



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.12282 of 2013

Ajmunnis

.. Petitioner

vs

1. The Chief Secretary and Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.
 2. The Assistant Engineer,
Corporation of Chennai,
Old Division No.27, New Division No.60,
Old Zone No.II, New No.V, Maraikayar Labbai Street,
Chennai 600 001.
 3. The Junior Engineer,
Corporation of Chennai,
Old Division No.27, New Division No.60,
Old Zone No.II, New No.V,
Maraikayar Labbai Street,
Chennai 600 001.
- .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in his notice dated 12.04.2013 in Ref.No.Ma.Aa 5 Na.Ka.No.12/2013 pertaining to the property, viz., house, ground and premises bearing Door No.12, New No.25, Ibrahim Sahib Street, 2nd Lane, George Town, Chennai 600 001 and quash the said notice.

For the Petitioner : Mr.A.Abdul Rahman

For the Respondents : Mrs.Karthikaa Ashok
Stdg. Counsel



ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

WEB COPY

The writ petition of the year 2013 is listed today because after an interim order passed by this Court, the file was not found available in the records and finding it out later on and on the request of the respondents, a direction for reconstruction was given and after reconstruction of the file, it is now listed before the Court.

2. The writ petition has been filed to challenge the notice issued by the respondent Corporation to remove the encroachment made by the petitioner in the land in question.

3. The learned counsel for the petitioner submits that despite the long possession of the property in dispute, the respondents intend to take action to remove the encroachment. It is despite production of the sale deed and proof of possession from the year 1940. The documents filed along with the writ petition are sufficient to prove the possession of the land in question and therefore only while the writ petition was earlier preferred by the petitioner, it was appropriately decided by this Court by issuing a direction that the respondents may proceed with the matter but by complying the provisions of law. In the instant case, the respondents are proceeding to remove the possession without following the provisions of law and therefore, the petitioner was left with no option but to file this writ petition.

4. It is further submitted that the writ petition is listed after several years and a copy of the counter affidavit filed in the year 2014 is not with the counsel, thus, the said counter may not be taken into consideration and otherwise, when prima facie case was found in favour of the petitioner, this Court passed an interim order and is operating till date. It is submitted that the petitioner is a poor person and has not encroached the land belonging to the school, but is in possession of his own land which gets proved by perusal of the sale deed and even the other documents which includes the birth certificate apart from the records issued where the address on which the petitioner is residing has been given and all these documents are sufficient to prove the long possession of the petitioner. The prayer is, accordingly, to allow the writ petition.

5. The writ petition has been seriously contested by the respondents. It is submitted that the land in question is of a school and for which a reference of the old record has been



given in para 6 of the counter. The land was acquired by the Corporation in the year 1913-1914 for a model school for a Muslim community under the order of the Special Deputy Collector. However, the petitioner had encroached on the property of the Corporation. In view of the above and as per the judgment of this Court, notice was caused by invoking Section 222 of Chennai City Municipal Corporation Act, 1919, thus, it is incorrect to state that without compliance of the provision, the action has been initiated.

6. It is further stated that before taking action, the Corporation had called for the records and found the land in question is not in the name of the petitioner or her ancestors, but is in the name of the school and therefore, the petitioner has no right in the land in question. It is also submitted that the sale deed does not give right to the petitioner to possess the land belonging to the municipal corporation, when the corporation did not enter into a sale deed with the petitioner or her ancestors. A party selling the land not belonging to them would not create a right in favour of purchaser or take away the right of the owner which in this case is the municipal corporation. For all the reasons, the writ petition has to be dismissed.

7. We have considered the submission made by the learned counsel for the parties.

8. The writ petition is in the second round of litigation, otherwise, according to the petitioner, another round of litigation was traced before the Subordinate Court where an injunction was alleged to have been granted. If that is the position, then it could not be clarified as to why the petitioner has filed the writ petitions to protect the possession when according to the petitioner injunction exists in her favour. It is submitted that despite injunction, the respondents are adamant to evict the petitioner, therefore, the writ petition was filed. The excuse aforesaid cannot be accepted for the reason that if any action is to be taken by the respondents flouting the order of the Subordinate Court, a remedy was available to the petitioner under Order XXXIX Rule 2A CPC. In any case, the writ petitions were filed and the first writ petition was disposed of with a liberty to the respondents to proceed as per the provisions of law and accordingly, notice under Section 222 of the Act of 1919 was given. Thus, it is not without compliance of the provision of law that the process for eviction was initiated. It is however a fact that after the notice, the petitioner has responded it by sending a reply detailing all the issues favourable to him, but there is nothing on record to show whether the aforesaid reply was dealt with by the respondents.



9. In view of the above, we are not entering into the issue about the sale deed and other documents submitted to prove the possession of the petitioner and also that in the revenue records, the property in question does not exist in the name of the petitioner or her ancestors, rather it recorded for school and we, accordingly, direct the respondents to pass a speaking order on the reply or the representation given by the petitioner on 19.04.2013 and thereafter, to proceed further in the matter. The exercise aforesaid would be required if not already undertaken within a period of one month from the date of receipt of a copy of the order. If such a course has already undertaken by the municipal corporation, a copy of it would be sent to the petitioner forthwith for taking further action in the matter. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

sra

To:

1. The Chief Secretary and Commissioner
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Maraikayar Labbai Street, Chennai 600 001.

+1cc to Mrs.Karthikaa Ashok, Advocate SR.No.38731

+1cc to Government Pleader SR.No.39291

W.P.No.12282 of 2013

JPL (CO)
GMY (29/06/2022)