

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos. 3797 and 3798 of 2016

and

CMP.Nos.19406 and 19407 of 2016

CRP.PD.No. 3797 of 2016

Emeli Ammal

Rep.by her Power of Attorney A.Jacob

... Petitioner

Vs.

1. The Executive Officer,
St.Thomas Mound Cantonment Board,
Having Office at North Parade Road,
St.Thomas Mound,
Chennai – 16.

2. Govindarajalu

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.02.2016 in I.A.No.826 of 2015 in O.S.No.656 of 2009 on the file of Additional District Munsif Court, Alandur, Chennai.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.C.Mohan for
: M/s.King & Partridge (for R1)
: No Appearance (for R2)

CRP.PD.No. 3798 of 2016

Emeli Ammal
Rep.by her Power of Attorney A.Jacob ... Petitioner

Vs.

1. The Executive Officer,
St.Thomas Mound Cantonment Board,
Having Office at North Parade Road,
St.Thomas Mound,
Chennai – 16.

2. Govindarajalu ... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.02.2015 in I.A.No.779 of 2014 in O.S.No.656 of 2009 on the file of Additional District Munsif Court, Alandur, Chennai.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.C.Mohan for
: M/s.King & Partridge (for R1)
: No Appearance (for R2)

COMMON ORDER

C.R.P.PD.No.3797 of 2016 is directed against the fair and decretal order passed in I.A.No.826 of 2015 in O.S.No.656 of 2009 dated 05.02.2016 on the file of the learned Additional District Munsif, Alandur, Chennai, thereby, dismissing the petition for appointment of an Advocate Commissioner.

2. C.R.P.PD.No.3798 of 2016 is directed against the fair and decretal order passed in I.A.No.779 of 2014 in O.S.No.656 of 2009 dated 04.02.2015 on the file of the learned Additional District Munsif, Alandur, Chennai, thereby, dismissing the petition for appointment of an Advocate Commissioner.

3. In both the Civil Revision Petitions, the petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for mandatory injunction directing the first respondent herein to grant building

approval for the schedule 'A' property and also seeking mandatory injunction directing the first respondent to act on their behalf to demolish the existing construction made by the second respondent herein. While pending the suit, the petitioner filed a petition for appointment of Advocate Commissioner and the same was dismissed by the fair and decretal order dated 04.02.2015. Without challenging the same, the petitioner again filed a petition for appointment of Advocate Commissioner for the very same purpose and the same was also dismissed by the fair and decretal order dated 05.02.2016. Aggrieved by both the orders, the present Civil Revision Petitions have been filed.

4. The learned counsel for the petitioner submitted that while dismissing the applications for appointment of Advocate Commissioner, the Court below observed that it would effect the main suit itself and as such, he prayed to expunge the observation made in paragraph No.10 of the order dated 04.02.2010.

5. Per contra, the learned counsel for the first respondent submitted that whatever observations made by the Court below is only to conclude the

Interlocutory Application and it would not effect the suit. He further contended that when considering the Interlocutory Application, the Court below normally would see the prima facie of the said applications. In both the petitions, the Court below found that there is no prima facie for appointment of Advocate Commissioner and dismissed the same. Both the Civil Revision Petitions are nothing but clear abuse of process of law. Since the petitioner initially filed a petition for appointment of Advocate Commissioner and the same was dismissed by an order dated 04.02.2015, he failed to file any Civil Revision Petition as against the said order. Again, the petitioner filed another application for appointment of Advocate Commissioner for the very same purpose and the same was also dismissed by an order dated 05.02.2016. After a period of nine months, the present Civil Revision Petitions filed, that too under Article 227 of the Constitution of India. Therefore, it amount to clear abuse of process of law and these Civil Revision Petitions are liable to be dismissed with exemplary costs. He also produced an extract from the General Land Register showing that the suit property comprised in S.No.162 is classified as Pond Poramboke and the property situated within the jurisdiction of St.Thomas Mount Cantonment Board. Therefore, the petitioner filed the suit fighting for the

Government Property, which is classified as Pond Poramboke.

6. Heard the learned counsel for the petitioner as well as the learned counsel for appearing for the first respondent.

7. Admittedly, these Civil Revision Petitions are filed as against dismissal for appointment of the Advocate Commissioner's applications. The petitioner filed a petition in I.A.No.779 of 2014 for appointment of Advocate Commissioner and the same was dismissed on 04.02.2015. The petitioner did not challenge the same. Thereafter, for the very same purpose again the petitioner filed a petition for appointment of Advocate Commissioner in I.A.No.826 of 2015 and the same was also dismissed on 05.02.2016. As against both the orders, the present Civil Revision Petitions have been filed by the petitioner. However, the learned counsel for the petitioner prays to expunge the remarks made by the Court below while dismissing the petition for appointment of Advocate Commissioner.

8. Considering above submissions, this Court finds no infirmity or

illegality in the orders passed by the Court below. Accordingly, these Civil Revision Petitions are dismissed. However, the trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order, on merits and in accordance with law uninfluenced by any of the observations made by the trial Court while dismissing the applications for appointment of Advocate Commissioner. Consequently, the connected Miscellaneous Petitions are closed. No costs.

23.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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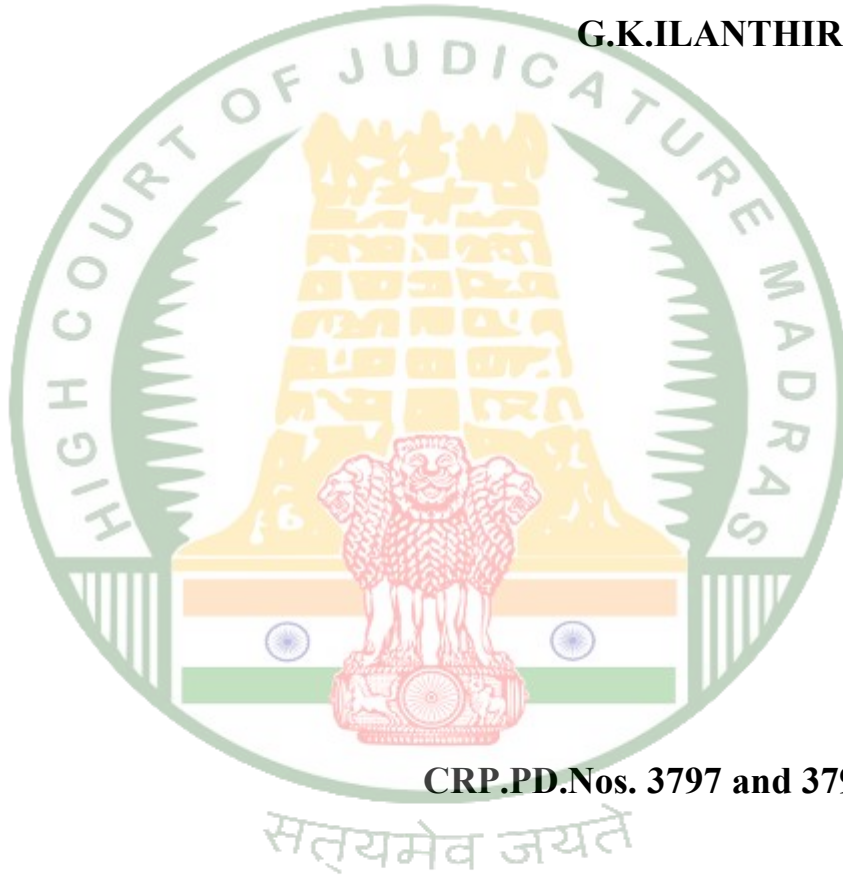
To

1. The Additional District Munsif, Alandur, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

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