



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.2942 of 2021

and

CMP.No.21092 of 2021

M/s.South India Shelters
Rep. by its Managing Partner
Mohammed Ali
No.14, Gulmohar Avenue,
Velachery Main Road,
Guindy, Chennai-600 032.

... Petitioner/2nd Respondent

Vs

1. Dr.Vandana Parvez
2. SIS Meridian Flat Owners Association,
(Reg as Doc No.246/2010)
Rep. by its Secretary,
Having office at Sis Meridian,
Velacheri Bypass Road,
Chennai-600 042.

... Respondents/Plaintiffs/1st Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to challenge the order dated 10.11.2021 passed in I.A.No.4 of 2020 in O.S.No.2990 of 2019 by the XIX Additional City Civil Judge, Chennai.

For Petitioner : Mr.Sarath Chandran
for M/s.SK.Rahul Vivek

O R D E R

Challenge in this revision is to an order appointing an Advocate Commissioner to inspect the suit property with assistance of the competent Civil Engineer from the State's Public Works Department and to file a report.

2.The suit has been initiated by the first respondent herein seeking the relief of permanent injunction and mandatory injunction for maintenance of the common areas and for damages.



The prayers as they stand as of today are only against the 1st defendant, which is the association of flat owners. The 2nd defendant is the builder. There is no prayer as such against the 2nd defendant. It is stated that an application for amendment has been filed seeking certain relief against the 2nd defendant also and the same is pending.

3.The 2nd defendant has come up with this revision contending that the appointment of Commissioner is only an attempt to gather evidence and the order being so widely worded will result in confusion.

4.Mr.Sarath Chandran, learned counsel appearing for the petitioner would point out that though in the plaint the petitioner has claimed that there are certain deficiencies in the maintenance work carried out by the association and therefore, there has to be a mandatory injunction directing the association namely, the 1st defendant in the suit to carry out the maintenance work. The order in the Commissioner's application does not referred to all the averments and it only says the Commissioner is appointed and the Commissioner would take the assistance of an Engineer from the State's Public Works Department and file a report.

5.The scope of the Commissioner's warrant will have to be within the prayers in the suit it cannot exceed the prayers in the suit. Therefore, I do not see any reason to interfere with the order, particularly, when the suit is for mandatory injunction to carry out certain maintenance work and a report of the Commissioner will definitely aid the Court in ascertaining what is the work that is to be done except to observe that the Commissioner shall not exceed the scope of the suit while inspecting and filing a report. The revision is dismissed with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

VS



To:

1. The XIX Additional Judge,
City Civil Court,
Chennai.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+2ccs to Mr.Rahul Vivek, Advocate, S.R.No.68832 & 68501

+1cc to Dr.Vandana Parvez, Advocate, S.R.No.68577

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NMI (CO)
SU(20/01/2022)