

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1.10.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.28504 of 2019

and

W.M.P.No.28227 of 2019

K.B.Rajendran

..Petitioner

Versus

1. The Housing and Urban Development Department, rep. by its Principal Secretary, Secretariat, Fort Saint George, Chennai 600 009.
2. The Member Secretary, Chennai Metropolitan Dev. Authority (CMDA) Thalamuthu Natarajan Building, No.1, Gandhi Irwin Marg, Chennai 600 008.
3. The Commissioner, The Greater Corporation of Chennai, Ripon Building, Chennai 600 003.
4. Tmt.M.C.Thennarasi alias Thennagam ..Resspondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first Respondent pertaining to his G.O.(3D) No.105 in lr.No.21797/UD 7-1/2008-1 and quash the order dated 13.8.2019 partially in respect of 16th paragraphs is as follows:- "Further as the actual sub-division of the plot can be carried out only after the civil court decides the matter, the committee decided to reject the appeal and direct the party to approach the Competent Authority with an application for planning permission based on the civil court verdict" made therein and consequently direct the third Respondent to remove the illegal, unlawful and unauthorised constructions i.e., ground and first, second and third floors made by encroaching the road land extents and petitioners land - extents in Dr.Ambedkar First Street,

Villivakkam, Chennai-49 made without title deed and sanctioned plan permit by violating the rules laid down under the Town and Country Planning Act, 1971 by the 4th respondent-herein at old door No.25, New Door No.34, Dr.Ambedkar First Street, Villivakkam, Chennai 600 049.

For petitioner : Party in person

For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader

For R2 : Mr.P.S.Ganesh

For R3 : Mr.V.C.Selvasekaran

ORDER

(Order of the court was made by Dr.VINEET KOTHARI,
ACTING CHIEF JUSTICE)

Heard the Petitioner in person and Mr.V.Jayaprakash Narayanan, learned Government Pleader for the State/Respondent No.1, Mr.P.S.Ganesh, learned counsel for Respondent No.2 and Mr.V.C.Selvasekaran, learned counsel for Respondent No.3.

2. The present Petition has been filed by the Petitioner on 13.9.2019 with the following prayer:-

"Certiorarified mandamus to call for the records of the first Respondent pertaining to his G.O.(3D) No.105 in lr.No.21797/UD 7-1/2008-1 and quash the order dated 13.8.2019 partially in respect of 16th paragraphs is as follows:- "Further as the actual sub-division of the plot can be carried out only after the civil court decides the matter, the committee decided to reject the appeal and direct the party to approach the Competent Authority with an application for planning permission based on the civil court verdict" made therein and consequently direct the third Respondent to remove the illegal, unlawful and unauthorised constructions i.e., ground and first, second and third floors made by encroaching the road land extents and petitioners land - extents in Dr.Ambedkar First Street, Villivakkam, Chennai-49 made without title deed and sanctioned plan permit by violating the rules laid down under the Town and Country Planning Act, 1971 by the 4th respondent-herein at old door No.25, New Door No.34, Dr.Ambedkar First Street, Villivakkam, Chennai 600 049."

3. The petitioner contended before us that he has earlier approached this court by way of W.P.No.12609 of 2017 (K.B.Rajendran v. The Housing and Urban Development Department and others), which was disposed of by a co-ordinate Bench of this court on 14.2.2018 with the following directions:-

"22. In view of the foregoing, this Court directs the 4th respondent to rectify the defects pointed out by the authorities, in tune with the sanctioned Plan, within a period of four months from today, preferably on or before 30.6.2018, failing which, it is open to the respondents/authorities to demolish the building. It is made clear that the Appeal said to have been filed by the 4th respondent under Section 79 is not at all maintainable.

23. Also, as to whether the five feet passage in question is a common passage of it exclusively belongs to the Petitioner and further whether the Parties have right over the same are interconnected issues, which have to be dealt with only by the Civil Court and this Court cannot delve into it.

24. This Writ Petition is allowed with the above direction(s) and observation(s). No costs. Consequently, connected miscellaneous petition is closed.

25. List this Writ Petition for 'reporting compliance' on 4.7.2018."

4. He has further brought to our notice that Respondent No.4, Tmt.M.C.Thennarasi alias Thennagam has encroached a part of the land and raised unauthorised construction and therefore, suitable direction may be issued to the Respondents to take action against such encroachment and unauthorised construction. He has also stated in para 39 of his Affidavit dated 13.9.2019 that the following Civil Suits are pending between the parties viz., O.S.No.6407 of 2014 in the court of XVIII Assistant Judge, City Civil Court, Chennai, O.S.No.589 of 2018 before the XIV Assistant Judge, City Civil Court, Chennai and etc. It is further seen that there is another suit pending on the issue in question in O.S.No.1287 of 1986 on the file of the District Munsif, Poonamallee.

5. Having heard the Petitioner, we are of the opinion that it is a civil and private dispute between the Petitioner and Respondent No.4, Tmt.M.C.Thennarasi alias Thennagam, as such questions of facts which are involved in the present proceedings cannot be determined under Article 226 of the Constitution of India. Therefore, we cannot entertain this Writ

Petition. If there is any breach of the directions given by the co-ordinate Bench of this Court earlier in W.P.No.12609 of 2017, then the Petitioner is free to take appropriate legal proceedings in the matter.

6. In these circumstances, leaving open to the Petitioner to avail the remedy by way of Civil Suit in the competent Civil Court, we dispose of this Writ Petition. No costs. The connected Miscellaneous Petition is closed.

ssk.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Housing and Urban Development
Department,
Secretariat,
Fort Saint George, Chennai 600 009.
2. The Member Secretary,
Chennai Metropolitan Dev. Authority (CMDA)
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Marg, Chennai 600 008.
3. The Commissioner,
The Greater Corporation of Chennai,
Ripon Building, Chennai 600 003.

+1cc to Mr.K.B.Rajendran, (Party-in-Person) Advocate, SR.No.84029
+1cc to the Govt.Pleader, Vide Sr.No.84494
+1cc to Mr.P.S.Ganesh, Advocate, SR.No.83940

W.P.No.28504 of 2019

Kak(12/11/2019)

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