



WEB COPY



Writ Petition No.1887 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/2/2023

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Writ Petition No.1887 of 2021

a n d

W.M.P.No.2137 of 2021

Adinath Jain Trust
rep. By its Secretary
Mr.D.Mohan Jain

...

Petitioner

Vs

1. The Commissioner
Greater Chennai Corporation
Rippon Building
Chennai 600 003.
2. The Executive Engineer
Zone 5, No.45 M.C.Road
Royapuram
Chennai 600 013.
3. S. Manikandan
4. The Member Secretary
Chennai Metropolitan Development Authority
No.1 Gandhi Irwin Road, Egmore
Chennai 600 008.

...

Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first and second respondents not to grant any permission/sanction/regularisation to the third respondent in respect of the common passage on the basis of fraudulent Gift Deed.



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For Petitioner	...	Mr.Vikram U.Jain
For respondents	...	Mrs.P.T.Ramadevi
		Standing Counsel
		for R.R.1 and 2
		Dr.A.Thiyagarajan
		Senior Counsel
		for Mr.B.Mohan
		for R.3.
		Mrs.P.Veena Suresh
		for R.4

ORDER

This writ petition has been filed to direct the first and second respondents not to grant any permission/sanction/regularisation to the third respondent in respect of the common passage on the basis of fraudulent Gift Deed.

2. The case of the petitioner is that the petitioner has owned a property, at Door No.1 and third respondent at Door No.1/34, Kandappan Street, Choolai, Chennai 600 112, under two separate sale deeds. There is a common passage between the property of the petitioner and third respondent, who are the owners of the northern and southern side portion, respectively. In each sale deed, grant of access through common passage is mentioned. Now, the third respondent claiming that he is the owner of the common passage, trying to obtain sanction/revised/regularisation plan from



Corporation of Chennai, treating the common passage as an exclusive passage and also to construct superstructure. Hence, the petitioner had submitted representations dated 22/11/2019, 21/9/2020 and 6/10/2020 and 22/10/2020. Since the same have not been considered so far, petitioner has come forward with the instant writ petition.

3. Heard Mr.Vikram U.Jain, learned counsel for the petitioner, Mrs.P.T.Ramadevi, learned Standing Counsel for the respondents 1 and 2, Dr.A.Thiyagarajan, learned Senior Counsel for the third respondent and Mrs.P.Veena Suresh, learned counsel for the fourth respondent.

4. The only grievance is that having bought the property with the common passage, now the third respondent wants to construct superstructure in the common pathway. Hence, the petitioner had filed O.S.No.2733 of 2020 against the third respondent, on the file of XIV City Civil Court, Chennai, for declaration and permanent injunction.

5. At the outset, this Court is of the view that the dispute between the petitioner and third respondent with regard to the right over the common pathway is purely civil in nature. Considering the fact that the suit filed by



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the petitioner is pending before XIV City Civil Court, Chennai, this Court is not inclined to grant the relief sought for by the petitioner, for the reason that the right and title to the property can be adjudicated only before the trial Court. The relief sought for by the petitioner cannot be granted by way of a writ.

6. In such a view of the matter, this writ petition is disposed of and even if any approval is granted by the respondents 1 and 2, regularising the building, the same will not stand in the way of the petitioner to establish his right and title to the subject property pending before the Civil Court in O.S.No.2733 of 2020 and the said regularisation would be subject to the result of the sit in O.S.No.2733 of 2020.

No costs. Consequently, the connected Miscellaneous Petition is closed.

22/2/2023

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.



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WEB COPY To

1. The District Collector of Chengalpattu
Chengalpattu 603 111.
2. The District Revenue Officer
Chengalpattu.
3. The President
Athur Village Panchayat
Kattankulathur Panchayat Union
Kattankulathur
Chengalpattu Taluk and District.
4. The Block Development Officer
Kattankulathur Panchayat Union
Kattankulathur
Chengalpattu Taluk and District.
5. The Public Health Officer
Collectorate Office
Chengalpattu 603 111
Chengalpattu Taluk and District.



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N. SATHISH KUMAR, J
mvs.

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