

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.4830/2018 & WMP.No.5965/2018

Sornakili Ammal

..Petitioner

Versus

- 1.The Commissioner,
Corporation of Chennai
Ripon Buildings,
Chennai 600 003.
- 2.The Regional Deputy Commissioner [South]
Corporation of Chennai, No.115,
Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.
- 3.Corporation of Chennai rep.by
The Zonal Officer, Zone XIII
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.
- 4.The Corporation of Chennai rep.by
The Assistant Engineer
Division No.178, Velachery Road
Velachery, Chennai 600 042.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1 and 2nd respondents to demolish the construction done on the road margin abutting to the property of the petitioner viz, No.137, Pillaiyar Koil Street, Velachery Village, Chennai 600 042, comprised in S.No.452/4, as per patta No.4137 to an extent of 2560 sq.ft.

For Petitioner : Mr.J.Kamaraj
For RR 1 to 4 : Mr.R.Gopinath
Standing counsel

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) The petitioner claims to have purchased the land admeasuring to an extent of 2560 sq.ft., along with the superstructure comprised in S.No.452/4 [patta No.4137], Pillaiyar Koil Street, Velachery Village, Chennai District, from one T.Rajaputhiran, through a registered Sale Deed bearing Doc.No.26/2007 dated 03.01.2007 and continues to remain in possession and enjoyment of the same.
- (3) The grievance expressed by the petitioner is the Greater Chennai Corporation had decided to construct a Gymnasium [Fitness Centre] on a public road, viz., Pillaiyar Koil Street, and thereby denying the access of the petitioner from his house for ingress and egress and the representation submitted in this regard, has failed to invoke any kind of response and hence, he came forward to file the present writ petition.
- (4) The learned counsel for the petitioner would submit that since the right of access in the form of ingress and egress has been denied to the petitioner on account of the unauthorised construction of Fitness Centre / Gymnasium by the jurisdictional Corporation officials, that too, on a public street, his fundamental rights including freedom of movement has been denied and hence, prays for appropriate orders.
- (5) The learned standing counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit as well as the additional counter affidavit of the 3rd respondent and would submit that a decision has been taken to construct a Gymnasium/Fitness Centre on a gramamatham land comprised in S.No.438/1 in TS.No.35, Brahmin Street [now known as Pillaiyar Koil Street], Velachery, Chennai, for use of public and insofar as the claim of the petitioner that he is denied access to his property, it is stated that the petitioner's property is located in S.No.452/4, Velachery Village for which the entrance is through Velachery 100 feet bye-pass road and the vacant land belonging to the Corporation is located on the rear side of the petitioner's property and as such, the claim of the petitioner is wholly unsustainable.
- (6) It is also brought to the knowledge of this Court that the petitioner has also filed a civil suit in OS.No.4367/2016 on the file of the Court of XIII Assistant City Civil Judge,

Chennai, against the Corporation praying for mandatory injunction restraining them from interfering with the peaceful possession and enjoyment of the same and for demolition of the said Gymnasium/Fitness Centre and restore the free access to the Schedule B property and the said suit came to be dismissed as withdrawn and as such, the petitioner has no legal basis to make or sustain his claim and hence, prays for dismissal of this writ petition.

(7) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(8) In the light of the stand taken by the respondents in their counter affidavit, this Court is of the considered view that the points urged by the learned counsel for the petitioner involve adjudication of disputed questions of fact. The petitioner, in fact wants a declaration of his easementary right either in the form of prescription or by way of interest and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot adjudicate the said issues.

(9) At this juncture, the learned counsel for the petitioner would submit that he may be permitted to avail the common law remedy and if the petitioner is so advised and if it is open to him, he may avail the same before the appropriate and competent Forum.

(10) In the result, the writ petition is dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

AP

To

1.The Commissioner,
Corporation of Chennai
Ripon Buildings,
Chennai 600 003.

2. The Regional Deputy Commissioner [South]
Corporation of Chennai, No.115,
Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

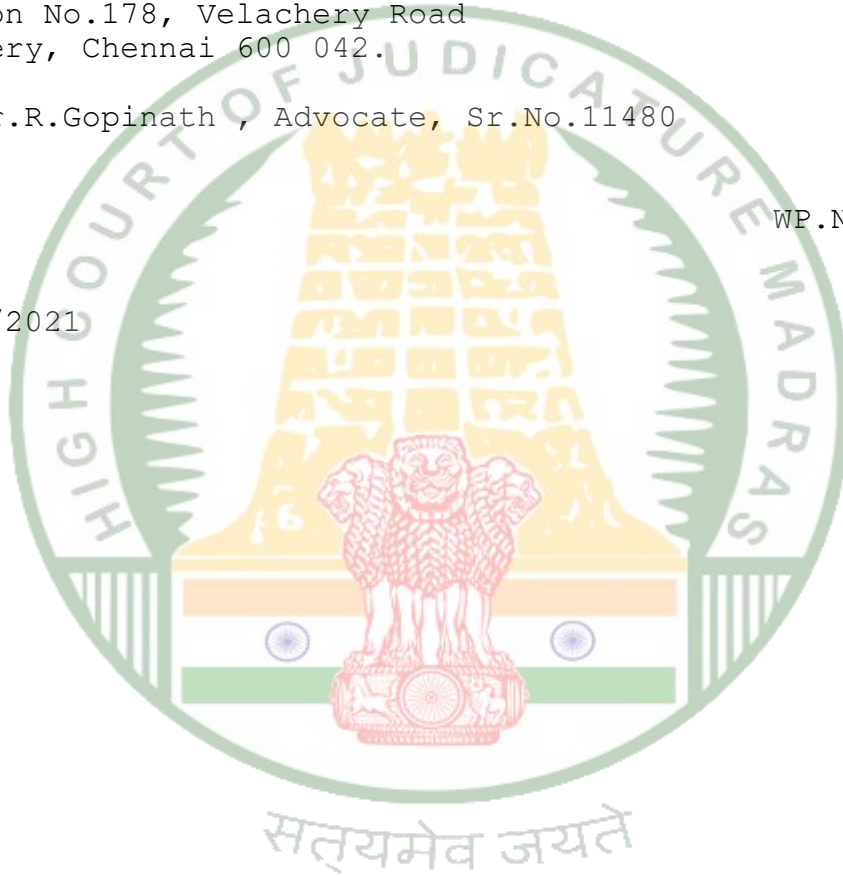
3. The Zonal Officer, Zone XIII
Corporation of Chennai
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

4. The Assistant Engineer
Corporation of Chennai
Division No.178, Velachery Road
Velachery, Chennai 600 042.

+1cc to Mr.R.Gopinath , Advocate, Sr.No.11480

WP.No.4830/2018

PMK(CO)
KKV/16/03/2021



WEB COPY