

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.M.P.Nos.35169 of 2019
in WP.No.31492 of 2019

Veerapan

... Petitioner

Versus

1.Vignesh

1.The State rep.by its
The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

.. Respondent

Prayer:- Writ Miscellaneous petition filed under Article 226 of the Constitution of India pleased to recall the order dated 08.11.2019 passed by this Court in the Writ Petition in W.P.No.31492 of 2019 and dispose of the Writ Petition after hearing him.

For Petitioner : Mr.B.K.Sreenivasan

For Respondent : Mr.R.Thirumurthy for R1

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,
through video conferencing]

The Public Interest Litigation was filed by the 1st respondent as the Writ Petitioner in W.P.No.31492 of 2019, praying for issuance of Writ of Mandamus, directing the 2nd respondent herein to remove the encroachment caused by the petitioner herein / 2nd respondent in Dr.Thomas Road, T.Nagar, Chennai, pursuant to his representation dated 07.08.2019. This Court, vide final orders dated 08.11.2019, passed the following orders and it is relevant to extract paragraph nos.4 and 5:

"4.Though the petitioner prays for larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in his representation or in this writ petition, directing the Executive Engineer, Zone-X, to put the petitioner as well as the second respondent on notice and cause inspection of the place, in which the second respondent is said to have been put up an unauthorised construction for commercial purposes and depending upon the result of the inspection, shall take immediate and appropriate action and also adhering to the principles of natural justice and complete the exercise

within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the second respondent.

5.This writ petition stands disposed of accordingly, No costs."

2. The 2nd respondent in the Writ Petition came forward to file this petition to recall the said order by stating among other things that he is running bunk shop at Door No.1, Dr.Thomas Road, T.Nagar, Chennai 600 017, for the past 30 years and also got license from the Tamil Nadu Food Safety and Drug Administration (Food Safety Wing) and it is valid upto 15.01.2024 and also got electricity service connection for his bunk shop and it is located just opposite to the office of the Division No.117 of the Greater Chennai Corporation. It is further submitted that on 05.12.2019, the son of the petitioner became aware of the notice dated 04.12.2019 issued by the Executive Engineer, Zone IX, Nungambakkam, Chennai 600 034, stating among other things that he had encroached and constructed a concrete illegal commercial building and he is running a bar at night and it is located on the Corporation land.

3. The learned counsel appearing for the petitioner would submit that though the petitioner has been arrayed as 2nd respondent in the Writ Petition, he has not been put on notice and the Writ Petition came to be disposed of straight away and that apart on enquiry he found that the Writ Petition was filed by a fictitious person by using the name of the writ petitioner namely Mr.Vignesh and further points out that the notice dated 04.12.2019 issued by the Executive Engineer, Zone IX, Nungambakkam, Chennai 600 034, is also not in tune with the direction contained in paragraph no.4 of the final order passed in the Writ Petition and prays for interference.

4. Mr.K.Thirumoorthy, learned counsel appearing for the 1st respondent would submit that the 1st respondent / writ petitioner though admitted that he signed the vakalat and affidavit filed in support of the writ petition, he believing the word of his friend has signed in some blank sheets which was utilised for filing the affidavit and he was not aware of the facts of the present case and he is unacquainted with the English language and prays for exoneration.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. During the course of arguments, this Court has put a specific query to the learned counsel appearing for the petitioner as to whether the land on which the superstructure has been located belongs to the petitioner and the answer is in negative. This Court has also put a specific question to him as to whether the superstructure / bunk shop appeared in page no.9 of the typed set of documents filed in support of the Writ Petition,, has been constructed with the planning permission or not and the answer is once again in negative.

7. It *prima facie* appears that the petitioner has put up a construction and it appears to be permanent on the land. Be that as it may, in the light of the directions contained in para no.4 of the final order dated 08.11.2019 made in W.P.No.31492 of 2019, and that in view of the reply dated 09.12.2019, submitted by the petitioner to the Executive Engineer, Zone IX, Nungambakkam, Chennai 34, the said official is directed to give an opportunity of personal hearing to the petitioner

namely, Veerappan and dispose of the representation dated 09.12.2013, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website, till such time, shall defer further decision for removal of encroachment and demolition of alleged unauthorised structure.

8. The Writ Miscellaneous Petition stands disposed of, accordingly.

[M.S.N.,J] [A.A.N.,J.]
03.02.2021

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Internet: Yes / No
Index: Yes/ No

To
The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

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in WP.No.31492 of 2019

M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,

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