



WEB COPY



WP No.12162 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MS. JUSTICE P.T. ASHA

Writ Petition No.12162 of 2018
and
WMP.Nos.14186 of 2018 and 8646 of 2020

K. Anandan

.. Petitioner

Versus

1. The Regional Deputy Commissioner (C)
Corporation of Chennai
Pulla Avenue, Shenoy Nagar
Chennai - 600 030

2. Mrs. Sivakami

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent in Ref.No.Z.O.VI.C.No.2585/2018 dated 13.04.2018 and quash the same.

For Petitioner : No appearance

For R1 : Mr. G.T.Subramanian
Standing Counsel

For R2 : Ms. Vadivelu Manju



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ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

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The petitioner has come up with this writ petition to quash the order dated 13.04.2018 passed by the first respondent, directing him to remove the encroachment/construction at No.19B, Sasthiri Nagar, Chandrayogi Samadhi Street, Mangalapuram, Chennai 600 012, within a period of 15 days failing which action will be initiated for removal of the encroachment in terms of Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919.

2. Today, when the matter is taken up for consideration, there is no representation for the petitioner. However, Mr.G.T.Subramanian, learned standing counsel appearing for the first respondent submitted that the second respondent herein filed a suit in O.S.No.4053 of 2016 on the file of the learned VII Assistant Judge, City Civil Court, Chennai against the petitioner herein and two others seeking to grant a permanent injunction restraining the petitioner herein/first defendant from putting up construction in common pathway measuring 34 square meters in between Plot Nos. 63, 61 and 62 set out in B Schedule of the plaint; for a mandatory injunction directing the petitioner herein/first defendant to remove the unlawful construction put up by him in the common pathway and for a mandatory injunction directing the defendants 2 to



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4 to remove the encroachment made by the petitioner herein/first defendant in the common pathway and for costs. The suit was contested by the petitioner herein. After contest, by a judgment dated 03.12.2018, the suit was decreed in favour of the plaintiff/second respondent in this writ petition. It is further stated by the learned Standing Counsel for the respondents that during the pendency of the suit in O.S. No. 4053 of 2016 filed by the second respondent herein, in exercise of the powers conferred under Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919, the notice dated 13.04.2018 was issued by the first respondent. Now, the suit itself has been decreed on 03.12.2018 in favour of the second respondent and therefore also, the notice dated 13.04.2018 issued by the first respondent is unassailable. Above all, it is submitted by the learned Standing Counsel for the first respondent that the petitioner had encroached upon the land belong to the Corporation of Chennai by putting up a construction in the common pathway. Therefore, the learned Standing counsel prayed for dismissal of the writ petition.

3. We have heard the submissions of the learned Standing counsel for the first respondent and also perused the materials placed on record, including the judgment and decree dated 03.12.2018 passed in O.S. No. 4053



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of 2016 filed by the second respondent herein. It is evident that the petitioner herein had contested the said suit in O.S. No. 4053 of 2016 and after contest, a decree dated 03.12.2018 was passed against him. Even otherwise, the petitioner in this writ petition has only challenged the notice dated 13.04.2018 issued by the first respondent calling upon him to remove the offending construction within a period of 15 days and it was not a final order. The petitioner, without submitting his explanation to the notice dated 13.04.2018, has filed the present writ petition. Therefore also, the writ petition is not maintainable and it is liable to be dismissed.

5. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

J.]

[R.M.D., J.]

[P.T.A.,

06.02.2023

Index : Yes / No
Internet : Yes / No
av/rsh

To

The Regional Deputy Commissioner (C),
Corporation of Chennai, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.



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