



W.P.No.12224 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

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

W.P.No.12224 of 2021
and
WMP.Nos. 12991 and 12992 of 2021

N.Dinakaran

.... Petitioner

vs

1. The Commissioner
Chennai Corporation,
Ripon Building,
Chennai 600 003.

2. The Member Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natarasan Maligai, Egmore,
Chennai 600 008.

3. The District Collector
Chennai District,
Chennai 600 001.

4. The Inspector General of Registration,
Registration Department,
Santhome, Chennai 600 028.

5. The Assistant Executive Engineer,



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Unit 29, Chennai Corporation, NSK Salai,
Kodambakkam,
Chennai-600 024.

6. The Assistant Engineer
Chennai Corporation,
Ward 127, Koyambedu Round Building,
Chennai 600 107.

7. The Inspector of Police
K-11 CMBT police station,
Koyambedu, Chennai 600 107.

8. Hydha Muslim Welfare
Masjid-E, Hidaya and Madarasa,
Rep. by its Kaja Mohideen,
New No. 9 Old No. 34 Seemathamman Nagar,
3rd sector, Koyambedu, Chennai 600 107.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents 1 to 7 to consider petitioner's Representations dated 17.10.2019, 20.01.2021 and remove an unauthorized and illegal construction put up by the 8th respondent herein and which is confirmed by the 6th respondent Notice BA No. NOT 10 / 00858 / 2020, dated 04.01.2021 at Chennai Distirct, Aminjikarai Taluk, Koyambedu village, Survey No. 63/1, T.S. No. 4/1, Block No. 63 New Door No. 9, Old Door No. 34, Semathamman Nagar, 3rd sector, Koyambedu Chennai 600 107 measuring an extent of 1224 Square feet.



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For Petitioner : Mr.T.Annamalai

For Respondents : Mr.DBR.Prabu
for R1, R5 and R6
Mr.Sudalai selvan
Standing Counsel for R2
Mr.T.Sampath kumar
Government Advocate for R3, R4, and R7
Mr.C.Harish- for R8

ORDER

(The order of the Court was made by N.MALA,J.)

Writ Petition is filed for Writ of Mandamus directing the respondents 1 to 7 to consider petitioner's Representations dated 17.10.2019, 20.01.2021 and remove the unauthorized and illegal construction put up by the 8th respondent herein and which is confirmed by the 6th respondent Notice BA No. NOT 10 / 00858 / 2020, dated 04.01.2021 at Chennai Distirct, Aminjikarai Taluk, Koyambedu village, Survey No. 63/1, T.S. No. 4/1, Block No. 63 New Door No. 9, Old Door No. 34, Semathamman Nagar, 3rd sector, Koyambedu Chennai 600 107, measuring an extent of 1224 square feet.



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2. The writ petitioner is a resident of Semathamman Nagar, 3rd sector, Koyambedu Chennai. The 8th respondent put up illegal construction in New No.9 Old No. 34, Semathamman Nagar 3rd sector, Koyambedu, Chennai 600 107 measuring an extent of 1224 square feet. According to the petitioner, the site where the illegal construction was put up is used for religious prayers and the entire road gets blocked because of it. The petitioner who is a resident of the building adjacent to the illegal construction of the 8th respondent requested and advised the 8th respondent not to proceed with the illegal construction, but the 8th respondent continued with the illegal construction. The petitioner therefore sent representations to the official respondents against the illegal construction put up by the 8th respondent. The 2nd respondent / CMDA by letter dated 27.02.2020 admitted that the property in Survey No. 63/1 belonged to it and also the patta stood in its name. The petitioner registered a complaint with the corporation of Chennai on 09.12.2020, which was registered in reference No.755 IBG. In pursuance of the petitioner's complaint, the 6th respondent/ Assistant Engineer Chennai Corporation visited the site and conducted an inspection on



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14.12.2020 and found that the 8th respondent had put up the construction illegally. On further complaint by the petitioner, the 5th and 6th respondents issued stop work notice to the 8th respondent in person and pasted the same on the illegal construction. In spite of the stop work notice, the 8th respondent continued with the illegal construction. The petitioner therefore registered another complaint and the same was registered in Ref.No.262 OEQ on 26.01.2021. In spite of the petitioner's best efforts, the 8th respondent continued with the illegal construction without obtaining any planning permission and therefore the petitioner filed the above writ petition for the aforesaid relief.

3. The 8th respondent filed counter tracing its title to a sale deed dated 16.04.2019 executed by one Sowmiya, Nithya and K.Sivapriya in favour of HIDAYA MUSLIM WELFARE TRUST. The original owner of the property was said to be Venkatesa Iyer, who sold the property on 09.05.1963 vide Doc.No. 1386/1963 to Thangakrishna Nadar. Thereafter on 24.02.2012, the said Thangakrishna Nadar executed a



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settlement deed with respect to a portion of the property (i.e) to an extent of 1250 Sq.ft in favour of the 8th respondent's vendors. The 8th respondent purchased the property on 15.04.2019 vide Sale Deed Doc.No.1805/2019. The 8th respondent thereafter constructed the Mosque in February 2020. The 8th respondent stated that there was absolutely no hindrance to public because of the Mosque. According to the 8th respondent, the petitioner belongs to Hindu Munnani and just to harass the 8th respondent the petitioner filed the writ petition. According to the 8th respondent, it was a bona fide purchaser for value and had purchased the property for a noble cause in the interest of its community. The 8th respondent approached the 2nd respondent for building approval who directed the 8th respondent to produce the patta copy, it was only then the 8th respondent came to know that the property belonged to the 2nd respondent. It was the further case of the 8th respondent that as per patta, the entire Semmanthamman Nagar, 3rd sector belongs to the 2nd respondent and if at all the structure of the 8th respondent is to be demolished then the entire constructions in the area have to be demolished, as no one has patta and building plan. The 8th



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respondent therefore prayed for dismissal of the writ petition.

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4. When the matter was taken up for hearing on 04.06.2021, this Court directed the 2nd, 5th and 6th respondents to conduct joint inspection of the property and find out whether the 8th respondent has got any document to prove his ownership of the property and also to find out if 8th respondent had any plan approval for the construction of the religious structure put up by him in the property along with photographs.

5. On 01.11.2023, when the matter was taken up the learned counsel for the 6th respondent submitted the status report filed on behalf of the 2nd respondent. From the status report, it is seen that joint inspection in the presence of the 8th respondent was conducted on 10.07.2023 by the officials of the Greater Chennai Corporation along with Senior Estate Officer, Chennai Metropolitan Development Authority (CMDA). From the inspection report, it is seen that the 8th respondent constructed the religious structure (mosque) with



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approximate built up area of 2500 sq.ft. without any planning permission. When the 8th respondent was asked to produce the plan copy, the 8th respondent sought time to produce the same but till the filing of the report, it was not produced. In the status report filed today, it is stated that as per the Award Proceeding No.3/2001 dated 14.12.2001 the lands in S.No. 63/1, measuring to an extent of 0.31 ½ Acres was acquired under item no.8. As per the records, the compensation for the said land was paid to the land owners *viz.*, K.M.Venugopal, K.Muthusamy and Salivaganan and with respect to the remaining land owners *viz.*, Thangakrishnan and Arputhavadi, the compensation was kept in deposit. The status report tabulates the L.A proceedings and furnishes the details of the writ petitions filed by the owners of the land. It is seen that the 8th respondent's predecessor in title Thanga Krishnan filed a writ petition in W.P.No.14433 of 2000, which was dismissed on 11.12.2000 against which a writ appeal in W.A.No.48 of 2003 and Review application No.73/2007 were filed and the acquisition was quashed vide order dated 16.04.2008. Thereafter the Special Deputy Land Acquisition officer, CMDA preferred SLP



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(Civil) No.9740/2010. By order dated 18.11.2010, the Hon'ble Supreme Court upheld the acquisition proceedings and dismissed the writ petition of the land owners. The operative part of the Judgment of Hon'ble Supreme Court is as follows:

“ In view of the above, we are of the view that the acquisition has to be upheld. Accordingly we allow this appeal, set aside the impugned judgment of the division bench of the High court affirming the order of the learned single judge. We uphold the acquisition and dismiss the writ petition filed by the respondents. Our observations in para 25 above regarding absence of proof of title of respondents 1 to 4 being in the context of the validity of acquisition, will not come in the way of their establishing any claim for their share of compensation, if any, in the acquired lands in accordance with law.”

6. It is therefore clear that the entire lands acquired as per award in S.No.59/3 measuring total extent of 4.89 Acres including the land comprised in S.No.63/1A extent of 0.31 ½ acres belongs to the CMDA, Chennai. Even in the Inspection report of the Greater Chennai Corporation, filed on 19.09.2023, it is clearly stated that the 8th respondent had not furnished any documents/plan copy for putting



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up the construction. The Inspection report clearly states that 8th respondent had put up a mosque measuring approximately 2500 Sq.ft built up area in the land in question.

7. The 8th respondent claims to have purchased the property from the legal heirs of Thangakrishnan, but in the backdrop of the above facts it is clear that the said land was acquired along with other lands by the CMDA / 2nd respondent, and the acquisition was also upheld by the Hon'ble Supreme Court in SLP (Civil) No.9740/2010. The sale Deed of the 8th respondent in Doc.No.1805/2019 is post acquisition and therefore the 8th respondent cannot claim any right, title or interest in the land. When the 8th respondent's predecessor in title had challenged the acquisition proceedings and lost before the Apex Court, the 8th respondent cannot claim better title than his predecessor. The 8th respondent has not produced the plan copy even before this Court and therefore this Court is constrained to conclude that the religious construction (mosque) put up by the 8th respondent is an illegal and unauthorised one. We therefore find that the 8th respondent has no



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right, title or interest in the subject land nor is the construction (mosque) put up by it authorised. The 8th respondent cannot masquerade the illegality by pleading that the mosque was constructed for worship of its community people. It will be appropriate to refer here to the Judgment of the Hon'ble Supreme Court in the case of *Dr.M.Ismail farugui v. Union of India* reported in 1994 (6) SCC 360. The relevant para '77' reads as follows:

"77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion."



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8. Even according to the 8th respondent, the construction of the building was completed well before February 2020, and that too without any approval from the planning authorities. The petitioner was agitating the issue before the authorities right from 17.10.2019 and it was on the petitioners persistent representations that the stop work notice was issued to the 8th respondent on 04.01.2021. As the respondents did not take further enforcement action, the petitioner filed the writ petition for demolition of the illegal and unauthorised construction.

9. We have to record here our disapproval of the apathy exhibited by the officials. This Court has time and again been warning the official respondents to ensure that no constructions are carried on without proper planning permission. In spite of repeated orders of this Court, the official respondents seem to turn a nelson's eye to unauthorised constructions. In our view the official respondents 1 and 2 are also responsible for this situation, hence we direct the respondents 1 and 2 to bear the expenses for demolition of the



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structure. The 8th respondent is given three (3) months time to relocate the mosque. The 1st respondent shall within four (4) weeks thereafter demolish the unauthorised structure.

As the 8th respondent is given sufficient time for relocation, the 8th respondent will not be entitled to further notice. The writ petition is accordingly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(J.N.B, J.) (N.M, J.)
22.11.2023

Index : Yes / No
Internet : Yes / No
Speaking order: Yes/No
Neutral Citation : Yes / No
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J. NISHA BANU, J.
and
N.MALA, J.

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