

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.4675/2021 & WMP.Nos.5294 &5295/2021

Jayalakshmi

.. Petitioner

Versus

1.The Commissioner
Greater Chennai Corporation
Chennai 600 003.

2.The Executive Engineer
Zone-10.

3.The Zonal Officer
Zone-10.

4.The Superintending Engineer
Central.

5.The Regional Deputy Commissioner
Central.

Respondents 2 to 5 are having office at
The Greater Chennai Corporation
No.117, NSK Salai, Kodambakkam
Chennai 600 024.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relevant to the notice issue under section 220 read with 222 of the CCMC Act IV of 1919 in Z.O.X.C.No.600/2021 dated 18.01.2021 and consequential notice issued by the respondents 2 to 5 in Z.O.X.C.No.1179/2021 dated 29.01.2021 to the petitioner to remove the encroachment within 15 days is illegal, improper, unreasonable, arbitrary against the natural justice and quash the same in respect of the property No.75B, Kannikapuram 1st Street, K.K.Nagar, Chennai 600 078.

For Petitioner : Mr.T.Dhanasekar

For Respondents: Mr.R.Gopinath (Corpn)
Standing counsel

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr.R.Gopinath, learned Standing counsel accepts notice on behalf of respondents 1 to 5.
- (3) The petitioner would state that her husband, viz., Selvaraj, had purchased the land along with the superstructure at No.69A, KanniKapuram 1st Street, P.V.Rajamannar Salai, K.K.Nagar, Chennai-78 and using the same for commercial purpose. The respondents had issued a Notice dated 18.01.2021 u/s.220 read with 222 of the Chennai City Municipal Act, 1919 [in short 'CCMC Act'] as if the petitioner had encroached upon the land which vest with the Chennai City Municipal Corporation. The said Notice is followed by yet another Notice dated 29.01.2021. The petitioner, in response to the said Notice dated 29.01.2021, has submitted reply dated 12.02.2021, stating among other things that the Tamil Nadu Slum Clearance Board had originally allotted the property in favour of her husband, Selvaraj, and thereafter, the superstructure has been put up and is in continuous enjoyment and also pointed out that it is not causing inconvenience or obstruction to the user of the road by the general public.
- (4) The learned counsel for the petitioner would submit that despite the said representation sent to the respondents through Registered Post with Acknowledgment Due on 12.02.2021, the respondents, without considering the same, are taking emergent steps to demolish the superstructure and also making attempts to dispossess the petitioner from the land in question and hence, prays for appropriate orders.
- (5) Per contra, Mr.R.Gopinath, learned standing counsel appearing for the respondents would submit that the petitioner, after the demise of her husband Selvaraj, had encroached upon the public road and also put up an unauthorised superstructure and since due process of law is being followed, she cannot make any grievance and prays for dismissal of this writ petition.
- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) It is relevant to extract Section 222 of the Chennai City Municipal Corporation Act, 1919:-

''222. Removal of encroachments.-(1) The commissioner may by notice require the owner or occupier of any premises to remove or alter any

projection, encroachment or obstruction (other than a door, gate, bar, or ground floor window) situated against or in front of such premises and in or, over, any street 1 [or any public place, the control of which is vested in the corporation].

(2) If the owner of occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a perspective title 2 [or where such period is less than thirty years, for a period of thirty years] or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same."

(8) Though the petitioner has prayed for a larger relief, this Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in her representation dated 12.02.2021 or in this writ petition, permits the petitioner to submit a fresh representation by enclosing relevant and authenticated documents including the document relating to the authorised/deviated/unauthorised structure put up by her to the 1st respondent within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 1st respondent is directed to consider the said representations in accordance with law and give a disposal within a further period of four weeks thereafter and communicate the decision taken to the petitioner and it is made clear that the petitioner, till the disposal of the representation by the 1st respondent, shall not create any third party rights in respect of the land and superstructure in question and respondents 1 to 5 shall also defer further decision in terms of the impugned notices till the disposal of the representation by the 1st respondent and communication of the same to the petitioner.

(9) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

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Chennai 600 024.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.13394

+1cc to M/s.T.Dhanasekar, Advocate, S.R.No.13068

+1cc to the Government Pleader, S.R.No.13749

WP.No.4675/2021

PMK (CO)
CB (09/04/2021)

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