

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P. (PD) No.476 of 2021

1.M.Sathish

2.M.Vijayanand

...Petitioners

Vs

1.The Commissioner,
Corporation of Chennai,
Park Town, Chennai-600 003.

2.The Assistant Engineer (Square)
Corporation of Chennai
Zone X, Area 30, Unit Office, Ward 142,
No.12, Masilamani Street, T.Nagar,
Chennai 600 017.

3.The Assistant Engineer,
Corporation of Chennai,
Zone X, Area 30, WARD 142,
No.2/12, West Jones Road,
Saidapet, Chennai-600 015.

4.Mrs.Madhu Nahar

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the learned VII Assistant Judge, City Civil

Court, Chennai, to dispose the suit in O.S.No.4962 of 2016, on its file within a stipulated time.

For Petitioner : Mr.L.Dhamodharan

ORDER

The limited prayer sought for in the present petition is to dispose of the suit within the stipulated time.

2. The petitioners herein have filed the suit in O.S.No.4962 of 2016 seeking for the following relief:

(a) Declaration that the plaintiffs are entitled for the Easmentary right of light and air over the "B" schedule property of the fourth defendant on the northern side of the A schedule property of the plaintiffs.

(b) For permanent injunction restraining the fourth defendant, her men, agents, servants, sub-ordinates or persons claiming through her from putting up construction in the B schedule property affecting the light and air enjoyed by the plaintiffs on the northern side of the A schedule property.

(c) For permanent injunction restraining the fourth defendant, her

men, agents, servants, sub-ordinates or persons from putting up construction in the B schedule property without leaving side setbacks on the northern side of the A schedule property.

(d) Mandatory injunction directing the defendants 1 to 3 to take necessary legal action in respect of the illegal construction carried by the fourth defendant in the "B" schedule property.

(e) Mandatory injunction directing the fourth defendant to remove the pillars and other construction preparatory works on the northern side of the "A" schedule property.

(f) To pay the cost of the suit.

3. The learned counsel for the petitioners submits that the trial Court failed to note that the plaintiffs have filed the suit for declaration and consequential relief in respect to "B" schedule property. As such, adjournment of the proceeding for more than four years defeats the very object of filing the suit. The learned counsel further submitted that the Court below ought to have considered that the plaintiff has approached the Court restraining the fourth defendant from proceeding with the construction activity in violation of the plan and planning permit

sanctioned by the statutory authority. Further, he states that the trial Court has failed to note that the plaintiff has sought for mandatory injunction directing the defendants 1 and 2 to taken action in respect of the illegal and unlawful constructions carried by the fourth defendant in the "B" schedule property, which is adjacent to the schedule property, and the fourth defendant has put up construction on the northern side of the plaint schedule property without leaving any side set back particularly as sanctioned by the statutory authority in the sanctioned plan. The area ear marked as open car parking on the northern side of the petitioners property has been filly constructed by the fourth respondent. The learned counsel further states that the Court below ought to have listed the case for trial, even though the pleading of the suit has been completed. As such, the adjournment of the proceedings on the caption of framing of issue is not proper. Hence, the learned counsel prays to allow this petition.

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4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. On a perusal of the adjudication orders, it is seen that in the suit in O.S.No.4962 of 2016, an amendment petition was filed and the same was allowed on 10.02.2020. Due to the pandemic situation owing to Covid-19 and also due to Nivar Cyclone, the suit was adjourned on various occasions for the purpose of filing the additional written statement.

6. It is seen that the suit of the year 2016 and hence, this Court directs the Court below to extend one more opportunity to the parties for filing Additional Written Statement, if any, within a period of two weeks from the date of receipt of copy of this order.

7. On filing of the additional written statement, the learned VII Assistant Judge, City Civil Court, Chennai, is directed to frame the issues, complete the trial and dispose of the Suit in O.S.No.4962 of 2016 within a period of one year from the date on which, the order copy is made ready.

8. Accordingly, the Civil Revision Petition stands disposed of. No costs.

09.03.2021

Index: Yes/No
Speaking order/Non-Speaking Order
sbn

To

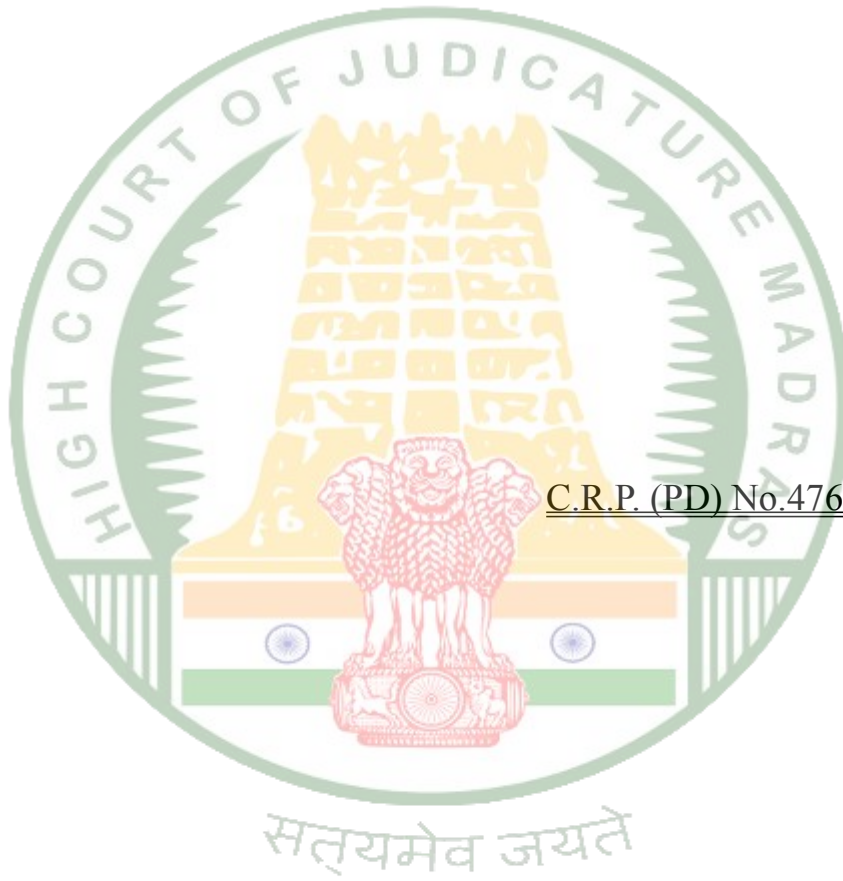
The VII Assistant Court,
City Civil Court,
Chennai.



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V.BHAVANI SUBBAROYAN, J.

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