



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P. No.4466 of 2022 and W.M.P. No.4592 of 2022

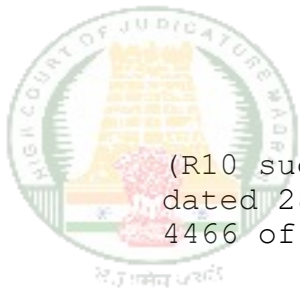
A.Srinivasan

... Petitioner

vs

1. The Commissioner,
Greater Chennai Corporation,
Chennai.
2. The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. The Zonal Executive Engineer (Zone),
Zone-9, Ward 109,
Shanmuganar Salai,
Gill Nagar, Choolaimedu,
Chennai - 600 094.
4. The Executive Engineer (Zone),
D 123, Ward 25, C.P.Ramaswamy Road,
Alwarpet, Chennai.
5. Geetha
6. Anitha
7. Girija
8. Krithika
9. Balaram
10. The Inspector of Police (L&O),
F5 Choolaimedu Police Station.

... Respondents



(R10 suo motu impleaded vide order dated 28.02.2022 made in W.P. No. 4466 of 2022)

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents 1 to 4 to demolish and remove the un-authorized construction viz. Four basement columns fixed in the eastern side of the property of the respondents 5 to 8 facing on the road side at D.No.6/97, Thiruvalluvarpuram II Street, Choolaimedu, Chennai-94 in violation of the plan sanctioned by the respondents 1 to 4.

For Petitioner : Mr.R.Murali

For Respondents: Mr.K.Raja Shrinivas,
Standing Counsel
for Corporation of Chennai for R1

Mrs.C.Sumathi,
CMDA for R2

Mr.Infant Dinesh for R5 to 9

Mr.K.V.Sajeev Kumar,
Special Government Pleader
for R10 (impleaded respondent)

ORDER

[Order of this Court was delivered by T.RAJA, J.]

The petitioner has come to this Court for issuance of a writ of Mandamus seeking a direction to respondents 1 to 4 to demolish and remove the un-authorized construction viz. four basement columns fixed in the eastern side of the property of respondents 5 to 8 facing on the road side at D.No.6/97, Thiruvalluvarpuram II Street, Choolaimedu, Chennai-94 in violation of the plan sanctioned by respondents 1 to 4.

2.Learned counsel appearing for the petitioner submitted that the petitioner is the absolute owner of the premises, situated at Door No.8/96, Thiruvalluvarpuram II Street, Choolaimedu, Chennai-94. However, the same was purchased by the father of the petitioner by way of a Sale Deed dated 02.11.1960 and thereafter, by a Settlement Deed dated 01.02.1962, the father of the petitioner settled the above property in favour of his 1st minor son Munuswamy and Rathinasabapathy, appointing Pachiammal Mother as a guardian. After some time, by Sale Deed dated 13.11.2015, one Mohan, who was the brother of the petitioner, has sold his share to the petitioner and by



Settlement Deed dated 11.11.2015, the said Munuswamy has settled his property in favour of the petitioner. Since the petitioner, being the absolute owner of the above property, has been residing in the same from 1961 onwards, he has been paying water tax and sewerage board charges etc. While so, respondents 5 to 8 started to construct and develop a building by demolishing compound wall on their side. When the same was questioned by the petitioner, respondents 5 to 8 were not present at the relevant point of time and it was found that respondents 5 to 8, who had shifted their residence elsewhere, had entrusted the work to the ninth respondent/the builder, by name Balaram, L Block, 27th Street, Anna Nagar, Chennai-40. As the petitioner is entitled to 4 feet set back space as mandated under Section 7 of the Indian Easementary Act 1892, the construction made by respondents 5 to 8 is against the statutory rules and regulations. Therefore, the petitioner issued a legal notice dated 05.01.2022 to respondents 5 to 8 with a copy to other statutory respondents complaining about the illegal construction. As there is no response, the petitioner is before this Court for the above direction.

3.Learned counsel appearing for respondents 5 to 8 submitted that when respondents 5 to 8 have moved an application seeking planning permission clearly mentioning that 0.3 metres would be left as a setback space, it is not fair on the part of the counsel for the petitioner to say that respondents 5 to 8 have not provided any setback space as per rules. Continuing his reply, learned counsel for respondents 5 to 8 submitted that if for any reason the petitioner has got any grievance that his easementary right is being affected, it is for him to establish his right before the appropriate forum by filing a Civil Suit. Without doing the same, the petitioner cannot obstruct the construction of respondents 5 to 8 being carried out as per the planning permission.

4.Mr.K.Raja Shrinivas, learned Standing Counsel for the Corporation of Chennai/first respondent submitted that after receiving the complaint from the petitioner, the first respondent has issued a notice on 20.01.2022 calling upon respondents 5 to 8 to provide the planning permission and other documents to verify as to whether the complaint given by the petitioner was correct and thereafter, a spot inspection was also carried on by the first respondent. Finally, on 23.02.2022, lock and seal notice was issued to respondents 5 to 8 giving 30 days time to provide their explanation. If further action is taken to lock and seal the building owned by respondents 5 to 8, respondents 5 to 8 are also having the right to prefer an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, now it is for the petitioner to provide his reply. If no such reply is provided by the petitioner, the Corporation shall proceed further in accordance with law.



5. At this stage, learned Special Government Pleader appearing for the 10th respondent/Inspector of Police submitted that after receiving a complaint from respondents 5 to 8 to conduct enquiry, the petitioner was asked to come for enquiry. During the enquiry, he was about to wait only for 2 hours, but not whole night, as stated by the learned counsel for the petitioner. After the enquiry was over, the petitioner was allowed to go home.

6. Since the first respondent Corporation has already initiated action by issuing notice on 20.01.2022 and a lock and seal notice on 23.02.2022 providing 30 days' time to respondents 5 to 8, we are of the view that the official respondents have taken necessary steps with regard to the complaint of the petitioner. Moreover, as the petitioner was asked to come for an oral enquiry, we do not find any mischief therein. Therefore, we are inclined to close this writ petition, as nothing further survives for adjudication.

7. If the petitioner is aggrieved, it is open to him to move an appropriate application before the Civil Court for his easementary right. With the above observation, this writ petition stands closed. No costs. Consequently, W.M.P. No.4592 of 2022 stands closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Commissioner,
Greater Chennai Corporation,
Chennai.
2. The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
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3. The Zonal Executive Engineer (Zone),
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4. The Executive Engineer (Zone),
D 123, Ward 25,
C.P.Ramaswamy Road,
Alwarpet, Chennai.

5. The Inspector of Police (L&O),
F5, Choolaimedu Police Station,
Chennai.

+1cc to Mr.R.Murali, Advocate, S.R.No.15402

+1cc to Mr.Infant Dinesh, Advocate, S.R.No.16368

+1cc to Mr.K.Raja Shrinivas, Advocate, S.R.No.15983

W.P. No.4466 of 2022
and
W.M.P. No.4592 of 2022

SPD[co]
NSK 24/03/2022