhavaram, Chennai 600 060.

+1 cc to Mr.K.Balu Advocate sr82894
+1 cc to Mr.B.Senthil kumar Advocate sr83118

W.P.No.14494 of 2019

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