

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.13877 of 2020

M.Sundaraiyan

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Petitioner

Versus

- 1.The State of Tamil Nadu
rep.by its Secretary,
Housing and Urban Development Department,
Secretariat, Chennai 9.
- 2.The Principal Secretary / Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-8.
- 3.The Commissioner,
Greater Chennai Corporation,
Chennai-3.
- 4.Tmt.K.Vijayalakshmi
- 5.The Superintending Engineer,
Chennai Electricity Distribution Circle (South)
No.110/33, Kundrathur High Road,
Porur, Chennai 116.
- 6.The Chairman and Managing Director,
Chennai Metro Water Supply and
Sewerage Board, Chennai-02.

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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 3rd respondent to demolish the unauthorized construction put up by the 4th respondent in Door No.4, Thirumurugan Nagar, 2nd Cross Street, Porur, Chennai 600 116.

For Petitioner : Mr.M.Baskaran

For R1 : Mr.R.Vijayakumar
Additional Government Pleader

For R2 : Mr.Karthik Rajan

For R3 :Mr.K.Raja Srinivas

For R4 :Mr.D.S.Raja

ORDER

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

The petitioner is a tenant in respect of Door No.5, II Cross Street, Thirumurugan Nagar, Porur, Chennai 116. According to him, the 4th respondent has put up a wholly unauthorised construction without obtaining any planning permission. The petitioner, in this regard, filed W.P.No.18420/2017, against the present official respondents as well as against the husband of the 4th respondent, prayed for a Writ of Mandamus directing the respondents 1 to 3 to take action on the representations and to demolish the illegal and unauthorised construction put up by the husband of the 4th respondent. The Division Bench of this Court, vide order dated 20.07.2017, has directed the 3rd respondent to put the 4th respondent on notice and thereafter act on the communication of the 2nd respondent dated 17.02.2015 and complete the exercise within the stipulated time and accordingly, action was taken. Challenging the same, the 4th respondent has filed W.P.No.8175/2018 and a Division Bench of this Court, taking into consideration of the fact that the 4th respondent, being the petitioner in the said Writ Petition, directed the Secretary to Government, Housing and Urban Development Department, Chennai-9 / Appellate Authority to entertain the Appeal/Special Revision dated 27.03.2018 and to dispose of the Petition for Stay at the first instance and till such time, directed the other respondents to defer action as to the demolition.

2. The petitioner, alleging non compliance of the order dated 20.07.2017, filed Cont.P.No.2618 of 2018 and the same is pending. In the interregnum, the 5th respondent was given some benevolence by the appellate authority, vide letter dated 07.12.2018, for disposal of the planning permission application on merits. The petitioner made one more attempt by filing W.P.No.858 of 2019, praying for issuance of Writ of Certiorarified Mandamus to quash the order of the Government dated 07.12.2018 and it came to be disposed of by a Division Bench of this Court, vide order dated 20.03.2019, by taking note of the submission about the rejection of the planning application submitted by the 4th respondent and accordingly disposed of the Writ Petition. The appellate authority namely the Housing and Urban Development Department, Chennai-9, vide communication dated 04.03.2020, addressed to the officials of Corporation of Chennai as well as the petitioner and the 4th respondent, having found that the land on which the superstructure put up by the 4th respondent as well as the

landlord of the petitioner, is classified as 'Thaneer Pandal Poromboke Land', directed the jurisdictional Tahsildar, Maduravoyal, to take immediate and necessary action for removal of encroachment.

3. The petitioner came forward to file the present Writ Petition, may be by way of last effort to direct the 3rd respondent to demolish the unauthorized construction put up by the 4th respondent.

4. The learned counsel appearing for the petitioner would submit that despite series of orders passed by this Court and pendency of the Contempt Petition, the officials of Corporation of Chennai, have not evinced any interest and left with no other option, constrained to approach this Court by filing this Writ Petition.

5. The learned standing counsel appearing for the 3rd respondent has invited the attention of this Court to the counter affidavit filed by the Zonal Officer, Zone-XI, Greater Chennai Corporation and would submit that the premises in which the petitioner is residing as a tenant is also an unauthorised construction and action was initiated under the provisions of the Town and Country Planning Act, 1971 and challenging the same, the landlord of the petitioner also filed a Special Revision / Appeal before the Government and the said fact has been totally burked by the petitioner, despite he is being aware of the same. It is also pointed out by the learned standing counsel appearing for the Corporation of Chennai that in the light of the communication dated 04.03.2020 of the Secretary, Housing and Urban Development Department, this Court may issue appropriate direction, directing the Tahsildar, Maduravoyal to cause removal of all encroachments in lands classified as 'Thaneer Pandal Poromboke' in Porur Village and as far as unauthorised constructions are concerned, the Corporation of Chennai would take immediate and necessary action in accordance with law.

6. The learned counsel appearing for the 4th respondent would submit that in the light of the fact that the petitioner has deliberately burked the material facts, he is not entitled to any indulgence before this Court and he is only protracting / dragging the 4th respondent by overlooking the fact that there are other unauthorised superstructures in the area and also drawn the attention of this Court to the communication of the Housing and Urban Development Department, dated 04.03.2020, wherein it has been stated that the land on which superstructures stand, is classified as 'Thaneer Pandal Poromboke' and the encroachments shall be removed by the Tahsildar, Maduravoyal and prays for dismissal of this Writ Petition with exemplary costs.

7. The learned counsel appearing for the petitioner in response to the said submission would submit that though the petitioner is aware of the fact of prosecution of Special Revision / appeal by the landlord, due to inadvertence, the said fact have not been disclosed in the affidavit filed in support of the present Writ Petition.

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

9. It is a well settled position of law that when a party approaching this Court seeking relief must approach the Court with clean hands and admittedly, the petitioner who is a tenant in respect of the premises, though very well aware of the fact that the superstructure in which he is residing itself is an unauthorised structure, for which landlord has filed Special Revision before the Government and the same is pending, he did not disclose the said fact. This Court has also taken note of the communication of the Housing and Urban Development Department dated 04.03.2020, wherein a positive direction was given to the Tahsildar, Maduravoyal to cause removal of encroachments on the land classified as 'Thaneer Pandal Poromboke' in Porur Village.

10. Thus it prima facie appears that the land on which the 4th respondent as well as the landlord of the petitioner had put up superstructure, appears to be classified as 'Thanner Pandal Poromboke' and in the absence of any reclassification and better title, the concerned persons may not derive any title. Insofar as the superstructures are concerned, area in question falls within the jurisdiction of the Corporation officials and therefore, the jurisdictional officials of Corporation of Chennai are directed to take immediate, necessary and appropriate action for demolition of superstructure, of course by following due process of law.

11. The Tahsildar, Maduravoyal, is also directed to act immediately upon the communication of the Head of the Housing and Urban Development Department, Secretariat, Chennai-9 in letter No.6748/UD-VI(1)/2018-4, dated 07.12.2018 and complete the said exercise within a period of ten weeks from the date of receipt of a copy of this order, by following due process of law and by adhering to the principles of natural justice.

12. In the result, the Writ Petition is dismissed with a cost of Rs.5,000/- (Rupees Five Thousand only) payable to the Tamil Nadu Advocates Clerk Association [Indian Bank, High Court Branch, Account No.484026006, IFSC Code:IDIB000M157] on or before 30.11.2020 Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Housing and Urban Development Department,
Secretariat, Chennai 9.
- 2.The Principal Secretary / Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-8.
- 3.The Commissioner,
Greater Chennai Corporation,
Chennai-3.
- 4.The Superintending Engineer,
Chennai Electricity Distribution Circle (South)
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- 5.The Chairman and Managing Director,
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Chennai-02.

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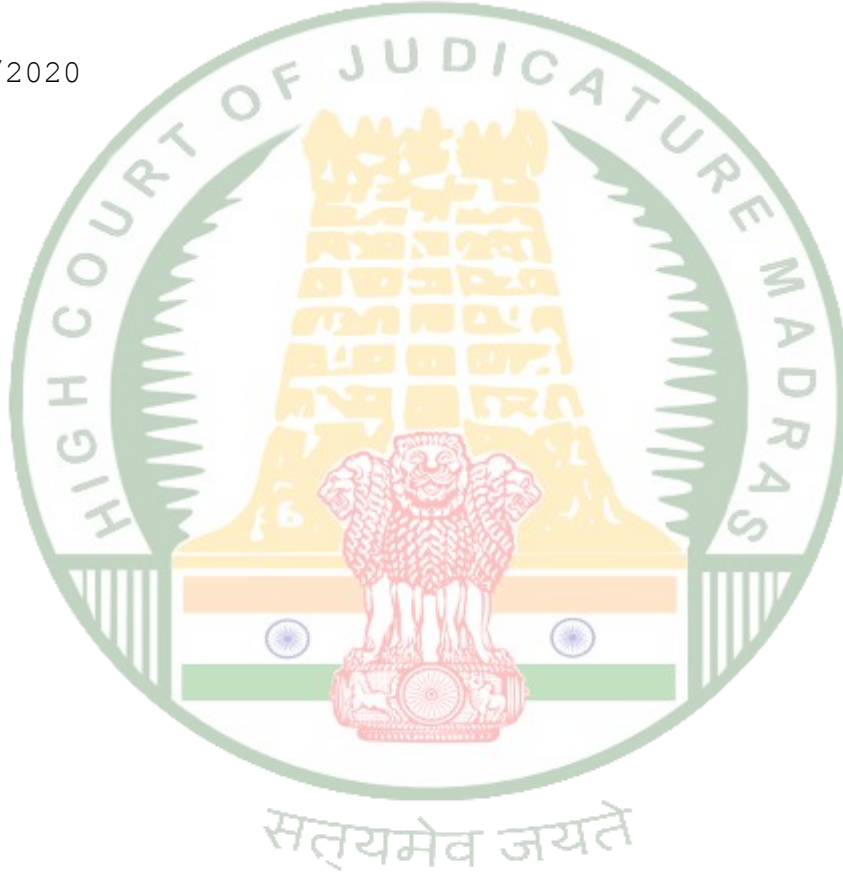
- 1 The Tahsildar,
Maduravoyal, Thiruvallur.

2 THE SECRETARY
TAMIL NADU ADVOCATE CLERK ASSOCIATION,
MADRAS HIGH COURT, CHENNAI
(INDIAN BANK, HIGH COURT BRANCH,
A/C NO. 484026006, IFSC CODE:IDIB000M157)

+1cc to M/s N.BASKARAN Advocate Sr.37450
+1cc to M/S K.Raja Srinivas Advocate SR.37498
+1cc to M/S Karthik Rajan Advocate SR.37642

W.P.No.13877 of 2020

VGII(CO)
RVR 19/12/2020



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