

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.5495 of 2019

D.Gopalakrishnan

...Petitioner

Vs.

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

2.The Assistant Commissioner,
Zone -X,
Corporation of Chennai,
Chennai-600 024.

3.The Zonal Deputy Tahsildar,
Egmore-Nungambakkam Taluk,
Chennai.
(R3 is impleaded vide order dt.19.06.2019
in WMP.23835 of 2019 in W.P.No.5495/2019
by CJ & MDJ)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to take immediate steps to demolish the unauthorised and illegal constructions and remove the illegal Encroachments abutting on the passage to Akshaya Apartments in Door No.4, Valliyammal Thottam, Rangarajapuram 2nd Street, Kodambakkam, situated in Town Survey No.8/1 in Block No.49, Puliyur Town, Egmore Taluk, Chennai District and restore to its original position as Public Road for access to the petitioner's property 26 feet road on the western side in the light of the order passed in O.S.No.377 of 208 by V Assistant City Civil Court, Chennai.

For Appellant : Mr.Swaminathan M.
For Respondents : Mr.Raja Shrinivas for R1 & R2

Mr.G.K.Muthukumar,
Spl. Govt. Pleader for R3

O R D E R

(Order of the Court was made by M.M.Sundresh,J)

Seeking a direction to the respondents to take immediate steps to demolish the unauthorised and illegal constructions and remove the illegal Encroachments abutting on the passage to Akshaya Apartments in Door No.4, Valliyammal Thottam, Rangarajapuram 2nd Street, Kodambakkam, situated in Town Survey No.8/1 in Block No.49, Puliyur Town, Egmore Taluk, Chennai District and restore to its original position as Public Road for access to the petitioner's property 26 feet road on the western side in the light of the order passed in O.S.No.377 of 208 by V Assistant City Civil Court, Chennai, the present writ petition has been filed.

2. The prayer as sought cannot be granted by this Court. The petitioner, pursuant to a decree obtained in O.S.No.377 of 2008 on the file of the learned V Assistant Judge, City Civil Court, Chennai, seeks to execute the same by invoking the extraordinary jurisdiction of this Court without even impleading the party defendants against whom it has been obtained.

3.The learned standing counsel appearing for the Corporation of Chennai submitted that the written statement filed in the said suit was wrong.

4.However, we will not go into the said issue, though, an affidavit has been filed, explaining the said position. Though this Court passed an order on the earlier occasion, it was only on a prima facie consideration. The respondent corporation now takes a different stand than the one taken earlier. Furthermore, what the petitioner seeks is on the basis of the decree obtained by executing it through this Court without impleading the party defendants. If the petitioner seeks a right pursuant to the decree obtained, which itself is an indication of his stand against the party defendant, it is well open to him to invoke the execution proceedings.

5.With the above observation, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa/kmk

To

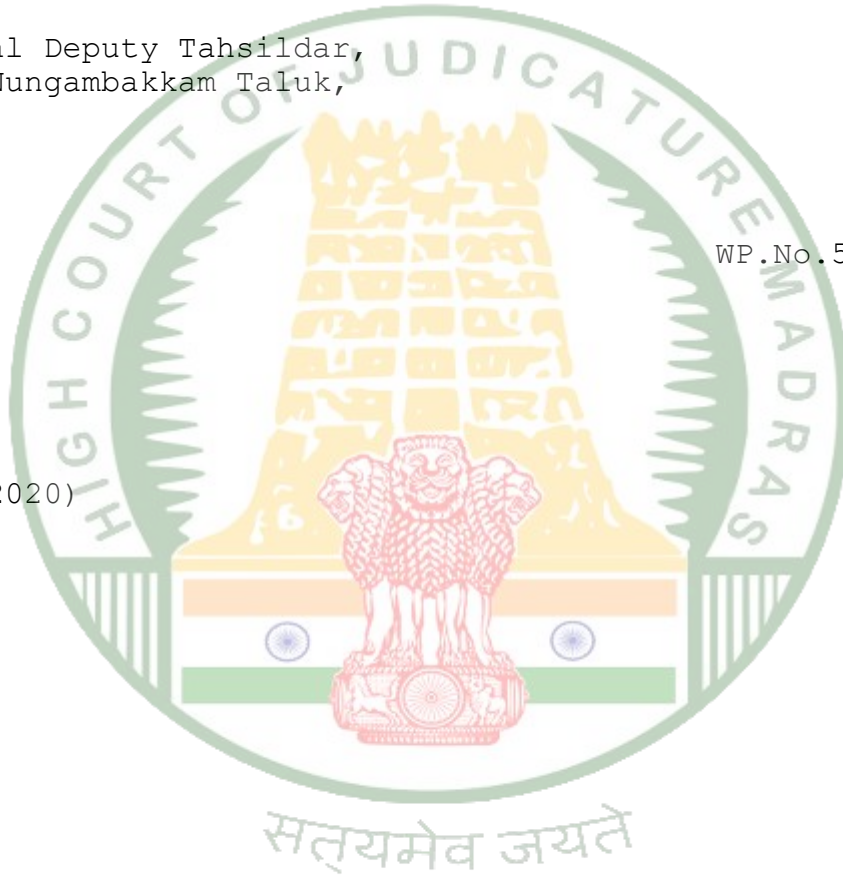
1.The Commissioner, Corporation of Chennai,
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WP.No.5495 of 2019

RSV (CO)
GS (28/08/2020)



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