

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.14950 and 21263 of 2019 and
W.M.P.Nos. 14915 and 14932 of 2019 in
W.P. No.14950 of 2019 and
W.M.P.No.20463 of 2019 in
W.P.No.21263 of 2019

The Anna Nagar People Welfare Sangam,
Tharamani,
Having Registration No.207 of 2014,
Represented by its Secretary
Mr.S.Paramanathan,
Having Turst Office at
No.16A, M.G.R. Street,
Anna Nagar, Tharamani
Chennai – 600 113.

.. Petitioner in W.P.No.14950/2019

Mrs. M. Ranjitham

.. Petitioner in W.P.No.21263/2019

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v.

1. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai – 600 003.

2. The Zonal Engineer, Zone XIII,
Greater Chennai Corporation,
L.B. Road, Adyar,
Chennai – 600 020.
3. The Area Engineer, Zone XIII,
Office of the Chennai Metropolitan
Water Supply & Sewerage Board,
Indira Nagar, Adyar, Chennai – 600 020.
4. The Tahsildar,
Velachery Taluk,
Gandhi Road, Seva Nagar,
Velachery, Chennai – 600 042.
5. The Deputy Commissioner of Police,
Adyar Range, Adyar, Chennai – 600 020.
6. The Assistant Commissioner of Police,
Thiruvanmiyur Range,
Thiruvanmiyur, Chennai – 600 041.
7. The Inspector of Police,
J-13, Tharamani Police Station
Kanagam, Chennai – 600 113.
8. Tmt. M.Ranjitham
9. Mr. Gopalakrishnan ... Respondents in W.P.No.14950/2019
1. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai.
2. The Regional Deputy Commissioner (South),
No.115, Dr. Mutulakshmi Salai,
Adyar, Chennai – 600 020. Respondents in W.P.No.21263/2019

W.P.No.14950/2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Mandamus, directing the respondents 1 to 4 to maintain the schedule public road as public road without being encroached by the 8th respondent and or any other persons in future in enabling the residents of Tharamani Village to use the same for their ingress and egress.

W.P.No.21263/2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, calling for the records of impugned order issued by the 2nd respondent in Notice No.001, dated 01.07.2019 and to quash the same.

For Petitioners : Mr.R.Balachanderan (W.P.No.14950/2019)
Mr.S.Joel (W.P.No.21263/2019)

For Respondents
(in W.P.No.14950/2019) : Mr.V.C.Selvasekaran
Senior Counsel – for R1 to R3
Mr.S.N.Parthasarathi,
Government Advocate – for R4 to R7
Mr.S.Joel – for R8
R9 – Not Ready in Notice

For Respondents
(in W.P.No.21263/2019) : Mr.V.C.Selvasekaran
Senior counsel – for R1 & R2

COMMON ORDER

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

W.P.No.14950 of 2019 has been filed by the petitioner association to issue a Writ of Mandamus, directing the respondents 1 to 4 to maintain the schedule public road as public road without being encroached by the 8th respondent, who is the petitioner in W.P.No.21263 of 2019, or any other persons in future in enabling the residents of Tharamani Village to use the same for their ingress and egress.

2. W.P.No.21263 of 2019 has been filed by the petitioner, who is the 8th respondent in W.P.No.14950 of 2019, to issue a Writ of Certiorari, to call for the records of impugned order issued by the 2nd respondent dated 01.07.2019 and to quash the same.

3. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it

could be seen that one T.Joseph and two others filed a suit in O.S.No.954 of 1992 on the file of the XIV Assistant Judge, City Civil Court, Chennai against the petitioner in W.P.21263 of 2019 and also against the Tahsildar, Guindy and the Commissioner of Chennai Corporation for permanent injunction restraining them from interfering with the plaintiffs' possession.

4. The Trial Court, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit. Aggrieved over the same, the plaintiffs filed an appeal in A.S.No.103 of 1999 on the file of VI Additional Judge, City Civil Court, Chennai and the Lower Appellate Court, by the Judgment and Decree dated 17.01.2009, reversed the Judgment and Decree of the Trial Court. As against the same, the petitioner in W.P.No.21263 of 2019, preferred a Second Appeal in S.A.No.1748 of 2004 before this Court and this Court, by Judgment dated 09.07.2018, allowed the appeal and confirmed the Judgment and Decree of the Trial Court. While dismissing the suit, this Court has categorically held that the plaintiffs have miserably failed to establish the existence of the suit property as abutting the 1st

defendant's [petitioner in W.P.No.21263/2019] property and also failed to establish the alleged encroachment by her into the suit property.

5. When the Civil Court as well as this Court had disbelieved the case of the plaintiffs and dismissed the suit, the 2nd respondent issued the impugned notice dated 01.07.2019. The 2nd respondent is bound by the Decree passed in O.S.No.954 of 1992 and S.A.No.1748 of 2018.

6. The 1st respondent was the 3rd defendant in the suit. Though the 1st respondent appeared before the Trial Court, he did not file any written statement. Similarly, in the Second Appeal also, the 1st respondent remained absent. In these circumstances, in view of the Judgment of this Court made in S.A.No.1748 of 2018, the impugned notice dated 01.07.2019 issued by the 2nd respondent is liable to be set aside. Accordingly, the same is set aside.

7. So far as the Writ Petition in W.P.No.14950 of 2019 is concerned, the relief sought for in the Writ Petition cannot be granted in view of the findings rendered by this Court in S.A.No.1748 of 2019.

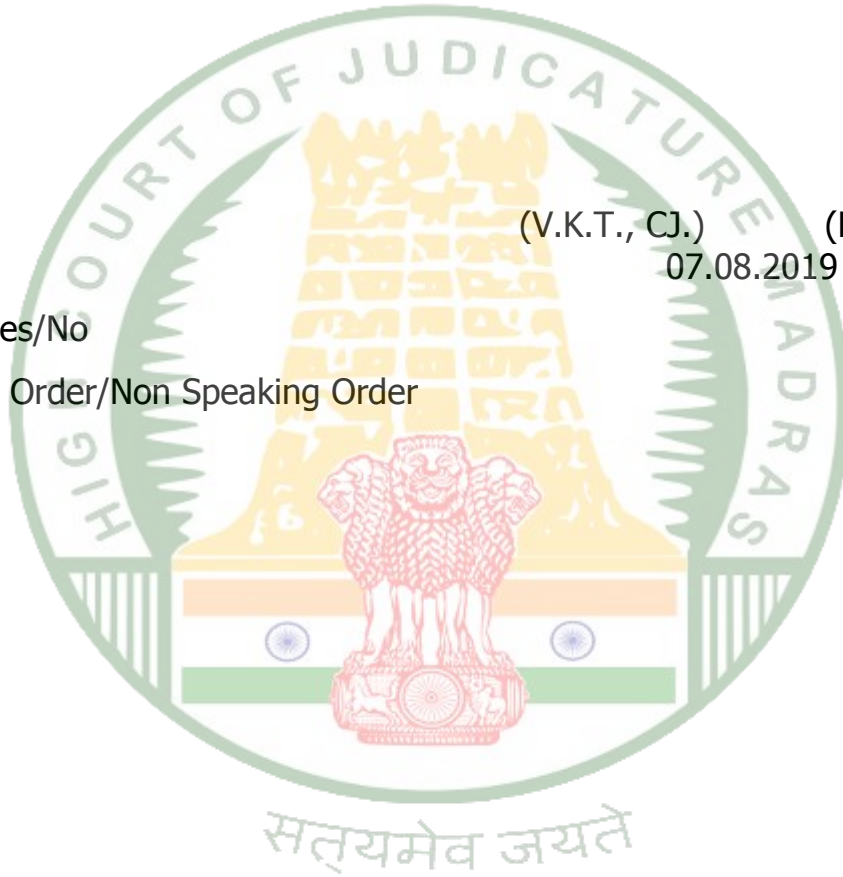
8. In such view of the matter, the Writ Petition in W.P.No.21263 of 2019 is allowed and W.P.No.14950 of 2019 stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(V.K.T., C.J.) (M.D., J.)
07.08.2019

Index : Yes/No

Speaking Order/Non Speaking Order

Rj



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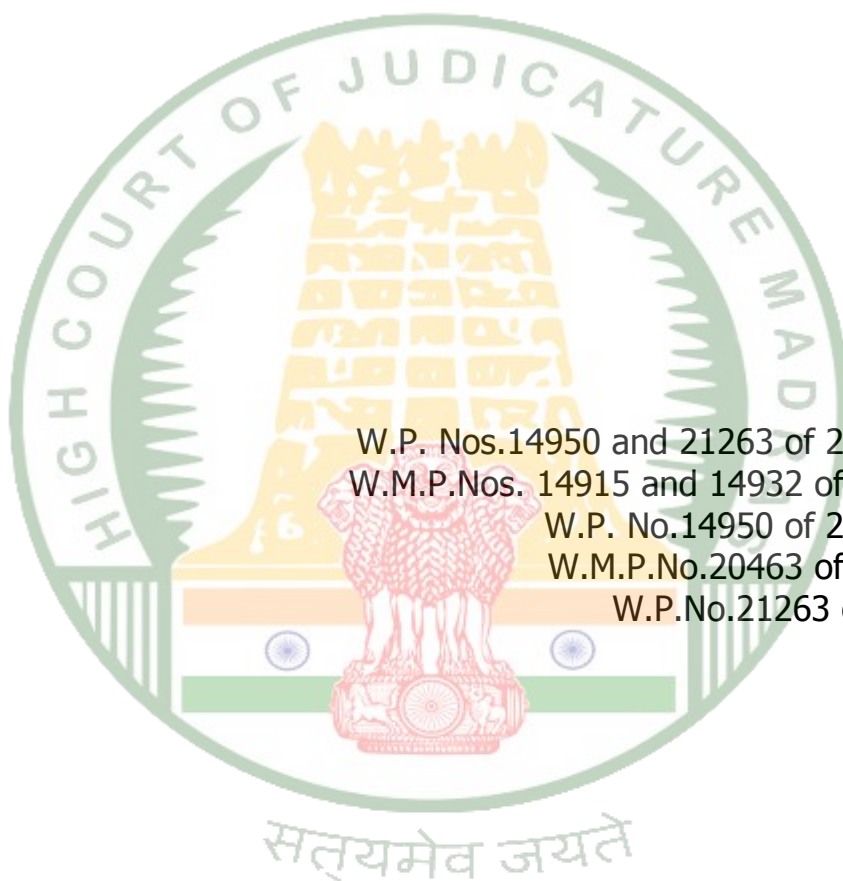
To

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