

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.10620 of 2020

and W.M.P.No.12902/2020

M.Durai .. Petitioner

Versus

- 1.The Commissioner,
Chennai Corporation,
Rippon Building, Chennai 600 003.
 - 2.The Assistant Commissioner,
Chennai Corporation,
Division 7, Ambattur.
 - 3.The District collector,
Chennai District,
Singaravelar Maligai,
Chennai 600 001.
 - 4.The Special Tahsildar,
No.1, M.T.H.Road, Ambattur Taluk,
Chennai District.
- .. Respondents

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to take necessary action on the representation given by the petitioner on 30.06.2020.

For Petitioner : Mr.T.Ramachandran

For R1 &R2 : Mr.K.Raja Srinivas

For R3 & R4 : Mr.Kamalesh Kannan
Government Advocate

ORDER

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

The petitioner claims that there are thousands of families residing in Gramanathan S.F.No.461/1, Division No.7, Ward 84 of Greater Chennai Corporation limit. The petitioner claims that he is residing with his family for more than 40 years in a superstructure bearing Door No.23/1, Agraharam, Perumal Kovil Street, Korattur, situated in the said Gramanatham Survey Number. The petitioner would state that initially he put up a thatched house and in the year 2019, pursuant to the scheme formulated by the Tamilnadu Slum Clearance Board, he put up a superstructure and it is also subjected to statutory levies. It is also averred by the petitioner that during the month of June 2020, some unknown persons, claimed as contractors, acting on behalf of the Corporation of Chennai, entered the area with heavy machineries and started demolishing the superstructure and when queries were raised, they were informed that the said land is classified as a 'water-body'. It is the specific case of the petitioner that the land in S.F.No.461/1 is classified as 'Gramanatham' and not water-body and representation submitted by the petitioner, for necessary action against the persons involved in the demolition of bathroom and toilet, has failed to invoke any kind of response and therefore, came forward to file this Writ Petition.

2. The Writ Petition was entertained on 25.09.2020 and the 2nd respondent has filed a counter affidavit dated 09.10.2020 and took a stand that the petitioner has encroached upon the Perumal Kovil Pond land comprised in S.No.8, admeasuring an extent of 7.32 cent, which is adjacent to his own patta land comprised in S.F.No.2 and the land in S.F.No.8 is waterway or channel for the lake and found a clear mention in the service records and the Corporation has no way intruded to demolish the superstructure put up on his patta land comprised in S.F.No.2 and the petitioner has fenced 90 sq.m in S.No.8 and illegally possessing the land, which is waterway and action has been taken strictly in accordance with law.

3. The learned counsel appearing for the petitioner has

drawn the attention of this Court to the typed set of papers and would submit that in respect of one Ms.P.Visalatchi, the Zonal Deputy Tahsildar, Ambattur, has given an extract of Ambattur Town Survey Filed Register, which disclosed that S.F.No.6/2, corresponding to the land in S.F.No.461 part is classified as 'Government Poromboke' and as per the old 'A' Register, it is classified as 'Grama natham' and it is being utilised as house site. In the light of the fact that the petitioner also is in possession of the land, wherein he has put up a superstructure in the very same survey number, there cannot be any default on the part of the petitioner and it is only 'Village Natham' and based upon the proceedings of the Tamilnadu Slum Clearance Board, Zone 4, dated 01.03.2019, he has also put up the superstructure and it is also subjected to statutory levies and without recourse to due process of law, the bathroom and toilet of the premises had been demolished and prays for appropriate orders.

4. *Per contra*, learned standing counsel appearing for the respondents 1 and 2 would submit that in the light of the stand taken by the 2nd respondent in the counter affidavit, that the petitioner had encroached upon 7.32 cents of land in S.F.No.8, which is classified as waterway, out of the said land, the petitioner had fenced 90 sq.m and put up a toilet and bathroom and the same has been demolished by following due process of law and therefore, the petitioner has no legs to stand and prays for dismissal of the Writ Petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. Though the petitioner has filed an additional typed set of papers, containing photographs of the superstructure, it is not clearly shown. A perusal of the Town Survey Register extract issued by the Zonal Deputy Tahsildar, Ambattur, would disclose that S.F.No.461/1 part is shown as village site / house site and in respect of the receipt dated 02.04.1998, produced by the petitioner, it merely refers to S.F.No.461/1 and in that receipt, survey number has been indicated not in the relevant part, but only below in the Column No.1 and authenticity of the same is also somewhat doubtful. The respondents in the counter affidavit also took a stand that except the fence area of 90 sq.m in S.F.No.8, which is classified as waterway, rest of the constructions put up by the petitioner is not disturbed and it is also taken on file and recorded.

7. In the absence of availability of materials, especially with regard to the photographs of the property said to have been put up by the petitioner and the classification of the land in S.No.461/1 is the village site, this Court is unable to come to

the aid of the petitioner.

8. It is also a well settled position of law that once a land is classified as water body / watercourse / water flood area, it cannot be utilised for any other purpose, even if the said area remains waterless. Usual reference also made by this Court in the decision reported in **T.K.Shanmugam, Secretary Vs. The State of Tamil Nadu, represented by its Secretary to Government (2015 (8) MLJ Volume 295)**. This Court having found no merits, is not inclined to decide the Writ Petition in favour of the petitioner.

8. In the result, the Writ Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar

sk

To

1.The Commissioner,
Chennai Corporation,
Rippon Building, Chennai 600 003.

2.The Assistant Commissioner,
Chennai Corporation,
Division 7, Ambattur.

3.The District collector,
Chennai District,
Singaravelar Maligai,
Chennai 600 001.

सत्यमेव जयते
WEB COPY

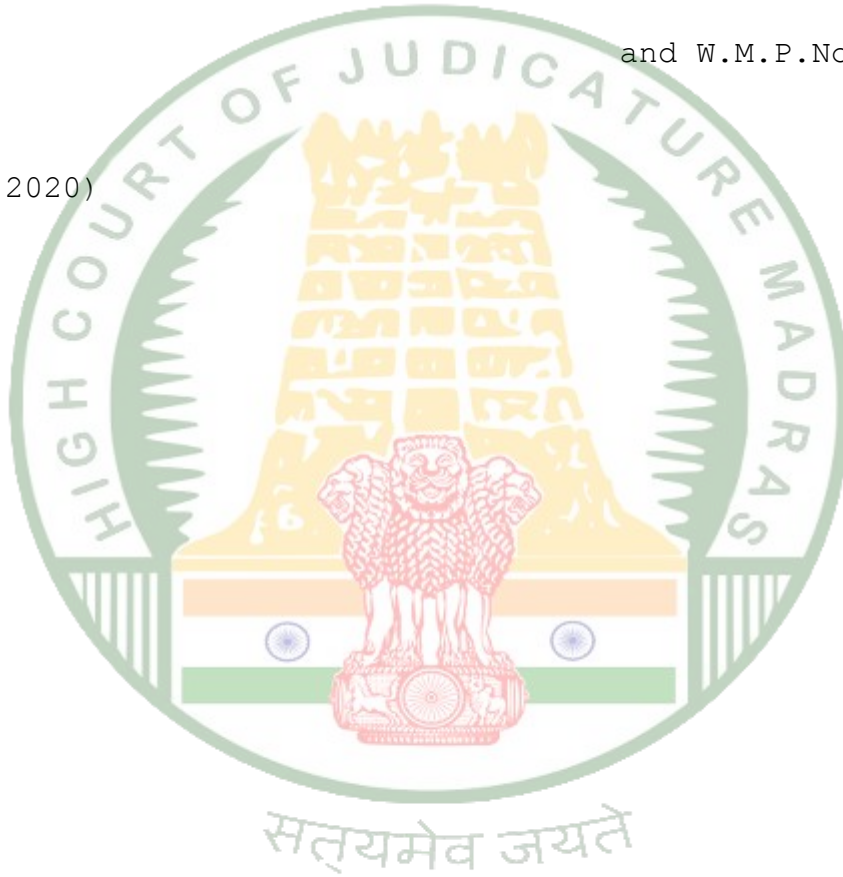
4.The Special Tahsidar,
No.1, M.T.H.Road, Ambattur Taluk,
Chennai District.

+1 C.C. to MR.K.RAJA SHRINIVAS Advocate SR.NO.37497

WP.No.10620 of 2020

and W.M.P.No.12902/2020

NRL (CO)
UM (11.12.2020)



WEB COPY