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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.28635 OF 2018

AND

W.M.P.NO.33418 OF 2018

J.Suresh

... Petitioner

Vs.

1. The Department of Environment
Rep by its Director,
Fort St.George,
Chennai.

2. Greater Corporation of Chennai
Rep by its Commissioner,
Rippon Buildings,
Chennai - 600 003.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, directing the 2nd respondent, its men, officers, agents or contractors to refrain from felling any of the trees on Beracah Road, Kilpauk, Chennai, plant necessary trees in situ as compensatory afforestation.

For Petitioner : Mr.A.Yogeshwaran

For Respondents: Mr.Ganesh
Standing Counsel

O R D E R

This writ petition has been filed by one of the residents of Kilpauk, Chennai-10 being aggrieved by the action of the second respondent in cutting down the trees in Berracah Road, Kilpauk, Chennai and obliterating the Corporation Park that is situated in the said road.

2. The learned counsel for the petitioner submitted that pursuant to the interim order granted by this Court, the second respondent/Corporation has stopped cutting the trees and thereafter, the Status Quo has been maintained. The learned



counsel further submitted that the Park belonging to the Corporation must be properly maintained and it must be restored back to its original position.

3. The second respondent has filed a counter affidavit in this writ petition. Mr. Ganesh, learned counsel appearing on behalf of the Corporation of Chennai, apart from reiterating the stand taken in the counter affidavit, has submitted that the Corporation was in fact taking action for removing certain encroachments, pursuant to the orders passed by this Court in W.P.No.36873 of 2016. In the course of removing the encroachments, two trees were cut down and such felling of trees was necessitated to complete the construction of a storm water drain. The learned counsel further submitted that the two trees which have been cut down will be replaced by planting 20 saplings in accordance with G.O.Ms.No.704 dated 03.08.2010. The learned counsel further submitted that the Corporation of Chennai is also equally interested in preserving the environment and green cover and that no more trees will be felled in the said locality.

4. This Court has carefully considered the submissions made on either side and perused the materials available on record. The relevant portions in the counter affidavit are extracted hereunder:-

"4. I respectfully submit that M/s. Secretariat Colony Residents Welfare Association, represented by its President L.Venkatakrishnan has filed a writ petition in W.P.No.36873 of 2016 before the Hon'ble High Court against the Commissioner, Greater Chennai Corporation and 2 others and praying for "issuance of a Writ of Mandamus directing respondents to remove the encroachment and restore the rain water drainage near Medavakkam Tank Road - Berracah Road - Secretariat Colony Junction in Ward 74, Zone - VI, Kilpauk, Chennai." In the above said case came up hearing before the Hon'ble High Court and passed an order dated 21.10.2016 as follows:

".....3. We may also note that these are hardly the kind of cases which should come to the Court and there should be better co-ordination between the Revenue and Police authorities. Until and unless there is some grave situation on account of which for any specific dates the police force is not available, we see no reason why the police force should not be made available as and when sought by the Revenue authorities. In this behalf, the Commissioner to issue necessary orders to all



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the police authorities so that we are not once again faced with such situations.

4. It is for the Revenue authorities to fix the dates and for the Police authorities to make available the police force.

5. The writ petition, accordingly, stands disposed of. No costs. We are informed that one of the encroacher has obtained an interim order in W.P.No.35525 of 2015. The said writ petition be listed on 26.10.2016...."

5. I respectfully submit that the above order the Greater Chennai Corporation have already taken steps to identify and remove the encroachment. I submit that a notice under Section 220 read with Section 222 of Chennai City Municipal Corporation Act, 1919 has been issued to the encroacher and all the encroachments have been removed on 18.07.2017.

6. I respectfully submit that M/s. Secretariat Colony Residents Welfare Association, represented by its President L.Venkatakrishnan has filed a Contempt Petition before the Hon'ble Court in Contempt Petition No.581 of 2017 in W.P.No.36873 of 2016 and praying for "To punish the respondents for willful disobedience of the order made in W.P.No.36873 of 2016 dated 21.10.2016. Contempt Petition and in the above said case came up hearing before the Hon'ble High Court and passed an order dated 27.10.2017 as follows:

" This Contempt Petition is filed to punish the respondents for willful disobedience of the order made in W.P.No.36873 of 2016 dated 21.10.2016.

2. The learned counsel appearing for the respondents submitted that the encroachments have been removed, as directed by this Court.

3. At this juncture, the learned counsel for the petitioner submitted that the rain water drainage has not been restored, for which, the learned counsel for the respondents submitted that the same would be restored as expeditiously as possible.

4. Recording the same, the Contempt



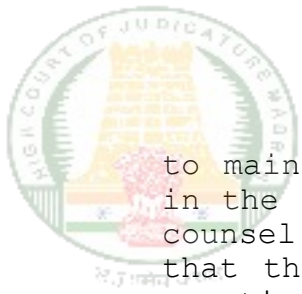
Petition is closed".

7. I respectfully submit that based on the above order, the Greater Chennai Corporation, Storm Water Drain Department, Head Quarters has proposed Dismantling of Existing dilapidated arch drain and Re-Construction of Storm water drain along Berracah Road near Medavakkam Tank Road in Division-74, Zone-6 for length of 220 meters and it is found that 8 in numbers of trees falling in the alignment of the proposed reconstruction of Storm Water Drain and due to the same, the alignment of the storm water drain cannot be shifted for avoiding tree cutting as 4 in numbers of Metro water drain pipelines of 300 to 600 diameters with values are passing along the road.

8. I respectfully submit that in the circumstance, Deputy Commissioner (Works), Greater Chennai Corporation has made inspection on 22.02.2018 and also instructed to remove the trees falling in the alignment of the storm water drain as it is an important storm water drain disposing of rain water in and around the Secretariat Colony Areas to Otteri Nullah.

10. I respectfully submit that during the re-construction of storm water drain at Berracah Road Junction of Medavakkam Tank Road to AK Swamy 9th Street, Kilpauk, Chennai and in which the alignment of the storm water drain. Only 2 in numbers of trees falling in the alignment. Therefore, it is necessity to remove the trees to complete the storm water drain construction work before this North East Monsoon and also in order to avoid the storm water stagnation in and around the Secretariat Colony Area. Due to the same, 2 in numbers of trees was removed for Public purpose in which as per the Government Order No.704 dated 03.08.2010 plant saplings at the rate of 10 saplings for 2 in numbers trees cut down 20 in numbers of plants has been planted in Division-74 Berracah Road Children Play Ground,, Secretariat Colony Park and Medavakkam Tank Road. The photocopies of the same is enclosed herewith for kind information."

5. It is clear from the counter affidavit that the felling of two trees was necessitated in order to construct a storm water drain, since these trees were interfering with the alignment of the storm water drain. The second respondent has also taken a very specific stand that, no more trees will be felled in the locality in question and for the two trees which have already been felled, 20 saplings will be planted, in order



to maintain the green cover. Recording the specific stand taken in the counter affidavit and the submissions made by the learned counsel appearing on behalf of the Corporation, it is made clear that there will be no more felling of trees in the locality in question and the second respondent is also further directed to fulfill their undertaking of planting 20 saplings as a replacement for felling two trees. Since a specific stand has been taken that the Corporation is equally interested in preserving the green cover, this Court believes that the Corporation will fulfill the undertaking of planting 20 saplings.

6. Incidentally, it was also brought to the notice of this Court that the Park that was under the control of the Corporation of Chennai got obliterated at the time when the Corporation undertook the exercise of removing the encroachments and constructing the storm water drain. It is the duty of the Corporation to maintain the Park belonging to them and restore the same to its original position, in order to ensure that the general public is able to access the Park. This Court expects that the Corporation of Chennai would immediately take steps to restore the Park and maintain the same.

7. This Writ Petition is disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
The Department of Environment
Fort St.George, Chennai.
2. The Commissioner,
Greater Corporation of Chennai
Rippon Buildings, Chennai - 600 003.

W.P.No.28635 of 2018

PVS (CO)
CS/13/07/2020