

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.904 of 2020
and CMP No.11103 of 2020

S. Adilakshmi

.. Appellant

-vs-

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003
2. The Assistant Commissioner,
Corporation of Chennai,
Adyar Zone, Ward No.112,
Muthulakshmi Salai,
Adyar, Chennai - 600 020
3. The Assistant Executive Engineer,
Velachery Zone,
No.61, Velachery Main Road,
Chennai - 600 042
4. Bhuvaneswari - VGP Selva Nagar Welfare Association,
Rep by its Secretary,
No.51, VGP Salai, Selva Nagar,
Velachery, Chennai - 600 042

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 04.08.2020 passed in W.P.No10238 of 2020 on the file of this Court.

W.P.No.10238/2020: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.331/ 1 part New S.No. 331/12, Block No. 193, T.S. No.

17/2 and Block No. 195, T.S. No. 33/4 Velachery Village Guindy
Mambalam Taluk Chennai District.

For Appellant : Mr.AR.L. Sundaresan,
Senior Counsel for
Mr.AL. Ganthimathi

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard Mr.AR.L. Sundaresan, learned Senior Counsel for the appellant and perused the impugned judgment.

2. We find that even though the appellant was not a party to W.P.No14189 of 2004 that was decided on 14.03.2007, the following was the observation made in paragraph 11 thereof:-

"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 first respondent. It is unfortunate that without verifying the relevant records and getting proper report from the Field Officers, 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 reply 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."

3. The appellant appears to have filed a Review Application No.30 of 2007 that was dismissed on 26.06.2019. The order whereof is extracted hereinunder:-

"The Review Applicant, who is a third party, has filed the above Review Application to review the order dated 14.03.2007 passed in W.P.No.14189 of 2004.

2. The 1st respondent filed the Writ Petition in W.P.No.14189 of 2004 to issue a writ of mandamus directing the Commissioner, Chennai Corporation, the 2nd respondent to remove the encroachments and demolish the construction made by the 3rd respondent on the 40 feet public road, viz., at the entrance of V.G.P.Selva Nagar, 1st Main Road in Survey No.331 of Velachery Village and thereafter, execute the repair work on the 40 feet public road.

3. The Division Bench of this Court, by order dated 14.03.2007, after considering the case of the petitioner and the 2nd respondent, the Commissioner, Chennai Corporation, allowed the Writ Petition by directing the 2nd respondent, the Commissioner, Corporation of Chennai to follow the rules/procedure and take appropriate steps for removal of the encroachments on the 40 feet public road. The Division Bench also found that the 3rd respondent had encroached on the 40 feet public road and therefore, necessary action should be taken for removing the encroachments. While coming to the said conclusion, the Division Bench also took into consideration the Advocate Commissioner's report and also the other documents.

4. It is settled position that a Review Application can be entertained only if there is an error apparent on the face of the record. In the case on hand, the 3rd party review

applicant is not in a position to point out any error apparent on the face of the record warranting review of the order passed in the Writ Petition. We do not find any error apparent on the face of the record warranting interference in the Review Application. In these circumstances, the Review Application is devoid of merits and the same is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs. Consequently, the connected miscellaneous petition is closed."

4. Mr.A.R.L. Sundaresan, learned Senior Counsel submits that the learned Single Judge has dismissed the writ petition giving rise to this appeal and as a matter of fact, made the position of the appellant worse, inasmuch as the appellant did not have the opportunity to contest the matter before High Court earlier as he was not a party to the writ petition. This is evident that the appellant was not a party, but, she filed a Review Application that has been dismissed. The apprehension of the appellant is that the pendency of the civil suits would be rendered infructuous and even otherwise, the impact thereof ought to have been taken notice of, which appears to have not been informed to the Court in the earlier set of proceedings.

5. Learned Senior Counsel submits that even assuming though not admitting that the directions of the Division Bench were to be followed by the Corporation, the same has to be done in accordance with the last part of the direction, where the Corporation has been directed to follow the rules and procedures for taking appropriate steps, which, according to the appellant, should be done after verifying the status of the road and its actual presence as the appellant did not get the opportunity to contest the said proceedings. This should be done only on the basis of the facts which the appellant proposes to plead before the Corporation before any overt or covert action that may likely affect the right of the appellant over the property.

6. In our considered opinion, the observation made by the learned Single Judge in paragraph 10 of the impugned judgment does not and cannot travel beyond what was said by the Division Bench and therefore, any action to be taken by the corporation, certainly, has to be in accordance with law and not otherwise.

7. It will be open to the appellant to contest the position before the Corporation accordingly and the corporation will be obliged to consider the same and pass appropriate orders thereon.

8. Therefore, no further orders are required to be passed. The appeal is consigned to records. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Chennai - 600 042
- +1 CC to M/s.AL. Ganthimathi, Advocate sr 33748.

W.A.No.904 of 2020

SSV(CO)
SP(06/11/2020)

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