

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.No.10238 of 2020

AND

WMP.No.12448 OF 2020

S. Andhilakshmi
W/o. P.Subramanian

...Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai.
2. The Assistant Commissioner,
Corporation of Chennai,
Adyar Zone,
No.112, Muthulakshmi Salai,
Adyar, Chennai.
3. The Assistant Executive Engineer,
Velachery Zone,
No.61, Velachery Main Road,
Chennai.
4. Bhuvaneshwari Nagar and VGP
Selvanagar Welfare Association,
Rep. by its Secretary,
No.51, VGP Selva Nagar,
Velacherry, Chennai - 600 042.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents 1 to 3 from interfering with the possession and enjoyment of the petitioner with respect to the vacant land measuring an extent of 3020 sq.ft. comprised in S.No.333/1Part, New S.No.331/12, Block No.192, T-S.No.17/2 and Block No.195, T-S.No.33/4 Velachery Village, Guindy-Mambalam Taluk, Chennai District.

For Petitioner : Mr.Rajarajan
For Respondents : Ms.Karthikaa Ashok
Standing Counsel

ORDER

This writ petition has been filed for the issue of a writ of mandamus forbearing the respondents 1 to 3 from interfering with the possession and enjoyment of the petitioner in the subject property.

2.It is seen from records that a large extent of property was developed by a builder. At the time of executing the project, a 40 feet road was formed to connect the property from the main road. Earlier one association approached this Court by filing W.P.No.14189/2004 for a direction to the Corporation of Chennai to remove the encroachment and demolish the construction that has been put up on the 40 feet public road.

3.The writ petition was disposed of by order dated 14.03.2007 and the relevant portions of the order is extracted hereunder.

"11. All the above mentioned particulars clearly show that the layout was duly approved in No.16/73 by the competent authority showing the width of the road as 40 feet. This is also evident from the report of the Advocate Commissioner. In such circumstances, we are unable to accept the contradictory stand taken by the respondent. It is unfortunate that without verifying the relevant records and getting proper report from the Field Offices, the Commissioner has sworn an affidavit giving incorrect information to this Court. It is not clear why the Commissioner has pleaded on behalf of the second respondent, when they have not evinced any interest in contesting the case of the writ petitioner. The stand taken by the first respondent cannot be appreciated by this Court. Even his report to the reply affidavit dated 14.03.2007 was filed only on the direction of this Court in order to rectify the mistake available in his counter affidavit dated 20.02.2007. We are satisfied that the petition association has made out a clear case and there is no difficulty in arriving a conclusion that the second respondent had encroached on the 40 feet public road. In such circumstances, the first respondent is duty bound to clear the same and after clearance, execute proper repair work on the 40 feet public road. Before complying with the said direction, the first respondent is directed to follow the rules/procedure and take

appropriate steps for removal of the encroachments on the 40 feet public road. The said recourse shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs."

4. When the above order was passed, this Court had taken into consideration the lay out plan no.16/73 which indicated the existence of 40 feet road. That apart, this Court also appointed a Commissioner and had taken into consideration the report of the advocate Commissioner. This Court ultimately directed the Corporation to remove the encroachment in the 40 feet road and gave 8 weeks time for complying with the order.

5. It is a matter of surprise that even though this order was passed in the year 2007, it was lying in cold storage for the last 13 years.

6. It is also pertinent to note that the petitioner filed a review petition on the ground that the petitioner was not heard before the order was passed and the said review petition was also dismissed by this Court. It is also pertinent to note that when the order was passed by this Court, the suits filed by the respective parties were pending before the City Civil Court from the year 2004 and 2005 respectively. It is clear that for the last so many years, there has been absolutely no action taken on the side of the Corporation.

7. It seems that a contempt notice was issued recently and that made the Corporation wake up from the deep slumber. The Corporation Officials seem to have visited the property and immediately the present writ petition has been filed before this Court.

8. Heard Mr. Rajarajan, learned counsel appearing for the petitioner and Ms. Karthikaa Ashok, learned Standing Counsel appearing on behalf of respondents.

9. In the considered view of this Court, the order of the Division Bench made in W.P.No.14189/2004, dated 14.03.2007 has become final. The review petition filed by the petitioner was also dismissed. The order of the Division Bench itself has given directions to the Corporation of Chennai at paragraph 11 of the order and the manner in which the encroachment will have to be removed. In the light of the said order, no further orders can be passed by this Court.. The mere pendency of the civil suits for the last 15 years again goes to show that the parties are not concerned about the disposal of the case and they become more vigilant only when some action is taken.

10. In view of the above discussion, this Court feels that no further orders can be passed in the present writ petition and the earlier orders passed by the Division Bench is still in force and the Corporation of Chennai is expected to comply with the said order in its letter and spirit.

11. In the result, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Chennai.

+1cc to Mr.D.Rajasekar, Advocate SR No.26071

W.P.No.10238 of 2020

MR (CO)
RV (04/09/2020)

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