



WEB COPY



W.P.No.21026 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 23.08.2023
ORDER PRONOUNCED ON : 12.10.2023

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS. JUSTICE N.MALA

WP. No. 21026 of 2023

Kennedy Nesamoney

...Petitioner

Vs.

1. The Member Secretary – CMDA,
Chennai Metropolitan Development Authority,
No.1, Ground floor, Thalamuthu Natrajan Building,
Gandhi Irwin Road, Egmore,
Chennai-600 008.

2. The Commissioner for Municipal Administration,
URBAN ADMINISTRATIVE BLDG (OPP. CIBA BLDG),
75, Santhome High Road, MRC Nagar,
Raja Annamalai Puram,
Chennai-600 028.

3.The Commissioner of Tambaram Corporation-
Muthu Rangan Street,
Tambaram, Chennai-600 045.

4.Sivaji.

5.Nandhan

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the third Respondent to take action against the illegal construction that is constructed in the schedule detail property as per the law of town and country planning act based on the representation dated 02.01.2023 and take action to lock and seal and to demolish the illegal building that has been constructed by the fourth and fifth Respondent in the schedule mentioned property.

For Petitioner : Mr. A. Senthil Manohar
For R-1 : M/s. C.N. Vinobha
For R-2 : Mr.E.Vijayanand,
Additional Government Pleader
For R-3 : Mr.P.Srinivas,
Standing Counsel
For RR4 and 5 : Mr.A.Umasankar

O R D E R

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

Writ Petition is filed for a Writ of Mandamus directing the 3rd respondent to initiate action against the illegal construction put up by the 4th and 5th respondent's in the writ petition scheduled property.



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2. It is the case of the petitioner that earlier his wife submitted a representation for removal of illegal building in the year 2019. Thereafter the petitioner gave a representation on 02.01.2023 for the aforesaid relief. According to the petitioner, in reply to the petitioner's representation, the 1st respondent vide letter dated 06.04.2023, directed the 3rd respondent to take necessary enforcement action against the illegal construction. The 2nd respondent in pursuance of the representation of the petitioner, addressed a letter to the 3rd respondent to conduct suitable inspection and to take action and further directed the 3rd respondent to inform the petitioner and the 2nd respondent on the action taken. The petitioner further stated that to his application under the RTI Act for information on the illegal construction made in the schedule property, the 3rd respondent replied that the building was constructed without any approval or sanction from the planning authority.

3. According to the petitioner, the respondents 3 and 4 were politically influential persons and therefore the 3rd respondent advised the



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petitioner to approach the Hon'ble Court to get remedy for his representation. The petitioner therefore filed the above writ petition with the aforesaid prayer.

4.The 3rd respondent filed a counter stating that the petitioner's wife claimed the lands as her own and she was unable to take possession of the lands. She filed several writ petitions alleging unauthorised construction in the lands claimed by her. According to the 3rd respondent, the petitioner and the residents of the area called as Anna Nagar, were involved in various civil and criminal litigations with regard to their rival claims to the lands. According to the 3rd respondent, the 4th and 5th respondents purchased the plots measuring to an extent of 1200 sq.ft and put up houses which are in existence for about 15 years. It is the further case of the 3rd respondent that, layout approval was given by the CMDA in the year 2019 vide office order dated 12.12.2018. After marking of the streets in the layout, approval for plot regularisation with respect to Survey.Nos. 21/1, 21/2 and 21/3, in Hasthinapuram Village, Pallavaram



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Municipality was accorded vide G.O.Ms.No.78, Housing & Urban Development, dated 04.05.2017 and G.O.Ms.No. 172 dated 13.10.2017.

Subsequently, some of the plot owners in the area obtained regularisation of the approved buildings. It was the 3rd respondent's further case that few residents of the subject area submitted their application for regularisation to the 1st respondent as per Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971 and the said applications were kept pending, in view of the interim orders granted in the Public Interest Litigation challenging G.O.Ms.No.110 issued under Section 113(C). The 3rd respondent further stated that the letter dated 06.04.2023 of the 1st respondent related to another property in the same locality and it was the subject matter of W.P.No. 8135 of 2021. The letter dated 13.04.2023 was a communication forwarding the compliant of the petitioner made to the 2nd respondent. The 3rd respondent submitted that there was only one town planning officer for Tambaram and Pallavaram zones and therefore, the files were kept pending. The 3rd respondent further stated that further action against the unauthorised construction would be undertaken based



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on the reply of the 4th and 5th respondents to the notice dated 19.08.2023 sent to them calling upon them to submit the approved plan or application filed, if any.

5. The 4th and 5th respondents filed common counter denying all the allegations and contentions raised in the writ petition, apart from narrating the various proceedings between the petitioner and themselves. The respondents 4 and 5 stated that they obtained land approval from the 3rd respondent for their lands on 15.12.2022. They further stated that they applied for building permission to the 3rd respondent/ Corporation which is pending till date. They denied the contention of the petitioner that the RTI reply clearly showed that they had illegally constructed the building without proper planning permission. They further stated that in pursuance to the RTI reply, they sent a detailed reply on 21.07.2023, to the official respondents for consideration of their application for grant of building approval / permission. They stated that it was because of the litigious attitude of the petitioner in filing several litigations and complaints in regard



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to the subject property that approvals were not granted to any of the persons in the locality. They submitted that petitioner was guilty of suppression of facts and approached the Court with unclean hands. The respondents 4 and 5 therefore prayed for dismissal of the writ petition.

6. We have heard both the learned counsels and have perused the materials placed on record.

7. It is seen from the counter filed by the respondents 4 and 5, that the subject property, a part of a larger extent of 18 Acres comprised in S.No.12/4, 21/1, 21/2 and 21/3 originally belonged to one Ramachandra Iyer. The petitioner's wife claims to be the adopted child of the said Ramachandra Iyer. The above mentioned property was mortgaged by Ramachandra Iyer with the Punjab National Bank in the year 1965, and as Ramachandra Iyer defaulted in repayment of the loan, the bank officials filed a suit against Ramachandra Iyer in O.S.No.40 of 1965 before the Sub-Court, Chengalpattu. The said suit was decreed ex-parte against the



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legal heirs of Ramachandra Iyer i.e. Mrs.Ananthalakshmi Ammal, his wife and others. To execute the decree, the bank officials filed Execution Proceedings in E.P.No.46 of 1989 before the Sub-Court, Poonamallee. In the said E.P., the Kudisai Vazhvor Nala Urimai Sangam, Anna Nagar, which is a registered Sangam was impleaded. The respondents 4 and 5 were the members of the said Sangam. Mrs.Ananthalakshmi Ammal, wife of Ramachandra Iyer inherited the aforementioned lands after his death. During the pendency of the E.P. the occupants of the larger extent of land owned by Ramachandra Iyer negotiated with his wife Mrs.Ananthalakshmi Ammal and with the bank for sale of the lands. After several rounds of negotiation, the said Ananthalakshmi Ammal authorised the resident of the association, Mr.MuthuKrishnan, to receive sale consideration from the members of the association and executed a registered irrevocable power of attorney in favour of the said association to execute the sale deed infavour of the persons in occupation of the respective lands. The respondents 4 and 5 purchased a portion of the land in the year 1990 and got the same duly registered in their favour. It is the respondents 4 and 5's



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case that planning approval was not granted to them by the 3rd respondent because of the objections raised by the petitioner's wife. It is seen that on one hand the writ petitioner's wife is stalling the grant of planning permission to the respondents 4 and 5 and on the other hand through her husband, the writ petitioner is trying to have the building of the respondents 4 and 5 demolished for want of planning permission. The petitioner's wife cannot stall the grant of planning permission to the respondents 4 and 5 without clear title and by merely filing objections. If the petitioner's wife has serious issues on title, then she should approach the Civil Court to establish the same.

8. It is seen from the counter of the 3rd respondent that a notice dated 19.08.2023 was issued to the 4th and 5th respondents to produce the plan or copy of the application, if any, made by them. It is the stand of the 3rd respondent that further action would be initiated based on the reply of the respondents 4 and 5.



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9. As the 3rd respondent has already initiated action against the respondents 4 and 5 by issuing a notice dated 19.08.2023, a direction is issued to the 3rd respondent to take further enforcement action in accordance with law. The writ petition is accordingly disposed of, there shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

(J.N.B, J.) (N.M, J.)
12.10.2023

Index : Yes / No
Speaking order : Yes/No
Neutral Citation : Yes / No
dsn



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J. NISHA BANU, J.

and

N.MALA, J.

dsn

**PRE- DELIVERY ORDER IN
W.P.No. 21026 of 2023**

**ORDER DELIVERED ON
12.10.2023**