

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.4041 of 2022 and W.M.P. No.4188 of 2022

Koti Sukumar

... Petitioner

vs

- 1.The Commissioner,
Greater Corporation of Chennai,
Ripon Building,
Park Town,
Chennai - 600 003.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Zonal Officer,
Anna Nagar Zone-VIII,
Corporation of Chennai,
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.
- 4.The Senior Engineer,
Corporation of Chennai,
Anna Nagar Zone,
Pulla Avenue, Shenoy Nagar,
Chennai -600 030.

5.Koti Jayakumar

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents 1 to 4 to initiate appropriate action by issuance of stop work notice as against the fifth respondent and prevent him from further proceeding with the illegal construction at Plot No7, No.63, A

Block, 11th Street, Anna Nagar East, Chennai-600 102, more fully described in the schedule A & B hereunder pursuant to the petitioner's representation dated 10.01.2022.

For Petitioner : Ms.M.Karpagam

For Respondents : Mr.K.Raja Shrinivas,
Standing Counsel
(Corporation of Chennai)
for R1, 3 and 4

Mrs.C.Sumathi,
Standing Counsel
(CMDA) for R2

ORDER

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

The petitioner has come to this Court for issuance of writ of Mandamus seeking a direction to respondents 1 to 4 to initiate appropriate action by issuance of stop work notice as against the fifth respondent and prevent him from further proceeding with the illegal construction at Plot No7, No.63, A Block, 11th Street, Anna Nagar East, Chennai-600 102, more fully described in schedule A & B to the petition, pursuant to his representation dated 10.01.2022.

2.Learned counsel appearing for the petitioner submitted that the petitioner, after serving as Chief Manager in Air India, got retired in the year 2009 and his father P.C.Varadaraj, who served as PWD Engineer, executed a Will dated 27.02.2002 and bequeathed the property, comprised in Survey No.40, R.S. No.40-part, Plot No.7, measuring to the extent of 5219 sq.ft., consisting of ground and first floors, situated at Anna Nagar, more fully described in the schedule to the petition, equally in favour of the petitioner and his younger brother Koti Jayakumar, the fifth respondent herein. After execution of the Will, his father passed away on 21.05.2002 and therefore, the Will came into effect. As per the arrangement made by his father in the said Will, he had not divided the property by metes and bounds and therefore, the petitioner is entitled to enjoy the benefit of ground and first floors, measuring to the extent of 1950 sq.ft., but, the ground floor measuring to the extent of 1800 sq.ft. is continued to be under the possession and enjoyment of his brother. While so, the petitioner came to know that the fifth respondent has been

constructing additional structures and alterations in the joint property. When the petitioner went to visit the property, the fifth respondent did not allow him, but prevented him with goondas and rowdies. Since the entire plot had four coconut trees and saplings, which were in existence and the fifth respondent without informing anyone, has been un-authorisedly constructing additional structures and alterations in the joint property, the petitioner made a representation dated 10.01.2022 to the respondent concerned seeking to issue Stop Work Notice. As there was no response, the petitioner is before this Court for the above direction.

3.We could see that the petitioner has not mentioned the details whether he had visited the place in question or not and on what date the fifth respondent has started putting up additional construction and structures. Secondly, we are able to see that the petitioner has also filed a police complaint before the K-4 Anna Nagar Police Station, wherein, he has not given any specific date on which his brother has been putting up the said construction. Thirdly, when the petitioner has filed an Original Suit in O.S. No.890 of 2022 for permanent injunction against the fifth respondent, he has not enclosed the copy of the plaint, said to have filed before the XX Assistant Judge, City Civil Court, Chennai. When the petitioner has filed the above suit and the same is pending before the XX Assistant Judge, City Civil Court, Chennai, he has to work out his remedy only before the said Court. During the pendency of the above suit, this Court will not entertain this writ petition. As two parallel proceedings for the similar relief cannot be legally permissible, which is the matter between the petitioner and his own brother, he has to work out his remedy before the said Court. Accordingly, this writ petition stands dismissed. Consequently, W.M.P. No.4188 of 2022 stands closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vga
To

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Park Town,
Chennai - 600 003.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
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Egmore, Chennai - 600 008.

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Chennai - 600 030.

4.The Senior Engineer,
Corporation of Chennai,
Anna Nagar Zone,
Pulla Avenue, Shenoy Nagar,
Chennai -600 030.

Copy to

The XX Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.K.Raja Shrinivas, Advocate Sr.13916

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spd[co]
srg 31/03/2022