

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 18.03.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.7115/2021 & WMP.No.7635/2021

A.Srinivasan

.. Petitioner

Versus

- 1.The Commissioner
Greater Chennai Corporation
Ripon Building, 1st Floor
Raja Muthiah Road,
Kannappar Thidal, Periyamet
Chennai 600 003.
- 2.The Regional Deputy Commissioner [North]
Chennai Corporation, No.62, Basin Bridge
Road, Basin Bridge, Chidambaram Nagar
Chennai 600 001.
- 3.The Zonal Officer
Chennai Corporation
Zone IV, Tondiarpet,
821/265, Thiruvottiyur High Road,
Tondiarpet, Chennai 600 021.

.. 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 relating to the impugned notice issued by the 2nd respondent dated 27.01.2021 vide Notice No.dN/42/001/2021, ZO.IV.C.No.B3/0392/2021 and quash the same as illegal.

For Petitioner : Mr.A.Sakthivel
For RR 1 to 3 : Mr.R.Gopinath
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 3.
- (3) The father of the petitioner was in occupation of 307 sq.ft., of land in Tondiarpet S.Nos. 3727/1, 3728, 3729, aggregating to 307 sqft., and vide proceedings of the Tahsildar, Fort-Tondiarpet Taluk, Chennai-1, dated 27.06.1983 in No. A1/9234/83, the said fact has been stated.
- (4) The father of the petitioner, while he was alive, filed a suit in OS.No.1683/1996 on the file of the Court of IV Assistant City Civil Judge, Chennai for permanent injunction, restraining the Commissioner, Corporation of Chennai, from interfering with the peaceful possession and enjoyment of the land admeasuring to an extent of 307 sqft., comprised of a zinc shed bearing No.603, Thiruvottiyur, Chennai-21 and interim injunction was granted and subsequently, the suit also came to be decreed on 11.04.2000.
- (5) The learned counsel for the petitioner would submit that as on date, the petitioner, who is the son of late Arumugam, is running a tea stall and he has been issued with all statutory licenses and also paying all statutory levies and all of a sudden, to the shock and surprise of the petitioner, the 2nd respondent has issued the impugned notice dated 27.01.2021, alleging encroachment and removal of the same.
- (6) The primordial submission is that since the father of the petitioner was in occupation for quite long time and by way of succession, his legal heirs including the petitioner, are in occupation of the said land and running a tea stall for eking out the livelihood and despite payment of statutory levies and obtainment of necessary licenses for running the tea stall, the impugned notice issued by the 2nd respondent is not at all sustainable and prays for interference.
- (7) Mr. R. Gopinath, learned Standing counsel appearing for respondents 1 to 3 would submit that the Tahsildar-Fort Taluk, Tondiarpet, Chennai-1, has caused inspection of the land and having noted encroachment on the part in Block - 56, S.No.3727/1 has informed the Assistant Executive Engineer, Zone-IV, Chennai-21 and therefore, action has been taken strictly in accordance with law by issuing the impugned notice dated 27.01.2021 u/s.220 read with 222 of the Chennai City Municipal Corporation Act, 1919, and it cannot be faulted with and prays for dismissal of the writ petition with cost.
- (8) This Court has considered the rival submissions and also perused the materials placed before it.
- (9) Admittedly, the father of the petitioner had encroached upon the land admeasuring to an extent of 307 sq.ft., and the same is also supported by the proceedings of the Tahsildar, Fort-Tondiarpet Taluk, Chennai-1, dated 27.06.1983. A perusal of the interim orders passed in OS.No.1683/1986 on the file of the Court of the IV Assistant Judge, City Civil Court, Chennai,

would disclose that originally a Zinc Sheet shed was in existence on the land in question and however, a perusal of the photographs made available in pages No.101 and 102 of the typed set of documents would clearly disclose that a full-fledged construction has been put into being and it prima facie appears that the same has been done without obtaining any planning permission whatsoever.

(10) The only submission made by the learned counsel for the petitioner is that since the license has been issued to run the tea stall and statutory levies have been collected, the possession and construction of the superstructure appear to be authorised. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that admittedly, the father of the petitioner had committed encroachment on the land belonging to the Chennai City Municipal Corporation and by way of succession, the petitioner claims to be in possession and appears to have put up a superstructure without any planning permission. As long as the respondents take action by following due process of law, it cannot be faulted with and in the case on hand, the 2nd respondent has invoked Section 220 read with 222 of the Chennai City Municipal Corporation Act, 1919.

(11) It is also 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 groundfloor 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 or 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.

(12) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner in this writ petition, permits the petitioner to submit a detailed representation/response to the

impugned notice dated 27.01.2021 by enclosing relevant and authenticated documents 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 2nd respondent is directed to consider the said representation in the light of sub-section [2] of Section 222 of the Chennai City Municipal Corporation Act, 1919 and pass appropriate orders within a further period of three weeks thereafter and till such time, shall defer further decision in terms of the impugned notice dated 27.01.2021. It is made clear that the petitioner, till the disposal of the representation by the 2nd respondent shall not create any third party rights in respect of the land and superstructure in question.

(13) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner

Greater Chennai Corporation
Ripon Building, 1st Floor
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Chennai 600 003.

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+1cc to Mr.R.Gopinath, Advocate Sr.No.17410

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NR 19/04/2021