



W.P.No.2279 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.2279 of 2019 and

WMP No.2528 of 2019

G.Prakash

... Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Singaravelar Maligai, Gandhi Erivin Road,
Egmore, Chennai 600 008.

2. The Commissioner, Corporation of Chennai,
Rippon Buildings, Chennai.

3. The Assistant Engineer, Division No.176,
Corporation of Chennai, Shastri Nagar,
Chennai.

4. M/s India Builders Pvt Ltd.,
AA-36, 3rd Main Road, 3rd Street,
Anna Nagar, Chennai 600 040.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to
issue a Writ of Mandamus, directing the respondents 1 to 3 to ensure that



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the respondent No.4 or its men or agents, or agreement holders from unauthorizedly putting up a gate by demolishing compound wall abutting the private passage on the eastern side of the building " Subashri" situated at New No.12 and 14, Jeevarathinam Nagar, Adyar, Chennai-20 by creating a new ingress or egress in violation of the building plan approval bearing No.B/SplBldg/137/2017 dated 05.05.2017.

For Petitioner : Mr.G.Senthilkumar

For Respondents : Mr.R.Thamaraiselvan
Standing Counsel for R1

Mr.Najeeb Ushman Khan
Standing Counsel for R2 and R3

Mr.Mr.T.V.Vineeth Kumar for R4

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to direct the the respondents 1 to 3 to ensure that the respondent No.4 or its men or agents, or agreement holders from unauthorizedly putting up a gate by demolishing compound wall abutting the private passage on the eastern side of the building " Subashri " situated at New No.12 and 14, Jeevarathinam Nagar, Adyar,

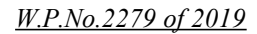


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Chennai-20 by creating a new ingress or egress in violation of the building plan approval bearing No.B/SplBldg/137/2017 dated 05.05.2017.

2. The petitioner and his paternal uncle Mr.S.Sethuraman are the absolute owners of the property bearing New No.16, Old No.11/3, Jeevarathinam Nagar first Street, Adyar. According to the petitioner, the 4th respondent, by merging plot Nos.25 and 25A of Door No.12 and Door No.14 at Jeevarathinam Nagar first Street, Adyar, Chennai, has constructed first + second + third floor comprising two units in each floor, by obtaining planning permission. As per the approved plan, he had put up a compound wall on all four sides with ingress and egress from the first Street, Jeevarathinam Nagar and completed the building.

2.1. After obtaining completion certificate from the first respondent, the 4th respondent is trying to demolish the compound wall abutting the private passage, leading to the house of the petitioner, with an idea to fix a gate and to create another entry for cars and vehicles to the flats, through private lands, which is contrary to the approved plan. If the six flat owners



3. The learned Standing Counsel appearing for the respondents 1 to 3 admitted that on receipt of complaint from the petitioner, the site in question was inspected by the authorities concerned on 21.03.2019 and thereafter, notice under Section 56(1) and 57 r/w 85 of the Tamil Nadu Urban and Country Planning Act was issued to the fourth respondent on 07.06.2019, calling upon him to produce the approved plan. The fourth respondent has also produced the approved plan, sanctioned by the CMDA. Thereafter, the first respondent herein had issued Locking and Sealing and Demolition notice dated 07.06.2019 to the fourth respondent, for construction of building, deviating the approved plan. He further submitted that there is no construction for putting up of gate or demolishing the



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compound wall as stated by the petitioner, however, there are some deviations in the building, as stated in the Lock and Seal and Demolition notice dated 07.06.2019. Therefore, he seeks for dismissal of the writ petition.

4. The learned counsel for the fourth respondent submitted that the petitioner is the owner of Plot No.11/3. The common passage is exclusive for four plot owners, who own door Nos.11/1 to 4. The petitioner and his uncle are parking the vehicles in the pathway and to grab the property exclusively, they started giving troubles and now filed this writ petition to grab the entire passage using their muscle power. According to the sale deed and approved layout, the plot owners are having right and the petitioner cannot seek exclusive right on the pathway by filing this writ petition. Therefore, the writ petition is liable to be dismissed.

5. Heard the counsel for the petitioner and the learned Standing Counsel appearing for the respondents 1 to 3 and the learned counsel for the fourth respondent. Also, we have perused the materials on record.



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6. Admittedly, the petitioner is one of the plot owners of Door No.11/1

to 4 at Jeevarathinam Nagar first Street, Adayar and he owned Plot No.11/3.

The fourth respondent herein is the promoter, who developed the properties of the plot owners. It is seen from the records that, the first respondent has issued a Lock and Seal and demolition noticed 07.06.2019 to the fourth respondent, in view of the construction made, deviating the approved plan. In the above said notice, the deviations/violations with reference to the approved plan are tabulated. As per the plan, approval was given to construct Stilt floor + 3 floors, but, the fourth respondent has constructed 4th floor(Pt) A.C. sheet, unauthorizedly. Further, in the said notice, there is a mention about some deviations in the setback. Except this, there was no mention about the putting up of gate, demolition of compound wall, as stated by the petitioner. Therefore, only with an apprehension, the petitioner has filed the writ petition, stating that the fourth respondent has put up gate, by demolishing the compound wall.

7. At this juncture, the learned counsel appearing for the fourth respondent has fairly agreed that, if the fourth respondent is intended to



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make any alteration or put up gate, he will approach the authorities concerned seeking necessary permission and it would not amounts to violation of planning approval.

8. In the light of the discussion supra, we are of the view that the petitioner has not made out a case for granting relief in his favour as sought for in the writ petition. Further, if the fourth respondent is intending to make any alteration or modification in the building, it is for him to approach the authorities concerned to get prior permission. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(P.D.B.J.)

14.06.2023

Internet: Yes/No
Index : Yes/No
mst



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To

WEB COPY

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.
2. The Executive Engineer, Greater Chennai Corporation,
Zone-05, Basin Bridge Road,
Royapuram, Chennai.



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D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

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