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W.P.No.18438 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Writ Petition No.18438 of 2018

K.Pattamal

... Petitioner

Vs.

1. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.

2.The Zonal Executive Engineer (Zone VIII)
No.368, 2nd Cross street, Pulla Avenue
Shenoy Nagar
Chennai-600 030.

3. The Member Secretary
Chennai Metropolitan Development
Authority, No.1
Gandhi Irwin Road
Egmore, Chennai-600 008.

4. J. Raghavendran

5. R. Sireesha



W.P.No.18438 of 2018

6.The State of Tamil Nadu
Represented by its Principal Secretary
Department of Housing and Urban
Development, Fort St. George
Chennai-600 009.

... Respondents

(Suo motu impleaded as 6th respondent
vide order of this Court dated 27.03.2023)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 & 2 herein to forthwith remove the unauthorised construction put up by the respondents 4 and 5 in old door No.36, New No.51, Gandhi Road, Jagannathan Nagar, Arumbakkam, Chennai-600 106 comprised in Old Survey Nos. 215/2, 222/1, T.S. No. 58/1 and 59, Block No.7 of Arumbakkam Village.

For Petitioner	: Mr.S.Balaji
For R1 & R2	: Mr.A.C.Manibharathi Standing Counsel
For R3	: Mr.C.N.Vinobha Standing Counsel
For R4 & R5	: Mr.T.Sundar Rajan
For R6	: Mr.A.Selvendran Special Government Pleader



WEB COPY



W.P.No.18438 of 2018

ORDER

(Order of the Court was delivered by V.M.VELUMANI,J.)

The petitioner has come out with the present Writ Petition for a direction to the respondents 1 & 2 to forthwith remove the unauthorised construction put up by the respondents 4 & 5 in old door No.36, New No.51, Gandhi Road, Jagannathan Nagar, Arumbakkam, Chennai-600 106 comprised in Old Survey Nos.215/2, 222/1, T.S. Nos.58/1 and 59, Block No.7 of Arumbakkam Village.

2. Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents 1 & 2 and 3rd respondent and learned counsel appearing for the respondents 4 & 5 and perused the entire materials on record.

3. According to the petitioner, she is owner of the property in S.No.223/1 (New T.S.No.60/1) bearing Door No.44-B, Gandhi Road, Jagannathan Nagar, Arumbakkam, Chennai, measuring 2 grounds 12 sq.ft. Her neighbour one N.Yogalakshmi, wife of a retired Police Officer encroached the petitioner's property and put up construction. The petitioner filed O.S.No.8989 of 1993 on the file of the IX Assistant City



Civil Court, Chennai and the said suit was decreed granting interim injunction restraining the said Yogalakshmi. At the instigation of the said Yogalakshmi, the respondents 4 & 5 filed O.S.No.10391 of 2010 on the file of the V Assistant City Civil Court, Chennai, for injunction against the petitioner and her son and the said suit is pending.

4. Learned counsel appearing for the petitioner submitted that the petitioner obtained information under RTI Act that respondents 4 & 5 obtained building permission for construction of ground and first floors, but they have put up four floors. In this regard, the petitioner gave a representation to the respondents 1 to 3. The 3rd respondent by communication dated 09.01.2012 directed the respondents 1 & 2 to take action against the respondents 4 & 5 as per the delegated power. The respondents 1 & 2 issued notice, but did not take any further action. Hence, the petitioner has come out with the present Writ Petition for the above stated relief.

5. The 2nd respondent filed counter affidavit. The learned Standing Counsel appearing for the respondents 1 & 2 submitted that on receipt of complaint given by the petitioner, the Assistant Executive Engineer &



W.P.No.18438 of 2018

Assistant Engineer, Greater Chennai Corporation inspected the property on 14.03.2018 and issued notice dated 14.03.2018 to the 4th respondent under Sections 56 & 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act calling for approved plan. On receipt of said notice, the 4th respondent submitted approved plan and building approval dated 11.02.2009 and stated that they have completed the construction in the year 2010. On scrutinising the approved plan, the 2nd respondent found that 4th respondent has constructed ground & first floors in deviation from the approved plan and also put up second floor unauthorisedly measuring 79.80 sq.mtr. and also head room measuring 15.60 sq.mtr. Again the 2nd respondent issued lock & seal notice dated 26.07.2018 under Sections 56 & 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971.

6. The respondents 4 & 5 filed counter affidavit. The learned counsel appearing for the respondents 4 & 5 submitted that there is a civil dispute pending between the petitioner and vendor of the respondents 4 & 5. The 4th respondent obtained approval for construction of ground & first floors and in view of deviation pointed out by the respondents 1 & 2, the 4th respondent submitted the revised plan



W.P.No.18438 of 2018

application under Section 149 of the Tamil Nadu Town and Country Planning Act before the Secretary to the Government, Housing and Urban Development Department. The said application is pending from 31.07.2018. In view of the same, the respondents 1 & 2 have not taken any further action and prayed for passing suitable orders.

7. In view of the above submissions, this Court suo motu impleads *“The State of Tamil Nadu Represented by its Principal Secretary, Department of Housing and Urban Development, Fort St. George, Chennai-600 009”* as 6th respondent in this Writ Petition. Mr.A.Selvendran, learned Special Government Pleader takes notice for the newly impleaded 6th respondent.

8. From the above materials, it is seen that admittedly the 4th respondent obtained approval for construction of ground & first floors. The learned Standing Counsel appearing for the respondents 1 & 2 submitted that 4th respondent is constructing ground floor deviating from the approved plan and also put up unauthorised construction in the second floor and head room. As the revised plan application is pending from 31.07.2018, the newly impleaded 6th respondent is directed to



W.P.No.18438 of 2018

consider the same and pass orders on the application for revised plan submitted by the 4th respondent within a period of two weeks from the date of receipt of a copy of this order, if no order is passed till today. In view of the deviation, the respondents 1 & 2 are directed to take further action in pursuant to the notice dated 26.07.2018 and also depending on the out come of the order passed in the application for revised plan.

9. With the above directions, the Writ Petition is disposed of. No costs.

(V.M.V., J) (V.L.N., J)
27.03.2023

Index : Yes / No
Neutral Citation : Yes / No

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W.P.No.18438 of 2018

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