



C.R.P.No.41 of 2021
and C.M.P.No.288 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.41 of 2021

and

C.M.P.No.288 of 2021

1.Sathiya Natarajan

2.R.Lakshmi

... Petitioners

Vs.

1.S.Ravi

2.The Tahsildar,
Ambattur Taluk Office,
Ambattur, Chennai - 600 053.

3.The District Collector,
Thiruvallur District.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal orders dated 22.04.2019 passed in I.A.No.411 of 2016 in O.S.No.240 of 2015 which had been filed for the rejection of the plaint on the file of the District Munsif, Ambattur.

For Petitioners	: Mr.T.Sundaravadanam
For R1	: No appearance
For R2 & R3	: Dr.S.Suriya, AGP



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ORDER

This petition has been filed against the fair and decreetal orders dated 22.04.2019 passed in I.A.No.411 of 2016 in O.S.No.240 of 2015 on the file of the District Munsif, Ambattur.

2.The revision petitioners are the defendants 1 & 2 in O.S.No.240 of 2015 on the file of the District Munsif, Ambattur. The first respondent/plaintiff filed the suit for a bare injunction against the petitioners as well as respondents 2 & 3 (defendants 3 & 4).

3.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

4.The case of the plaintiff is in brief is as follows :

The suit property in S.No.493/2 of Korattur Village, Ambattur Taluk, Thiruvallur District measuring 960 sq.ft. with 432 sq.ft. built up



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area was purchased by plaintiff's father Sadayan through an unregistered sale deed from one Kubendran and ever since the date of purchase his father was in possession and thereafter, he continued to be in possession. According to him the defendants 1 & 2 who are living in a land in the same S.No.493/2 are attempting to grab the property of the plaintiff. They also wrongly propagated that the property of the defendant is in S.No.1421 which is a water body belonging to Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB). The official respondents at the instigation of the defendants 1 & 2, who have money and muscle power demolished the superstructure measuring 432 sq.ft. as if the said property is in S.No.1421. Hence, the suit.

5.The defendants 1 & 2 filed a petition in I.A.No.411 of 2016 in O.S.No.240 of 2015 under Order VII Rule 11 CPC praying to reject the plaint on the ground that the superstructure even as per the averments of the plaint had been demolished by the defendants 2 & 3 and the subject matter pertaining to the suit no longer exists. According to them the plaintiff suppressing all material facts had filed the suit and that the



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plaint is full of not only misrepresentation of facts but also false allegations.

6.The petition in I.A.No.411 of 2016 was posted for enquiry on 22.04.2019 finally. Since the petitioners / defendants 1 & 2 did not appear, the petition was dismissed by the trial Court observing thus:

"Inspite of granting sufficient opportunity to petitioners due to their failure to adduce their side enquiry in this I.A., in the Interest of Justice this I.A. is hereby dismissed"

Aggrieved over the same, the present Civil Revision Petition is filed.

7.Heard Mr.T.Sundaravadanam, learned counsel appearing for the revision petitioners and Dr.S.Suriya, learned Additional Government Pleader for the respondents 2 & 3.

8.Though notice was served on the first respondent and his name was printed in the cause list, there is no representation on behalf of the first respondent, either in person or through a counsel. No



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representation for the respondents 2 & 3.

9. It is seen from the plaint averments that the plaintiff filed the following writ petitions before this Court.

- 1) W.P.No.1716/2015 for restoration of electricity service connection.
- 2) W.P.No.8131/2015 for considering the petition of the plaintiff for issuance of patta.

In both the above writ petitions the plaintiff has described his property as the one situate in S.No.1421 of Korattur Village with 432 sq.ft. RCC built up area. A division bench of this Court disposed both the writ petitions vide orders dated 07.08.2015 by observing thus:

"4. According to the petitioner, property in S.F.No.1421, Seeyathamman Nagar, Kolathur was purchased by his father on 27 August 2005. The purchase was made on the strength of an unregistered document. It was a thatched house originally and the roof was subsequently changed. The petitioner got electricity connection and he has been residing in the said house with family.



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5. While so, Tahsildar, Ambattur, initiated proceedings for eviction by resorting to the provisions of Tamil Nadu Land Encroachment Act. The Statutory Authority has passed final orders directing the petitioner to vacate the Government land. Feeling aggrieved by the action taken by the Tahsildar, Ambattur, the petitioner has come up with the Writ Petition in W.P.No.8131 of 2015.

6. The Assistant Engineer, Tamil Nadu Electricity Board, disconnected the supply to the residence of the petitioner. The prayer in W.P.No.1716 of 2015 is to restore the service connection.

7. The District Collector, Tiruvallur, in his counter affidavit dated 17 July 2015, submitted that the property in question is a water course poromboke and as such, it would not be in public interest to permit the petitioner to retain possession of the land.

8. The District Collector, Tiruvallur, filed another affidavit on 5 August 2015, agreeing to give alternative site to the petitioner in case a representation is made.

9. The factual matrix clearly indicates that the land in question is a water course poromboke. The petitioner has no right to construct a residential house by encroaching the water course poromboke land. The statutory authority issued



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WEB COPY *notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, to the petitioner and only thereafter, final order was passed. We do not find any error or illegality in the procedure adopted by the second respondent.*

10.The District Collector, Tiruvallur, has very fairly submitted that the district administration is ready to consider the request for alternative accommodation, if made. The relevant paragraph of the affidavit dated 5 August 2015 reads thus :-

"It is further submitted that, if the petitioner is giving any representation for allotment of house site, the District Administration is ready to consider and allot an alternate site to the petitioner at Thamaraipakkam Village, Tiruvallur Taluk, Tiruvallur District, provided he does not own any house site after following procedures established by law."

11.There is no question of quashing the impugned order in view of the fact that encroachment is objectionable. Similarly, there is no question of directing the Assistant Engineer, Tamil Nadu Electricity Board, to restore the electricity connection.

12.The petitioner is given liberty to submit a representation to the District Collector, Tiruvallur, for alternative site. In case any such representation is made, the same shall be considered favourably and orders should be



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WEB COPY *passed as expeditiously as possible and in any case, within a period of two months from the date of receipt of such representation.*

13.The Writ Petitions are disposed of with the above direction. No costs. Consequently, M.P.Nos.1 to 4 of 2015 are closed."

10.The plaintiff had filed the present suit in O.S.No.240 of 2015 even during the pendency of both the writ petitions and is now projecting a plea that his property is only in S.No.493/2 and not in S.No.1421. The seal of the Court shows that plaint was presented on 19.05.2015. It is pertinent to point out that the plaintiff did not bring it to the knowledge of the division bench of this Court before passing orders on 07.08.2015 that

- a) his property is only in S.No.493/2 and not in S.No.1421
- b) A suit in this regard has been filed by him in O.S.No.240 of 2015 before District Munsif, Ambattur.

Moreover, the Executive Engineer, Regional Office -I, RO-I/2916/2014 sent a communication to



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- 1) The Executive Engineer, TNEB, Kolathur, Chennai.
- 2) The Zonal Officer, Zone-9, Corporation of Chennai, Ambattur, Chennai - 53, which are extracted hereunder :

"1)CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD

EXECUTIVE ENGINEER
REGIONAL OFFICE -1
RO-I/2916/2014 dt.24.12.14

No.1, New Avadi Road,
Kilpauk, Chennai 600 010.

To
The Executive Engineer,
TNEB,
Kolathur,
Chennai.
Sir,

Sub : Encroachment - Ambathur Taluk - Korattur Village - Water Canal
Road - Encroachment on the Government land by constructing
building and obtained Electricity connection without proper
Approval - requested to evict the unauthorized structure - Reg.

Ref : Tmt.Sathya Natarajan, Chennai -75 letter dated 12.12.14.

A copy of the above reference is enclosed wherein it is informed that a building is being constructed by Thiru.Ravi at Plot No.10, Seeyathamman Nagar, Water Canal Road, Korattur, Chennai across the Government land pertains to CMWSSB.

Inspection shows that the above construction work is being carried out without proper approval from Corporation of Chennai. Further a part of the



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construction work is carried out in Metro water land and it is very near to the Metro Water Conduit No.1 which carries raw water from Puzhal lake for treatment and supply to Chennai city. Further Electricity connection has also been obtained for the above building in the Government land.

Enquiry reveals that Thiru.Ravi who is carrying out this unauthorized construction do not have any documentary evidences in his name and hence do not have any rights to construct building on Government land.

As such, it is requested to take necessary action to disconnect the Electricity connection early for safeguarding the water conduit pipes.

S/d
Executive Engineer,
Regional Office - I.

Copy to:
Tmt. Sathya Natarajan, 6A Srinivasan Street Muthamizh Nagar, Pammal Ch-75."

"2) CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD

EXECUTIVE ENGINEER
REGIONAL OFFICE -1
RO-I/2916/2014 dt.24.12.14

No.1, New Avadi Road,
Kilpauk, Chennai 600 010.

To
The Zonal Officer, Zone-9,
Corporation of Chennai,
Ambattur,
Chennai - 53.

Sir,

Sub : Encroachment - Ambathur Taluk - Korattur Village - Water Canal

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Road - Encroachment on the Government land by constructing building and obtained Electricity connection without proper Approval - requested to evict the unauthorized structure - Reg.

Ref : Tmt.Sathya Natarajan, Chennai -75 letter dated 12.12.14.

A copy of the above reference is enclosed wherein it is informed that a building is being constructed by Thiru.Ravi at Plot No.10, Seeyathamman Nagar, Water Canal Road, Korattur, Chennai across the Government land pertains to CMWSSB.

Inspection shows that the above construction work is being carried out without proper approval from Corporation of Chennai. Further a part of the construction work is carried out in Metro water land and it is very near to the Metro Water Conduit No.1 which carries raw water from Puzhal lake for treatment and supply to Chennai city. Further Electricity connection has also been obtained for the above building in the Government land.

Enquiry reveals that Thiru.Ravi who is carrying out this unauthorized construction do not have any documentary evidences in his name and hence do not have any rights to construct building on Government land.

As such, it is requested to take necessary action against the illegal construction activities and arrange to remove the structure early for safeguarding the water conduit pipes.

S/d
Executive Engineer,
Regional Office - I.

Copy to:
Tmt. Sathya Natarajan, 6A Srinivasan Street Muthamizh Nagar, Pammal Ch-75."



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11.The superstructure put up by the plaintiff measuring 432 sq.ft. was also demolished by the concerned officials. The contention of the plaintiffs that the officials demolished the building even without verifying the survey numbers cannot be accepted because the Government officials were heard by the division bench of this Court before passing orders in W.P.No.8131/2015 and W.P.No.1716/2015 on 07.08.2015. The plaintiff though by that time had prepared a plaint contending that his property is actually in S.No.493/2 and not in S.No.1421 did not bring it to the knowledge of the Court. Thus, it is clear that the claim of the plaintiff in the suit in O.S.No.240/2015 is not bonafide.

12.In this regard, it is relevant to extract the order passed by this Court in C.R.P.(PD)Nos.1245 & 2741 of 2017 & C.R.P.(PD)Nos.3447, 3452, 3827 & 4159 of 2018 & C.R.P.(PD).No.85 of 2019 dated 09.07.2019, wherein, this Court while deciding on the



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point for striking off the plaint on the ground of re-litigation relied upon

few judgments of the Hon'ble Supreme Court and held that

"By filing various suits on the same cause of action the plaintiffs are attempting not only to protract the proceedings but also to keep litigation alive which is also abuse of process of Court in another garb. Having failed to seek the relief for declaring the suit O.S.No.8667 of 1985 as null and void in the earlier suit O.S.No.39 of 2017 and omitting to seek leave to file for the said relief on a later point of time, the second suit is liable to be dismissed on the ground of Order II Rule 2 of the Code of Civil Procedure. The plaintiffs who are very much aware of this position has intentionally omitted to sue for the said relief. This is nothing but an abuse of process of Court."

The process of Court must be used properly and should not be abused.

One of the examples for abusing the process of Court is re-litigation. It is settled that the re-litigation may or may not be barred as *res judicata*, but if the same issue is sought to be re-agitated, it also amounts to an abuse of process of Court. A perusal of the plaint shows that there is no chance of the plaintiff succeeding in the suit. Be it under Article 227 of the



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Constitution of India or under Section 115 CPC, the High Court has general supervisory jurisdiction which is the residuary jurisdiction conferred on the High Court. Thus, exercising the supervisory jurisdiction conferred on the High Court under Section 115 CPC and Article 227 of Constitution of India, it is just and necessary that the plaint in O.S.No.240/2015 is ordered to be struck off.

13.In the result,

- 1) the Civil Revision Petition is allowed. No costs.
- 2) the fair and decreetal orders dated 22.04.2019 passed in I.A.No.411 of 2016 in O.S.No.240 of 2015 on the file of the District Munsif, Ambattur, is set aside.
- 3) The plaint in O.S.No.240/2015 is struck off.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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R. HEMALATHA, J.

mtl

To

- 1.The District Munsif, Ambattur.
- 2.The Section Officer, VR Section, High Court, Madras.

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