

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.31789/2019 & WMP.No.32016/2019

Mr.K.Kaliyamoorthy ... Petitioner

Versus

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

2.The District Collector
Chennai District,
Collectorate Building
Chennai.

3.The Zonal Officer
Zone-XV, Corporation of Chennai
No.20, Rajiv Gandhi Salai
Sholinganallur, Chennai 600 119.

4.The Tahsildar
Sholinganallur Taluk, TNHB
Sholinganallur, Chennai 600 119.

5.Mr.Pakrisamy ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the impugned proceedings dated 23.09.2019 in Ma.A.15.No.Na.Ka.No.A5/03733/2019 issued by the 3rd respondent and quash the same and consequently direct the 3rd respondent to remove the encroachment made by Mr.Pakrisamy on Saraswathi Nagar 3rd Main Road, Neelankarai, Chennai 600 115.

For Petitioner : Mr.S.Sathyaraj

For RR1 & 3 : Dr.C.Ravichandran

For RR2 & 4 : Mr.P.S.Sivashanmugasundaram
Spl.GP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1) By consent, the writ petition is taken up for final disposal. Dr.C.Ravichandran, learned Standing counsel accepts notice on behalf of the respondents 1 and 3 and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader accepts notice on behalf of respondents 2 and 4.
- (2) The petitioner claims to be the owner of the property situate at Door No.4/691, Bharathiyar Nagar, 17th Cross Street, Neelangarai, Chennai-600 115, and according to him, the land on which he has put up the superstructure, was assigned to him vide proceedings of the Tahsildar, Tambaram dated February 2009.
- (3) The learned counsel for the petitioner would submit that the 5th respondent, who is a Government official and also the owner of the adjacent property, had encroached upon Saraswathi Nagar 3rd Main Road around 10 feet and constructed his house and also blocked the free access to the road and that apart, he has also put up sump under the road and put up a fence around the small garden and thereby, causing utmost hardship and inconvenience to the petitioner. The petitioner in this regard, has also lodged a complaint to the 4th respondent on 30.08.2019 followed by a representation to the Hon'ble Chief Minister Grievance Cell. It is his further submission that the 3rd respondent has sent a communication dated 23.09.2019, stating that the Assistant Engineer, Division 192, has caused inspection of the place in question on 16.09.2019 and the road being used by the public, is a dead end road and the owner of the house, viz., the 5th respondent has put up a small garden and also parked two wheelers and it cannot be construed as permanent encroachment. It is the submission of the learned counsel that the inspection was caused without putting the petitioner on notice and since the 5th respondent is a Government official, the 3rd respondent has obliged him and hence, prays for interference.
- (4) Per contra, the learned Standing counsel appearing for the respondents 1 and 3 would submit that cognizance of the petitioner's representation was taken and the jurisdictional Assistant Engineer caused inspection and accordingly sent a communication dated 23.09.2019, and if at all the petitioner is aggrieved, he is entitled to work out his remedy before the competent Civil Forum.
- (5) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (6) A perusal of the photographs at page No.11 of the typed set of papers coupled with the contents of the impugned proceedings dated 23.09.2019 would prima facie disclose that the matter in issue would revolve adjudication of disputed

questions of fact and in the considered opinion of the Court, it cannot be resolved by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. This Court also did not go into the merits of the claim projected either by the petitioner or by respondents 1, 3 and 4 and in the light of the above facts and circumstances, is of the view that the impugned order does not warrant interference, However, taking into consideration the plea made by the learned counsel for the petitioner, if the petitioner is so advised and if it is available to him under law, he is always entitled to work out his remedy under common law.

(7) In the result, the writ petition stands dismissed subject to the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

AP

To

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Sholinganallur, Chennai 600 119.

+1cc to Mr.S.Sathyaraj, Advocate SR.No.94224

+1cc to Dr.C.Ravichandran, Advocate SR.No.94074

+1cc to Government Pleader SR.No.95099

WP.No.31789/2019

RSI (CO)
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