

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.22394 of 2019 and
W.M.P.Nos.21732 & 21734 of 2019

M.N.Saraswathi

... Petitioner

Vs.

1.The Commissioner and Director of
Survey and Land Records,
Chepauk, Chennai - 600 005.

2.Sakthivel

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records made in impugned Memo Na.Ka.No.Ja.4/3907/2017 passed by the first respondent herein dated 13.07.2019 and quash the same as illegal and direct the first respondent to pay the DCRG Gratuity amount of Rs.3,88,244/- to the petitioner.

For Petitioner : Mr.R.Sankarasubbu

For 1st Respondent: Mr.J.Pothiraj
Special Government Pleader

ORDER

The present writ petition has been filed against the order passed by the 1st respondent in recovering certain amount from the DCRG payable to the petitioner vide order dated 13.07.2019. Originally the same action of the 1st respondent was put to challenge in the writ petition and the learned Judge of this Court, in W.P.No.10190 of 2018 dated 12.04.2019 after observing the following, has dismissed the writ petition. The relevant observation of the order in paragraphs No.2 & 3 is as follows:

"2.The learned counsel appearing on behalf of the respondents states that the impugned order was passed by the competent authorities based on the order passed by the competent civil court in E.P. No. 125 of 2016 in O.S. No. 424 of 2006 dated 21.03.2018. If at all the writ petitioner is aggrieved from and out of the execution order passed by the civil court, he has to

prefer an appeal before the competent appellate court in order to adjudicate the issues involved in the judgment and decree of the civil court or the order passed in the Execution Petition. Contrarily, the administrative order passed by the respondents implementing the civil court decree cannot provide a cause for the writ petitioner to file a writ petition and such order passed based on the judgment and decree of the civil court cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

3. Thus, the writ petitioner has not established any acceptable cause for the purpose of entertaining this writ petition. Accordingly, this writ petition is devoid of merits and stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

2. Thereafter, the recovery order was passed on the basis of a civil court decree obtained by the Creditor as against the present writ petitioner. In case the petitioner is aggrieved, the only course open to her to approach the civil court and seek for appropriate orders and it is certainly not open to the petitioner to knock the doors of this Court under Article 226 of the Constitution of India and seek to quash the order passed by the 1st respondent. Ultimately the order passed by the 1st respondent is in pursuance of the civil court decree and this Court cannot pass any order preventing such execution of the civil court decree. Therefore, the only course open to the petitioner is to approach the civil Court, if she so advised. Moreover, once this Court has taken a decision to dismiss the writ petition filed by the petitioner, for the same issue, the second writ petition with the same cause of action cannot be entertained.

3. In the above circumstances, this Court is of the view of that the Writ Petition is not maintainable and also lacks merit and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (J)

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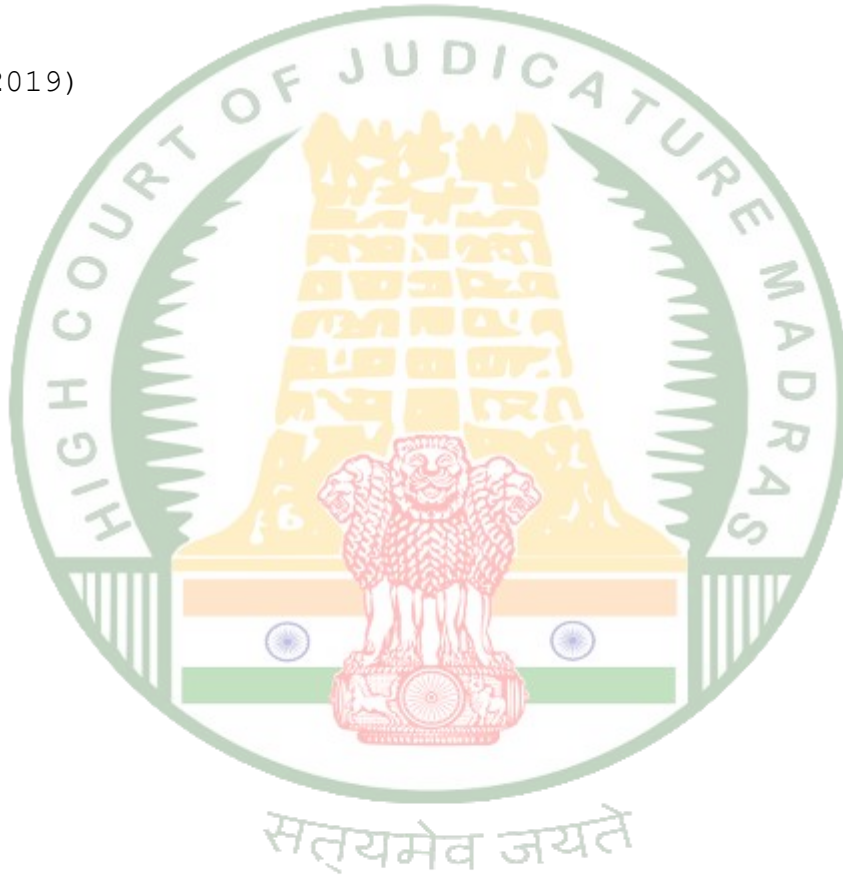
Sub-Assistant Registrar

To

1.The Commissioner and Director of
Survey and Land Records,
Chepauk, Chennai - 600 005.

W.P.No.22394 of 2019

SP(29/08/2019)



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