



C.R.P.No.386 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.386 of 2022
and C.M.P.No.2017 of 2022

The Diocese of Chengalput,
Kancheepuram Road,
Thimmavaram,
Chengalput.

.. Petitioner

Vs.

1. Srinivasan

2. Represented by Chief Executive Office,
Office of the Cantonment Board,
St.Thomas Mount,
Chennai 16.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against struck of the plaint in O.S.No.404 of 2021 pending on the file of Additional District Munsif Court, Alandur.

For Petitioner : M/s.G.Selvi George

For Respondent : Mr.P.T.Perumal for R1
Mr.C.Mohan for R2
for M/s.King & Partridge

ORDER

The Civil Revision Petition is filed by the petitioner with a prayer to strike out



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the plaint in O.S.No.404 of 2021.

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2. According to revision petitioner that the suit property belongs to the petitioner and the 1st respondent herein committed tress-pass into the suit property and put up an unauthorized construction. As the 1st respondent put up an unauthorized construction in the Cantonment area without getting sanction from the 2nd respondent, the petitioner filed writ petition in W.P.No. 35546 of 2020 and sought for a direction to 2nd respondent to take action against the 1st respondent and demolish the unauthorized construction. In the said writ petition, the 2nd respondent took a stand that already they had sealed the premises under Section 249 of the Cantonments Act and hence legal process for removal of unauthorized construction had been initiated. Recording the said statement, the writ petition was disposed. The petitioner further submitted that even after the order passed in the said writ petition, the 2nd respondent did not take further action and hence the petitioner was constrained to file the second writ petition in W.P.No.714 of 2021 seeking action against the unauthorized construction. The said writ petition was disposed by the Division Bench of this Court without going into the question of title, possession etc of the parties, by directing the 2nd respondent to continue its action for removal of unauthorized construction in the manner known to law. A direction was also given to the jurisdictional police station to extend maximum



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cooperation in the action of the 2nd respondent against illegal construction put up by the 1st respondent. Thereafter the 1st respondent filed a Civil Suit in O.S.No.404 of 2021, on the file of District Munsif Alandur, for injunction against petitioner herein and the 2nd respondent. The petitioner further submitted that the suit for injunction filed by 1st respondent is nothing but abuse of process of the Court aimed at nullifying the order passed by the Division Bench of this Court and hence prayed this Court to strike out the plaint. The learned counsel for the petitioner vehemently contended that the very object of filing the injunction suit before the Civil Court is to nullify the order passed by the Division Bench of this Court and hence it is a sheer abuse of process of Court and consequently, prayed for allowing of revision.

3. The learned counsel for the 1st respondent submitted that the petitioner is a society and the same is not properly represented by the competent person as per the bye-laws and hence the revision filed by petitioner without describing itself properly in the manner known to law is not maintainable. The learned counsel for the 1st respondent further submitted that the survey number of the property that had been dealt with in the writ petition was S.No.1946, however the present suit is filed in respect of different property situated in S.No.1911/3. Hence, precisely it is the argument of the learned counsel for the 1st respondent that the subject matter of



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the writ petition and the subject matter of the present suit are not one and the same

and hence the suit cannot be termed as an abuse of process of the Court. Thirdly, the learned counsel for the 1st respondent submitted that the petitioner shall not rush to the High Court by invoking supervisory jurisdiction without invoking the effective remedy available under Order 7, Rule 11 of C.P.C. for rejection of the plaint, if at all, it entertains any grievance with regard to the maintainability of the suit. The learned counsel for the 1st respondent by relying on the judgment reported in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai versus Tuticorin Educational Society* reported in (2019) 9 SCC 538, submitted that when an effective remedy is available for the revision petitioner under C.P.C., he ought not to have invoked the supervisory jurisdiction of this Court under Article 227 of Constitution of India.

4. The learned counsel for the 2nd respondent submitted that already they have initiated process for removal of unauthorized construction as against the 1st respondent in pursuance of the direction issued by this Court in writ petition. The learned counsel further submitted that there is some difficulty in getting police help and therefore there is some delay on the part of the 2nd respondent in taking further action. The learned counsel for the 2nd respondent also submitted that the



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supervisory power of this Court under Article 227 of Constitution of India is held to be basic structure of our constitution in ***Surya Dev Rai Vs. Ram Chander Rai and others*** reported in ***(2003) 6 SCC 675***. Hence in appropriate cases, the High Court can interfere by virtue of its supervisory power with the orders passed by the Courts below.

5. Heard the argument of the learned counsel for the petitioner and the learned counsel for the 1st and 2nd respondents and perused the records.

6. The perusal of the orders passed by this Court in writ petition W.P.No.35546 of 2020 and W.P.No.714 of 2021 make it clear that the question of title and possession of the parties with regard to the subject matter of the writ petition was not gone into in the writ petition. This Court in earlier writ petition had clearly found that 1st respondent had put up an unauthorized construction in S.No.1946 and hence the 2nd respondent was directed to take action against unauthorized construction in accordance with law. The relevant of the High Court order in W.P.No.35546 of 2020 is as follows.

"5. In the aforesaid circumstance, nothing survives for further adjudication in the matter. However, if there is any title dispute between parties, they can approach the civil Court."



The observation of this Court in W.P.No.714 of 2021 is as follows:

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"(9) This Court is not inclined to go into the right, possession or title of the petitioner in respect of S.No.1946 of Mangaliamman Koil Street, St. Thomas Mount, admeasuring to an extent of 75 acres and 25 cents. The fact remains that the on-going construction put up by the 2nd respondent was found to be unauthorised and therefore, the 1st respondent took action in the form of locking and sealing the premises and it appears that the 2nd respondent has removed it and completed the construction. When this Court has put a query to the learned Standing counsel appearing for the 1st respondent as to how the 2nd respondent was permitted to do so, in reply, it is the submission of the learned Standing counsel for the 1st respondent that despite the complaint to the jurisdictional Assistant Commissioner of Police, no assistance has been provided and taking advantage of the same, the 2nd respondent has completed the construction.

(10) It is a well settled position of law that unless the Completion Certificate is given by the jurisdictional Local Body/Entity as to the construction being an authorised one and in accordance with the Sanctioned Plan, the electricity, water supply / sewerage connection cannot be given. It is also the submission of the learned Standing counsel for the 1st respondent that action has already been initiated under the provisions of the Cantonment Act and in the light of the same, the 1st respondent is directed to complete the said exercise as expeditiously as possible and not



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*later than eight weeks from the date of receipt of a copy of this order / uploading of the order in the website. It is needless to point out that whenever assistance is sought for by the 1st respondent, the jurisdictional police, viz., St.Thomas Mount Police Station, shall render all necessary and required assistance and extend maximum cooperation in that regard and if any complaint is pending in this regard and if it discloses the commission of cognizable offence, they have to follow the mandate under Section 154 of the Code of Criminal Procedure and also in the light of the mandate cast upon them in **Lalithakumari V. State of West Bengal** reported in 2014 [2] SCC 1 [CB]."*

7. Therefore, it is clear that the title, right and possession of the parties have not been gone into and the direction was issued to the 2nd respondent only to take action against the unauthorized construction. The 1st respondent filed the present suit with the following prayer.

"(a) For an order of permanent injunction restraining the defendants or their men and agents or any person or persons claiming through the defendants or any person representing the defendants from interfering with the plaintiff's peaceful and enjoyment of the suit properties morefully in the schedule mentioned property hereunder either by dispossessing or disturbing the plaintiff possession or in any other manner without due process of



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8. The reading of the prayer in the present suit makes it clear that the 1st respondent sought for a qualified injunction. He sought for an injunction restraining the petitioner and the 2nd respondent herein from interfering with his peaceful possession and enjoyment of the suit property without due process of law. Therefore, I do not think, the pendency of the suit would be a hindrance for the 2nd respondent to take action against the unauthorized construction put up by the 1st respondent in accordance with law in pursuance of the order passed by the Division Bench of this Court. Even assuming 1st respondent succeed in the suit and get an order of injunction as prayed for, still there is no impediment for the 2nd respondent to take action against the unauthorized construction by following due process of law. The learned counsel for the respondent submitted that the Survey number of the suit property in present suit is S.No.1911/3 whereas the property in respect of which relief was sought for in the writ petition is situated in S.No.1946 and therefore, the present suit is in respect of a different property but not concerning the subject matter of the writ petition. Whether the both properties are one and the same is a disputed question of fact which can be gone into only by the Civil Court.

9. As discussed earlier, in view of the qualified prayer made by the 1st



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respondent the pendency of the suit is not an hindrance for the 2nd respondent to proceed further in accordance with law as against unauthorized construction put up by the 1st respondent. The law is well-settled by the Hon'ble Supreme Court in ***Rame Gowda Vs. M.Saradappa Naidu reported in (2004) 1 SCC 769***, that even the original owner of the property cannot take law into his own hands and disturb the possession of even a tress-passer. Therefore, on face of it, we cannot jump into a conclusion that the suit filed by the 1st respondent is abuse of process of Court aimed at preventing the 2nd respondent from initiating action against 1st respondent by following due process of law. As far as the contention of the learned counsel for the respondent that the subject matter of the present suit is different from the property which was the subject matter of the writ petition is concerned, the same can be decided by the Civil Court as it is a question of fact which cannot be decided which exercising revisional jurisdiction. However, it is made clear that it is always open to the revision petitioner to file appropriate application before the Trial Court, for rejection of the plaint as provided under Order 7, Rule 11 of C.P.C., by raising all the points which has been raised in this revision. In view of the law laid down by the Hon'ble Apex Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai versus Tuticorin Educational Society [cited supra]*** that when effective remedy is available before regular Civil Court under C.P.C., there is a near total bar



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for exercise of supervisory jurisdiction under Article 227 of the Constitution of

India, this Court is not inclined to exercise the supervisory

S.SOUNTHAR, J.

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jurisdiction to strike out the plaint in O.S.No.404 of 2021. The Civil Revision Petition is disposed of with the clarification that pendency of the suit in O.S.No.404 of 2021 on the file of District Munsif Court, Alandur is not an impediment for the 2nd respondent to take action against the unauthorized construction of the 1st respondent as per the order passed by this Court in W.P.No.714 of 2021. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
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To

The II Additional District Munsif, Alandur.

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