

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.11628 of 2020

H.Mohammed Sajath ... Petitioner

Versus

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai-7.
2. The Executive Engineer,
Zone-VI, Greater Chennai Corporation,
Anderson Street, Ayyanavaram,
Chennai-23.
3. Tamil Nadu Wakf Board,
rep.by its Chief Executive Officer,
No.1, jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1.

4. Syed Adil Hussain

5. Ms. Gulnaaz ... Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents 1 and 2 to demolish the unauthorized construction put up by respondents 4 and 5 at the property bearing door No. 18/27, Dargah street, Dadashamakkan, Chennai 12 in R.S.No. 2811 / 30, O.S.No.2653 and C.C.No.1270 as sought vide representation dated 31.7.2020 by the petitioner.

For Petitioner : Mr.N.A.Nissah Ahmed

For Respondents: Mr.K.Raja Srinivas
standing counsel for R1 & R2

Mr.C.Shankar for R3

Mr.Y.Kajanavas for R4 & R5

ORDER

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

The petitioner claims to be a Secretary of Dadashamakkan Wakf and he came forward to claim that the property bearing Door No.18/27, Dargah Street, Dadashamakkan, Chennai - 12 in R.S.No.2811/30, O.S.No.2653 & C.C.NO.1270 belongs to the said Wakf and the 4th respondent, who was the office bearer of the Wakf Board, illegally encroached upon the said land and put up wholly an unauthorised construction and a representation submitted to demolish the unauthorised construction, has failed to invoke any kind of response and therefore, the petitioner is constrained to approach this Court by filing this Writ Petition.

2. The 2nd respondent has filed a counter affidavit stating among other things that on receipt of the representation from the petitioner, the premises in question was inspected on 24.08.2020 and immediately after inspecting the building in question, action had been taken by issuing a Stop Work Notice dated 24.08.2020, calling for approved plan dated 24.08.2020 under Sections 56(1) and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971 to the respondents 4 and 5 and they have given a reply letter dated 26.08.2020, without enclosing the approved plan, stating that the land in question at R.S.No.2811/6 measuring 389 sq.ft is a patta land and not belonging to the Dadashamakkan Wakf.

3. The learned counsel appearing for the petitioner would submit that in the light of the stand taken by the respondents 4 and 5, this Court may pass appropriate orders for demolishing the offending construction.

4. Per contra, the learned counsel appearing for the respondents 4 and 5 would submit that in the light of the fact that the superstructure in question has been put only in R.S.No.2811/6, not in respect of land said to have been belonged to the Wakf Board, the proceedings initiated by the respondents 1 and 2 are not at all in order and prays for dismissal of this Writ Petition.

5. The learned counsel appearing for the respondents 4 and 5 would submit that since the construction came into being prior to March 2007, application under Section 113(C) of the TCP Act has also been submitted to the concerned authority for consideration and disposal.

6. Mr.Raja Srinivas, learned standing counsel appearing for the respondents 1 and 2 would submit that due to the pendency of the petition, further action could not be taken and depending upon the result of the Writ Petition, further action would be taken strictly in accordance with law.

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

8. It is made clear that this Court is not going into the issue as to whether the Wakf Board is having ownership of the land in question but it merely concern with the alleged unauthorised construction being put up by the respondents 4 and 5 and the counter affidavit of the 2nd respondent would prima facie disclose that the said construction is an unauthorised one. It is not as if the respondents 4 and 5 are without any remedy and there is a provision for special revision / appeal available under Section 80-A of the Town and Country Planning Act, 1971 and if the respondents 4 and 5 are so advised, they may be at liberty to invoke such remedy before the Government. It is also brought to the knowledge of this Court that as on date, the premises in question is under lock and seal.

9. It is brought to the knowledge of this Court that challenging the said proceedings, the respondents 4 and 5 have also filed a Special Revision under Section 80-A of the TCP Act before the Government. Therefore liberty is granted to them to workout their remedy and get appropriate relief.

10. In the result, the Writ Petition is disposed of and it is open to the respondents 1 and 2 to proceed further in accordance with law. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
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Chennai-1.

+1 cc to M/s.K.Rajasrinivas, Advocate Sr.No. 36779
+1 cc to M/s.Y. Kajanavas, Advocate Sr.No. 36396

W.P.No.11628 of 2020

VSNII(CO)
RMP(11/12/2020)



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