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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.8863 of 2021

Mrs.Lakshmi Ranganathan

...Petitioner

.Vs.

1. The Commissioner Corporation
of Chennai Office at Ribbon Building,
Raja Muttaiyah Road,
Kannapar Thidal,
Periyamet, Chennai - 600 003.
2. The Chief Engineer,
Corporation of Chennai,
Having Office at Ribbon Building
Raja Muttaiyah Road,
Kannapar Thidal,
Periyamet, Chennai - 600 003.
3. The Superintendent Engineer,
Corporation of Chennai,
Office at Ribbon Building Raja
Muttaiyah Road, Kannapar Thidal
Periyamet, Chennai - 600 003.
4. The Execute Engineer
Corporation of Chennai Office at Ribbon
Building Raja Muttaiyah Road,
Kannapar Thidal,
Periyamet, Chennai - 600 003.
5. The Assistant Engineer,
Corporation of Chennai Office at Ribbon
Building Raja Muttaiyah Road,
Kannapar Thidal, Periyamet,
Chennai - 600 003.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the Respondents to accept the Affidavit of Undertaking submitted by the Petitioner, wherein the Petitioner has very



clearly on her behalf and on behalf of her sons has accepted to surrender 5 Feet as and when requested by the Respondents when the road widening project takes place and further she has undertaken to have the said extent vacant and shall not perform any construction on the same and issue their NOC for demolition of the existing building and sanction the proposed plan for fresh construction as submitted by her.

For Petitioner : Mr.G.Anandaraj

For Respondents : Mrs.P.T.Ramadevi
Standing Counsel

ORDER

This writ petition has been filed for the issue of a Writ of Mandamus directing the respondents to consider the representation made by the petitioner on 23.02.2021 and to accept the affidavit of undertaking given by the petitioner and grant permission to the petitioner for demolition of the existing building and sanction plan for the proposed new construction.

2.The case of the petitioner is that she along with her children decided to demolish the existing structure and put up a new building in the subject property. An application was also submitted in this regard. However, the CMDA directed the petitioner to execute a gift deed in favour of the Chennai Corporation to an extent of 5 feet for the purpose of future expansion of road .

3.The petitioner made a representation in this regard to the Chennai Corporation by stating that the petitioner is willing to give an affidavit of undertaking to surrender 5 feet as and when required by the Chennai Corporation. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

4.The respondents have filed a counter affidavit. The respondents have placed reliance upon Rule 35(19) of the Tamil Nadu Combined Development and Building Rules 2019 which provides that a gift deed has to be executed at the time of issuance of building permit with regard to the space that is identified and set apart for the future road widening or street alignment. It is also stated in the counter affidavit that the orders passed in various writ petitions, directing the Corporation to obtain and undertaking instead of a gift deed, was also put to challenge and the same is pending before the Division Bench in W.A.Nos.3663 and 4345 of 2019. It is further stated that the relevant rule has also been put to challenge and writ petitions



are pending in this regard and they have been tagged along with the pending writ appeals.

5. Heard Mr.G.Anandaraj, learned counsel for the petitioner and Mrs.P.T.Ramadevi, learned Standing Counsel appearing on behalf of the respondents.

6. The issue involved in the present case is covered by the earlier order passed by this Court in W.P.No.5790 of 2015, dt.04.03.2015. The relevant portions in the order are extracted hereunder:

"4. There is no dispute that the petitioners are the joint owners of the property. The petitioners have sought for planning permission to put up construction on the said property. A portion of the land measuring 5.85 meters is likely to be acquired for the purpose of road widening. Therefore, the planning authority are insisting the petitioners to give a gift deed.

5. The land in question which is jointly owned by the petitioners has not been acquired so far and there is only a proposal for widening the road. However, the respondents state that there is a proposal for widening the road and it is submitted that a portion of the land measuring 5.85 meters will be acquired.

6. It is seen that under similar circumstances in W.P.No.1259 of 2014, this Court, taking into consideration an earlier order in W.P.No.8541 of 2012 dated 19.07.2012, issued an interim direction subject to the condition that the petitioner therein should give an affidavit of undertaking to the effect that he will not put up any construction in the place earmarked for the purpose of road widening and on receipt of the said undertaking, the CMDA and the Corporation of Chennai shall give approval for building plan permission with proper endorsement. Though the said direction is an interim order, there will be a direction, in this writ petition, to the petitioners to undertake not to put up construction in the extent of land which is proposed for road widening. Furthermore, the petitioners shall also undertake that they will not resist the proposal of road widening and hand over the said portion to the appropriate authority for the said purpose. The petitioners will, however, be entitled to compensation for the land to be acquired.



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7. In the light of the above, the writ petition is disposed of directing the petitioners to submit an affidavit of undertaking not to put up any construction in the portion earmarked for road widening on their property to the extent of 5.85 meters and keeping the area clear and also undertake to surrender the portion for implementation of road widening work without prejudice to the petitioners' right to claim compensation. If such an affidavit is filed, the respondents shall consider the same and process the application in accordance with the statutory provisions. No costs. Consequently, connected miscellaneous petition is closed."

7.The facts of the present case squarely falls within the ambit of the directions issued in the above writ petition.

8.In the light of the above, this writ petition is disposed of with a direction to the petitioner to submit an affidavit of undertaking not to put up any construction in the portion earmarked for road widening on the property to an extent of 5 feet and keep the area clear and also undertake to surrender the portion for implementation of road widening work in future, without prejudice to the petitioner's right to claim compensation. If such an affidavit is filed, the respondents shall consider the same and process the application in accordance with law.

8.This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1. The Commissioner Corporation
of Chennai Office at Ribbon Building,
Raja Muttaiyah Road,
Kannapar Thidal,
Periyamet, Chennai - 600 003.



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Corporation of Chennai Office at Ribbon
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Building Raja Muttaiyah Road,
Kannapar Thidal,
Periyamet,
Chennai - 600 003.

+2 Ccs to Mr.G.Anandaraj, Advocate, Sr.No. 41697.

+1 CC to M/s.P.T.Ramadevi, Advocate, Sr.No. 41598.

W.P.No.8863 of 2021

NR(CO)
LS(24/08/2021)