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W.P.No.4723 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	19.09.2023
PRONOUNCED ON :	30 .10.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

W.P.No.4723 of 2022

A.Kumaravelu

..Petitioner

Vs.

1.TheCommissioner
Chennai Corporation,

Ripon Buildings, Chennai-600 003

2.The Zonal Officer, Zone-7,

Chennai Corporation, MTH Road, Ambattur,

Chennai-6000 053.

3.Gopalakrishnan

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first and second respondents to consider the petitioner's representation dated 16.10.2021 and take appropriate action by demolishing the illegal construction put up by the 3rd respondent in Periyandavar street, Gandhi Nagar, Orakadam, Ambattur Chennai-600 053 comprised in Survey



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No.47/4, Oragadam Village, Ambattur Taluk, Thiruvallur District.

For Petitioner :: Mr.K.Shanmugam

For respondents :: Mr.E.C.Ramesh, Standing counsel for R1 and R2

Mr.G.Sridhar for R3.

ORDER

J.NISHA BANU, J.

This writ petition is filed praying for issuance of writ of mandamus to the 1st and 2nd respondents to take appropriate action for demolition of the illegal construction put up by the 3rd respondent in Periyandavar street, Gandhi Nagar, Orakadam, Ambattur Chennai-600 053 comprised in Survey No.47/4, Orakadam Village, Ambattur Taluk, Thiruvallur District.

2. In the affidavit filed in support of the writ petition, it is averred that the property bearing Plot No.3A and 3N admeasuring Ac 0.08 cents or 3488 sq.ft. comprised in Survey No.47/4, Orakadam Village, Ambattur Taluk, Thiruvallur District, was originally allotted to petitioner's mother Alamelu, by the Special Tahsildar, Saidapet by way of an Assignment patta vide proceedings R.C.No.2519 92/1976 and subsequent proceedings dated 07.01.1991. According to the



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petitioner, he and his family were in peaceful possession and enjoyment of the said property.

3. The petitioner submitted that 3rd respondent and others tried to encroach his property and therefore, he filed O.S.No.43 of 2014 before the District Munsif, Ambattur. The said suit is pending trial. The petitioner averred that one Balasundaram got manual patta No.1374/2019 on 27.03.2019 and thereafter executed a settlement deed dated 10.10.2019 in favour of his son, Deepak. The said Deepak executed a sale deed in favour of the 3rd respondent on 17.10.2019 and the same was registered as Document No.15046 of 2019 in the office of Sub Registrar, Ambattur.

4. It is submitted by the petitioner that regarding repeated encroachments over his property by 3rd respondent, he preferred complaint with Ambattur Police Station. However, the 3rd respondent has put up construction in the petitioner's land in October 2021 without getting any plan approval and permission from the concerned authorities.



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5. In support of his submissions that the petitioner is the absolute owner of the subject property, in the typed set of papers, the petitioner filed (i) assignment given by the Special Tahsildar, Saidapet, for the subject property; (ii) plaint filed by petitioner and his family members in O.S.No.43 of 2014 before the District Munsif, Ambattur for mandatory injunction and permanent injunction restraining the defendants therein from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property

6. The petitioner also filed in the typed set of papers the order passed in W.P.No.14541 of 2009 wherein, the petitioner's mother Alamelu Ammal filed the said writ petition for prohibiting the respondents-Municipality from installing bore-well in the said property and to remove the illegal encroachment into the petitioner's property. The said writ petition was dismissed by this court on 04.09.2013 holding that the prayer cannot be maintained under Article 226 of the Constitution of India and the remedy open to the petitioner is to approach the competent civil court.



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7. The 2nd respondent-Zonal Officer, Zone-7, Chennai Corporation, filed status report and the same is adopted by the 1st respondent-Commissioner, Chennai Corporation. It is submitted that upon receiving the complaint, stop work notice was served on 21.03.2022 to the 3rd respondent; lock and seal notice for the unauthorised construction of 4.41 meter square was also issued by the 2nd respondent on 23.04.2022 and the same was received by the 3rd respondent on 25.04.2022.

8. The respondent authorities would further submit in their status report that the 3rd respondent filed W.P.No.14692 of 2022 and the same was dismissed on 14.06.2022. On 11.05.2022, the 3rd respondent submitted an application to the concerned authorities for approval and the 3rd respondent communicated this to the 2nd respondent.

9. In the status report, it is also submitted that the title dispute pending between the petitioner and the 3rd respondent is to be adjudicated before the civil court. It is also stated that even though lock and seal notice were issued to the



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subject unauthorised construction, people are still residing in the above said unauthorised construction. The 3rd respondent did not obtain any planning permission for the said construction.

10. In the counter affidavit filed by the 3rd respondent, it is stated that his application for grant of approval/permission dated 11.05.2022 is pending with the authorities for consideration. The 3rd respondent would further submit that pending litigation in O.S.No.43 of 2014, he constructed the building for which lock and seal notice were issued and thereafter filed approval application on 11.05.2022 and the same may be considered.

11. Heard both sides and perused the records.

12. Admittedly, there is civil suit pending between the petitioner and the 3rd respondent in respect of title dispute over the subject property. In such circumstances, the unauthorised construction put up by the 3rd respondent without planning approval, cannot stand for scrutiny. The parties approached this court even in the earlier occasions for the relief of prohibiting and injuncting the



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encroachers. Since, the very issue of title is to be decided in the civil court based on the pleadings and evidence to be let in during the trial, the unauthorised construction put up by the 3rd respondent taking shelter that the same is pending approval vide his application dated 11.05.2022, cannot be sustained. The 3rd respondent without planning approval, cannot make any construction in the subject property more so when the title is in dispute. The 1st and 2nd respondents having issued lock and seal notice for the said unauthorised construction, is directed to take further enforcement action as against the 3rd respondent and such action shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

13. It is relevant to extract paragraph 19 of the judgment of the Division Bench of this Court in ***W.P.(MD).No.16120 of 2023 dated 30.08.2023 [N.Sankar Vs. The Principal Secretary (Town and Country Planning) and 4 others]***.

“ 19. No application for approval after completion of the building can be entertained, as it would amount to putting a cart before a horse. As stated earlier, the Authorities shall also inspect the building from the basement level itself, so that the set backs as suggested by them / plan can be adhered to and in any event, the



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FSI / area cannot be enhanced. Electricity supply may be an essential service for any person, but certainly it shall not be to the violators and it has got to be fixed at the premium rate till the building is brought back in accordance with the plan. That apart, Officials of E.B. must make a periodical surprise inspection to violated places to check about the theft of electricity. If exorbitant rates are foisted, it will affect the monthly budget of the violators and they will think twice to violate, as the charges under three heads, viz., E.B., Property Tax and Water Charges are recurring one. “

14. In the result, the Writ Petition is allowed with direction to the respondents 1 and 2 as stated supra. No costs.

(J.N.B.,J.) (N.M.,J.)
30 .10.2023

nvsri

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Neutral citation : Yes/No



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To:

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Chennai Corporation, MTH Road, Ambattur,
Chennai-6000 053.



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and
N.MALA, J.,
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ORDER IN

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Dated:
30.10.2023