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WP No.33321 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 33321 of 2016
and
W.M.P. No. 28782 of 2016

B. Mohan Kumar

.. Petitioner

Versus

1.The Regional Deputy Commissioner
Regional Office (Central),
Greater Chennai Corporation,
No.26B Pulla Avenue, 2nd Cross Street,
Shenoy Nagar,
Chennai – 600 030.

2.The Executive Engineer
Greater Corporation of Chennai,
Zonal Office – X,
No.117, N.S.K.Salai,
Kodambakkam,
Chennai – 600 024.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records in proceedings Z.O.X.C.No.7579/2016, dated 07.09.2016, on the file of 1st respondent and quash the same as illegal, incompetent and wholly without jurisdiction.

For Petitioner : Mr. Avinash Wadhwani
for Mr. V. Lakshmi Narayanan



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For Respondents : Mr. G.T. Subramanian

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ORDER

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

The petitioner has come forward with this writ petition seeking to quash the order dated 07.09.2016 passed by the first respondent as illegal, incompetent and wholly without jurisdiction.

2. In the affidavit filed in support of the writ petition, it is stated by the petitioner that the land and building at No.26/5, Vanniar Street, West K.K. Nagar, Chennai was in possession and occupation of his predecessor for 80 years and presently he is in possession and enjoyment of the house and shop constructed thereof. While so, a Public Interest Litigation was filed by one Traffic Ramaswamy before this Court in WP No. 31546 of 2012 to remove the encroachment in K.K. Nagar, Virugambakkam, Vanniar Street and other localities. On the basis of the directions issued in WP No. 31546 of 2012 on 02.12.2015, the second respondent issued a notice dated 25.07.2016 calling upon the petitioner to remove the encroachments made by him. Aggrieved by the same, the petitioner has filed WP No. 26963 of 2016 and by an order dated 03.08.2016, this Court directed the respondents to conduct enquiry and then pass an order. Accordingly, a notice was issued to the petitioner calling upon



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him to participate in an enquiry on 24.08.2016. The petitioner also attended the enquiry and produced all the relevant records. However, without considering the documentary evidence submitted by the petitioner, the illogical order dated 07.09.2016 has been passed, hence, the present writ petition is filed.

3. The learned counsel for the petitioner would only submit that the documents submitted by the petitioner has not been taken into consideration by the respondents while passing the order dated 07.09.2016. It is his further contention that the petitioner and his predecessors have been residing in the property in question for more than eight decades and to prove the same, the petitioner has also produced documentary evidence. However, by simply brushing aside those documentary evidence, the order dated 07.09.2016 has been passed by the first respondent and he prayed for allowing this writ petition.

4. Per contra, the learned Standing counsel for the respondents submitted that the petitioner participated in the enquiry and produced 7 documents. None of the documents produced by the petitioner relate to title to the land in question. Thus, when the petitioner could not produce any



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document evidencing his title to the land in question, he can only be regarded as an encroacher. The petitioner has been squatting on the property of the respondents-Corporation without any right and therefore, the order dated 07.09.2016 has been passed by the first respondent which does not call for any interference by this Court.

5. Above all, it is further stated by the learned counsel for the respondents that based on the directions issued by this Court in the earlier Writ Petitions, joint inspection has been conducted, the entire site has been demarcated by the revenue officials and thereafter, due notice under Section 220 read with 222 of The Chennai City Municipal Corporation Act, 1919 has been issued to the petitioner. On receipt of such notice, the petitioner participated in the enquiry during which certain documents were produced. Taking note of the documents submitted by the petitioner as well as the entire records relating to the land in question, the order dated 07.09.2016 has been passed by the first respondent. The petitioner has occupied the land meant for laying road by the Chennai Corporation and therefore, he cannot be permitted to remain in occupation of the land in question any longer. The petitioner is an encroacher of a public property and therefore, the learned counsel for the respondents prayed for dismissal of the writ petition.



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6. We have heard the learned counsel for petitioner and the learned

Standing counsel for respondents and perused the materials placed on record.

7. On perusal of the order dated 07.09.2016 passed by the first respondent, it is evident that a notice was issued to the petitioner to put forth his defence. The petitioner also participated in the enquiry on 24.08.2016. During such enquiry, the petitioner said to have produced 7 documents, but none of those documents relate to his title to the land in question. On the other hand, it is stated by the respondents that the land which is in occupation of the petitioner is meant for laying road, where the petitioner had put up a construction to an extent of 23.50 m² of size 5.00m X 4.70m at No.26/5, Vanniar Street East, West K.K. Nagar, Chennai in Division No.128, Unit No.29, Zone 20. It is further stated by the respondents that by reason of such encroachment made by the petitioner, the free flow of traffic is affected and it is causing inconvenience to the vehicle users. Having regard to the above, we are of the view that the grounds raised by the petitioner in this writ petition need not be considered. When the petitioner is in occupation of a public property, he cannot be permitted to remain in occupation over such land any longer. Therefore, we find no merits in this Writ Petition and the writ petition deserves to be dismissed.



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8. Accordingly, we confirm the order dated 07.09.2016, passed by the first respondent herein, which is impugned in this writ petition. Consequently, the writ petition is dismissed as devoid of merits. No costs. It is open to the concerned revenue authorities as well as the respondents/ Corporation to proceed further in the manner known to law to remove the encroachments. Consequently, the connected Miscellaneous Petition is closed.

[R.M.D., J] [M.S.Q., J]

08.02.2023

ay/rsh

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-Speaking Order
To

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