

C.R.P.(NPD)Nos.624 and 627 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.624 and 627 of 2017
and C.M.P.No.3193 of 2017

A.Pramila Devi

.. Petitioner in
both CRPs.

Vs.

1.Kausalya Sundaram

2.The Commissioner
Erode Municipal Corporation
Erode.

.. Respondents in
both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.12.2016 made in E.A.No.107 of 2016 in E.A.No.43 of 2016 in E.P.No.63 of 2010 in O.S.No.371 of 2005 and E.A.No.108 of 2016 in E.A.No.106 of 2016 in E.A.No.43 of 2016 in E.P.No.63 of 2010 in

O.S.No.371 of 2005 on the file of the Principal District Munsif Court,
Erode.

In both CRPs.

For Petitioner : Mr.T.Murugamanickam, Senior Counsel

for M/s.Zeenath Begum
For R1 : Mr.M.N.Kathir
for Mr.G.Pavendhan

For R2 : No appearance

COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

The Civil Revision Petitions are filed against the fair and decretal order dated 22.12.2016 made in E.A.No.107 of 2016 in E.A.No.43 of 2016 in E.P.No.63 of 2010 in O.S.No.371 of 2005 and E.A.No.108 of 2016 in E.A.No.106 of 2016 in E.A.No.43 of 2016 in E.P.No.63 of 2010 in O.S.No.371 of 2005 on the file of the Principal District Munsif Court, Erode.

2.The issues involved in both the Civil Revision Petitions are one and the same and hence, they are disposed of by this common order.

3(i).The petitioner is the 5th respondent, 1st respondent is the petitioner and 2nd respondent is the 2nd respondent in E.P.No.63 of 2010. The 1st respondent, who is the decree holder, filed O.S.No.371 of 2005 against one S.Ravindran/1st defendant, the 2nd respondent herein and two others for mandatory injunction. The Principal District Munsif Court, Erode, decreed the suit by judgment and decree dated 23.10.2009 holding that the building constructed by Ravindran/1st defendant is illegal and constructed in violation of building permit dated 19.10.2004 and directed the 2nd respondent to take action after the disposal of the appeal filed by the said Ravindran to the 4th defendant in the suit. Pending suit, the said Ravindran sold the suit property to the petitioner vide sale deed dated 24.08.2009.

3(ii).The 1st respondent filed E.P.No.63 of 2010 against all the defendants in the suit as respondents 1 to 4. The petitioner was

impleaded as per the order dated 18.06.2012 in E.A.No.21 of 2012 as 5th respondent in E.P.No.63 of 2010. The 1st respondent filed the said E.P. for a direction to the 2nd respondent herein to take action against the said Ravindran/1st defendant in the suit, for removing unauthorised construction put up by him. The learned Judge by order dated 26.08.2013 partly allowed E.P.No.63 of 2010 holding that the said Ravindran, the 1st defendant in the suit and the petitioner have not properly complied with the decree granted by the Court and directed the 2nd respondent to take action against the 1st defendant and the petitioner with respect to the unauthorised construction put up by the 1st defendant, in accordance with law, within a period of three months from the date of the said order.

3(iii).The 1st respondent herein filed E.A.No.43 of 2016 under Order XXI Rule 32(2) and 43 of C.P.C. against the 2nd respondent herein to attach the property of the Municipality or arrest and detain the 2nd respondent in civil prison alleging that the 2nd respondent did not take any action as directed by the learned Judge in E.P.No.63 of 2010. The 2nd

respondent filed counter statement and submitted that the 2nd respondent issued notices to the said Ravindran/1st defendant as well as to the petitioner for demolishing unauthorised construction, for which, they informed the 2nd respondent that they themselves demolished the unauthorised construction put up by the 1st defendant. The 2nd respondent further stated that subsequently, they demolished the unauthorised construction.

3(iv).Pending E.A.No.43 of 2016, the 1st respondent filed E.A.No.106 of 2016 in E.A.No.43 of 2016 against the 2nd respondent for appointment of Advocate Commissioner to inspect the property with the help of Civil Engineer and to file a report along with plan.

3(v).The petitioner filed E.A.No.107 of 2016 to implead her in E.A.No.43 of 2016 and filed E.A.No.108 of 2016 for impleading her in E.A.No.106 of 2016 in E.A.No.43 of 2016 in E.P.No.63 of 2010. According to the petitioner, she being the owner of the property, which is

sought to be inspected, her presence is necessary at the time of inspection by the Advocate Commissioner. The 1st respondent filed counter affidavits and opposed both the petitions. The learned Judge, by common impugned order dated 22.12.2016 dismissed both the petitions holding that no relief was sought against the petitioner in E.A.No.43 of 2016 and the 2nd respondent herein was directed to take action and therefore, the petitioner is not a necessary party in the said petitions.

4. Against the said common fair and decretal order dated 22.12.2016 made in E.A.Nos.107 and 108 of 2016, the petitioner has come out with the present two Civil Revision Petitions.

5. The learned Senior Counsel appearing for the petitioner contended that the petitioner purchased the suit property two months prior to the date of decree by the deed of sale dated 24.08.2009, pending suit, from the 1st defendant, who did not inform the pendency of the suit to the petitioner. The suit was decreed by the judgment and decree dated

23.10.2009. The learned Principal District Munsif, Erode, by order dated 18.06.2012 made in E.A.No.21 of 2012 impleaded the petitioner as 5th respondent in E.P.No.63 of 2010 as she is the present owner of the suit property. If the Court is deciding E.A.No.43 of 2016 without aid of any other materials, then it is only between the Court and the 2nd respondent. But when the 1st respondent is seeking appointment of Advocate Commissioner to inspect the property of the petitioner, then the petitioner is necessary party and otherwise, inspection will be done behind her back, which is in violation of principles of natural justice. If any report is filed in E.A.No.106 of 2016, it is open to the petitioner either to accept such report or file her objection and prayed for allowing both the Civil Revision Petitions.

6.The learned counsel appearing for the 1st respondent contended that the 1st respondent is seeking relief in E.A.No.43 of 2016 only against the 2nd respondent. E.A.No.106 of 2016 is filed only for appointment of Advocate Commissioner to find out whether the 2nd respondent has

complied with the order of the Court dated 26.08.2013 passed in E.P.No.63 of 2010. As no relief is sought for against the petitioner, she is not a necessary party in both E.A.Nos.43 and 106 of 2016. The learned Judge rightly dismissed both the petitions by giving cogent and valid reasons and prayed for dismissal of both the Civil Revision Petitions.

7.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8.Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

9.From the materials on record and arguments of the learned Senior Counsel for the petitioner as well as the learned counsel for the 1st respondent, it is seen that E.A.No.43 of 2016 is filed by the 1st respondent against the 2nd respondent for attachment of property of Municipality or

to arrest and detain the Commissioner in civil prison for non-compliance of the order dated 26.08.2013 passed in E.P.No.63 of 2010. It is for the 2nd respondent to substantiate his case that he has taken action against Ravindran/1st defendant as well as the petitioner and unauthorised construction had been removed by Ravindran/1st defendant and the petitioner. In view of the relief sought for in E.A.No.43 of 2016, the petitioner is not a necessary party in the said E.A. On the other hand, in E.A.No.106 of 2016, the 1st respondent is seeking appointment of Advocate Commissioner to inspect the property belonging to the petitioner with the help of Civil Engineer and to file a report along with plan. When the 1st respondent is seeking relief to inspect the property of the petitioner, the same cannot be done behind the back of the petitioner. She must be put on notice the date of inspection and she is entitled to be present during the inspection of the Advocate Commissioner, if E.A.No.106 of 2016 is allowed by the learned Judge. The learned Judge failed to consider the fact that in E.A.No.106 of 2016, the 1st respondent is seeking inspection of the property of the petitioner and erroneously

held that the petitioner is not a necessary party in E.A.No.106 of 2016. The learned Judge has not properly exercised his power conferred on him and erroneously dismissed E.A.No.108 of 2016.

10.For the above reason, the common order dated 22.12.2016 passed in E.A.No.107 of 2016 is confirmed and E.A.No.108 of 2016 is liable to be set aside and is hereby set aside. E.A.No.108 of 2016 is allowed. The learned Judge is directed to implead the petitioner as the 2nd respondent in E.A.No.106 of 2016 and proceed with the said E.A. as per law.

11.In the result, C.R.P.(NPD)No.624 of 2017 stands dismissed and C.R.P.(NPD)No.627 of 2017 stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Internet:Yes/No

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V.M.VELUMANI, J.

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To

1.The Commissioner
Erode Municipal Corporation
Erode.

2.The Principal District Munsif
Erode.

C.R.P.(NPD)Nos.624 and 627 of 2017
and C.M.P.No.3193 of 2017



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