



Cont. P. No.767 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Cont. P. No. 767 of 2018

R.Sundaram,
No.1A, Karikalan East Street,
Adambakkam,
Chennai

.... Petitioner

Vs

Emmanuel Balakumar
Office of Tahsildar,
Aminjikarai Taluk,
No.4, West Mada Street,
Aminjikarai, Chennai – 600 088.

.... Respondent

Prayer :- Contempt Petition filed under Section 11 of the Contempt of Court Act, to punish the respondent for wilful disobedience to comply the order passed by this Court in W.P.No.14298 of 2017, dated 13.07.2017 and punish him for the same.

For Petitioner : Mr.J.Kannan
For Respondent : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.M.R.Gokul Krishnan
Government Advocate.

ORDER

This Contempt Petition has been filed to punish the respondent for wilful disobedience of the order of this Court dated 13.07.2017 in W.P.No.14298 of 2017, thereby directing the respondent to issue patta to the petitioner to an extent of 1100 sq.ft, within a period of four weeks from the date of receipt of a copy of the order.



2. The learned counsel for the petitioner would submit that the order has been passed on 13.07.2017 and even till today, the respondent did not considered the request of the petitioner as directed by this Court for issuance of patta.

3. On perusal of the records, it shows that the petitioner already filed a writ petition in W.P.No.10672 of 2005, for issuance of patta to an extent of 1100 sq.ft comprised in Old No.162/2, New Town Survey No.6, Block No.38, bearing Door No.23, Navalur Nagar, Anna Nagar West Extension, Chennai and this Court, by an order dated 31.03.2005, dismissed the writ petition on the ground that the petitioner is an encroacher and on the complaint lodged by the Malar Colony Flat Owners Welfare Association, Anna Nagar, Chennai. The concerned officials were directed to remove the unauthorised occupants from the area concerned within three months from the date of receipt of a copy of the order.

4. Thereafter, the petitioner filed a suit in O.S.No.5810 of 2011 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, for declaration and injunction in respect of the said property. In the said suit, the respondent and other defendants were set ex-parte and ex-parte decree was passed by a Judgment and Decree dated 20.12.2012. On the strength of the Judgment and Decree passed in O.S.No.5810 of 2011, the petitioner filed a writ petition before this Court in W.P.No.14298 of 2017 and by an order dated 13.07.2017, this Court recorded that the defendants in the said suit have not filed any application to set aside the ex-



parte decree or filed an appeal as against the Judgment and Decree. Therefore, considering the request of the petitioner directed the respondent herein to issue patta to the petitioner to the subject property, on the strength of the decree passed by the Civil Court in O.S.No.5810 of 2011, dated 20.12.2012. Thereafter, the respondent herein and the defendants in the suit filed an application to set aside ex-parte decree in I.A.No.7712 of 2018 in O.S.No.5810 of 2011 to condone the delay of 1964 days. However, the said application was dismissed by a Judgment and Decree dated 22.01.2020. Aggrieved by the same, the respondent and other defendants taken steps to file a Civil Revision Petition before this Court and it is pending .

5. The learned Additional Advocate General submitted that as against the order passed by this Court in W.P.No.14298 of 2017, the respondent also filed a review petition and it is pending in Review SR.No.84291 of 2021. He further submitted that the subject land is owned by the Tamil Nadu Housing Board. The patta was also stood in the name of the Tamil Nadu Housing Board. He also produced the photos in respect of the subject property and revealed that it is a vacant land and it is meant for car parking for the Malar Colony Flat Owners Association, Anna Nagar, Chennai. Therefore, admittedly, the petitioner is not in possession and enjoyment of the said property.



6. Mr.Karunagaran Ramalingam, the learned counsel for the Malar Colony Flat Owners Association, Anna Nagar, Chennai also submitted that already they filed writ petition in W.P.No.38147 of 2003 before this Court to remove the encroachers i.e., the petitioner and others. The Hon'ble Division Bench of this Court, by an order dated 06.12.2004, directed the officials concerned to remove the encroachment. Accordingly, the said order was executed and the possession of the said property was taken over from the petitioner and now allotted for car parking for the Malar Colony Flat Owners Association, Anna Nagar, Chennai.

7. However, suppressing those facts, the petitioner simply filed writ petition on the strength of the ex-parte decree passed in O.S.No.5810 of 2011 and obtained order from this Court. Now, as against the order passed by this Court, the review application is pending and as against the dismissal of the condone delay application in setting aside the ex-parte decree, the respondent and the other defendants taking steps to file the Civil Revision Petition before this Court.

8. Therefore, the order passed by this Court in W.P.No.14298 of 2017 dated 13.07.2017 has not been complied with. However, after disposal of the Review Petition in Review SR No.84291 of 2021 and Civil Revision Petition to be filed by the defendants, the petitioner is at liberty to approach this Court for non-compliance of the order passed by this Court in W.P.No.14298 of 2017 dated

13.07.2017



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9. In view of the above, the Contempt Petition is closed.

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SD/-
ASSISTANT REGISTRAR(COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

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GS/13/10/2021