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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07/10/2021
Delivered on	29/10/2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. No.14052 of 2020 &
W.M.P.Nos.3758 and 8213 of 2021
(Heard through VC)

M.Lalitha

.. Petitioner

Versus

1.The Corporation Commissioner,
Greater Corporation of Chennai,
Chennai - 600 003.

2.The Assistant Engineer,
Division 119 Unit 24,
Corporation Zone-9, Greater Corporation Cennai,
No.9, CIT Colony, 6th Cross Street, Mylapore,
Chennai - 600 034.

3.The Executive Officer,
Arulmigu Selva Vinayagar Temple,
No.49, Whites Road, Royapettah,
Chennai - 600 014.

4.M/s.Jayabharatham Furniture and Appliances Ltd.,
18A, Royapettah High Road,
Chennai - 600 014.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the respondents 1 and 2 herein to demolish the illegal unauthorized construction made at No.10, Kalingarayan Mudali Street, Royapettah, Chennai-14 put up by the fourth respondent and his men and restore the land to the vacant position.

For petitioner : Mr.B.Radhakrishnan

For respondents : Mr.K.Raja Shrinivas
Senior Standing Counsel for R1 & R2



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Mr.T.N.C.Kaushik
Government Advocate for R3

Mr.V.Kataria for R4

Mr.N.G.R.Prasad for

ORDER

K.KALYANASUNDARAM. J,

Land measuring an extent of 1680 sq.ft. comprised in R.S.No.617, Certificate No.4299 situated at Kalingarayan Mudali Street, Royapettah, Chennai - 14, belongs to Arulmigu Selva Vinayaga Temple, situated at No.49, Whites Road, Royapettah Chennai - 14. It is the case of the petitioner that on 21.12.1910, the Temple leased out the land to one Venkatachala Mudaliar for a period of 99 years. He put up a small construction and had been in possession and enjoyment of the same. After his demise, his son Madhavan sold the leasehold right to one S.G.Govindaraman vide deed dated 27.12.1959, who in turn let out the superstructure to one P.Soundrarajan.

2. According to the petitioner, the said Soundararajan is her father and he regularly paid ground rent to the Temple and building rent to the lessor. However, in the year 1988, the leasehold right was given to the fourth respondent-M/s.Jayabharatham Furniture and Appliances Ltd. It is alleged that when the fourth respondent wanted to put up a new construction, the petitioner had agreed to shift her residence temporarily. After completing the construction, the fourth respondent failed to re-accommodate her as per his undertaking. So, she approached the third respondent to renew the lease in her favour, but it was rejected and the appeal preferred before the Commissioner is pending.

3. The present Writ Petition is filed alleging that the fourth respondent without consent of the third respondent and planning and building approval from the respondents 1 and 2 had put up unauthorized construction. The third respondent instituted a suit O.S.No.5000 of 1997 against the fourth respondent for permanent injunction and for mandatory injunction for removal of illegal construction. Though the suit was decreed on 10.03.2004 and the Appeal preferred by the fourth respondent was dismissed on 20.10.2005, but so far the illegal construction is not removed and E.P.No.2868 of 2006 filed by the third respondent is not properly prosecuted.

4. This Court, vide order dated 04.01.2021 considering the fact that notwithstanding a Decree for mandatory injunction came



to be passed in O.S.No.5000 of 1997, the officials of the Chennai Corporation did not take any steps to demolish the unauthorized construction, issued direction to the Assistant Engineer (Operation and Maintenance), TANGEDCO to disconnect the electricity supply given to the premises at No.10, Kalingarayan Mudali Street, Royapettah, Chennai-14.

5. W.M.P.No.3758 of 2021 is filed by one Mohanadurai alias Ram Mohan Durai to implead him as fifth respondent in the Writ Petition. It is his case that on 27.02.2012, he purchased the property from the fourth respondent by paying valid sale consideration and the same was informed to the Temple Authorities and sought permission to continue in possession of the property on rental basis. He was also assured by the Competent Authority that his request has been forwarded to the higher authorities for taking favourable decision. However, in the meanwhile, an order came to be passed by this Court on 04.01.2021 for disconnecting the electricity connection availed by him. The above order is said to be a cause of action for filing the impleading petition.

6. The writ petitioner has filed W.M.P.No.8213 of 2021, seeking impleadment of Assistant Engineer, Operation and Maintenance, TANGEDCO, Balaji Nagar, Royapetta, Chennai- 600 014 as proposed respondent in the Writ Petition, alleging that even though a direction was issued on 04.01.2021 to disconnect the electricity supply to the building in dispute, but no action was taken by the concerned Officer.

7. On behalf of the Greater Chennai Corporation, a counter affidavit has been filed stating that on receipt of the complaint from the petitioner, the building in question was inspected on 30.11.2020, and found that the lands belong to the Arulmigu Selva Vinayagar Temple and issued Pre-notice dated 30.11.2020; Locking & Sealing and Demolishing notice dated 18.12.2020 under Sections 56 and 47 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971. The further action against the building in question will be taken as per the provisions of the Tamil Nadu Town and Country Planning Act.

8. The fourth respondent-M/s.Jayabharatham Furniture and Appliances Ltd., filed a counter to the effect that the Civil Proceedings were initiated against M/s.Jayabharatham Furniture and Appliances, which is a partnership firm, and they were not aware of the dispute with the third respondent.

9. The learned counsel appearing for the petitioner Mr.B.Radhakrishnan would argue that the competent Civil Court has clearly held that the building in question is an unauthorized construction and even after this fact was brought



to the notice of the respondents 1 and 2, no action was taken. He further contended that the third respondent is colluding with the fourth respondent and hence, the Execution Petition is being unnecessarily dragged on.

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10. Mr.N.G.R.Prasad has drawn the attention of this Court to the typed-set filed in W.M.P.No.3758 of 2021 in support of his contention that the proposed respondent has purchased the property from M/s.Jayabharatham Furniture and Appliances Ltd., and he is in possession and enjoyment of the property. It is also stated that the petitioner in the impleading petition has paid rent to the Temple, which was accepted by them and the issue of recognition is pending with the higher authorities. He further added that as per G.O.Ms.No.277, dated 02.12.2005 any person, who is in occupation of the Temple property can be recognized as a tenant.

11. In this regard we have heard Mr.K.Raja Shrinivas, learned Senior Standing Counsel appearing for the respondents 1 and 2; Mr.T.N.C.Kaushik, learned Government Advocate for the third respondent; Mr.V.Kataria, learned counsel for the fourth respondent.

12. In the instant case, there is no dispute that the land measuring an extent of 1680 sq.ft in R.S.No.617, Kalingarayan Mudali Street, Royapettah, Chennai - 14 belongs to the third respondent-Arulmigu Selva Vinayagar Temple. The petitioner has clearly stated that the leasehold right granted in favour of Venkatachala Mudaliar on 21.12.1910 vide registered document No.367 of 1910, on the file of SRO, South Madras for a period of 99 years, has expired in the year 2009. It appears before expiry of lease period, lease hold right had been sold to the third parties in the year 1988. The property was occupied by the fourth respondent-M/s.Jayabharatham Furniture and Appliances Ltd. The Temple filed a suit before the Civil Court, Chennai against the fourth respondent in O.S.No.5000 of 1997 for permanent injunction and mandatory injunction to remove the illegal construction put up on the land in contravention of the Building Rules. After contest, the suit was decreed on 10.03.2004 and the same was confirmed by the appellate Court on 20.10.2005 in A.S.No.495 of 2004. The Execution Petition filed in the year 2006 is still pending. It is relevant to note that the Civil Court has already held that this construction is an unauthorized one and the decision of the Civil Court has become final.

13. Perusal of the typed-set filed by the petitioner in W.M.P.No.3758 of 2021 discloses that he claims right over the property in dispute through a unregistered sale receipt dated 27.02.2012. The rental receipt annexed in the typed set shows



that it was paid by the fourth respondent-M/s.Jayabharatham Furniture and Appliances Ltd. Admittedly, the proposed respondent is not recognized as tenant so far. It is settled principle that the pendente lite purchaser is bound by the Judgment passed against his vendor. In this case, as aforementioned, a civil suit against the fourth respondent was instituted as early as in the year 1997 and it was held that the construction was an unauthorized one. That apart, any sale of immovable property above the value of hundred rupees through an unregistered document is not valid in law. So, we are of the opinion that the petitioner/Mohanadurai has no right to implead him as a respondent in this Writ Petition and accordingly, W.M.P.No.3758 of 2021 is dismissed.

14. The respondents 1 and 2 are bound by the decision of the civil Court. Merely stating that they have initiated proceedings under the Tamil Nadu Town and Country Planning Act against the building would not absolve their responsibility. Therefore, the respondents 1 and 2 are hereby directed to demolish the unauthorized construction made in the land measuring an extent of 1680 sq.ft, comprised in R.S.No.617, situated at No.10, Kalingarayan Mudali Street, Royapettah, Chennai-14, within a period of four weeks.

15. It is informed that the third respondent-Temple is brought under the control of the Tamil Nadu Hindu Religious and Charitable and Endowments Department. So, we thought it appropriate to issue direction to the Secretary to the Government, Hindu Religious and Charitable Endowments Department, Chennai and the Execution Officer, Arulmigu Selva Vinayagar Temple, No.49, Whites Road, Royapettah, Chennai - 600 014, to resume the land measuring an extent of 1680 sq.ft, comprised in R.S.No.617, situated at No.10, Kalingarayan Mudali Street, Royapettah, Chennai - 14, forthwith.

16. Accordingly, the Writ Petition is allowed. In view of the order passed in the Writ Petition, W.M.P.No.8213 of 2021, is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

r n s



1.The Corporation Commissioner,
Greater Corporation of Chennai,
Chennai - 600 003.

3. The Executive Officer,
Arulmigu Selva Vinayagar Temple,
No.49, Whites Road, Royapettah,
Chennai - 600 014.

+2 ccs to Mr.B.Radhakrishnan, Advocate Sr.NO. 56081

W.P. No.14052 of 2020 &

PMK (CO)

A.SK (07.12.2021)

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