



W.P.No.12972 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.12972 of 2017
and WMP.No.13842 of 2017

M.Boopathy

...petitioner

Vs.

1. G.Vaithiyalingam
2. The Commissioner,
Greater Corporation of Chennai,
Rippon Building, Chennai.
3. The Zonal Officer,
Zone-X,
Greater Corporation of Chennai,
No.117, N.S.K.Salai, Kodambakkam,
Chennai 600 024.
4. The Assistant Commissioner,
Zone-X,
Greater Corporation of Chennai,
No.117, N.S.K.Salai, Kodambakkam,
Chennai 600 024.
5. The Tahsildar,
Mambalam Taluk, Office,
Mambalam, Chennai 600 033.



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6. The Executive Officer,
Arulmigu Vadapalani Andavar Temple,
Palani Andavar Koil Street,
Vadapalani, Chennai 600 026.

...respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records of the fourth respondent notice Z.O.X.C.No.13499/2017, dated 08.05.2017 and quash the same.

For petitioner : Mr.K.Seetha Ram

For respondents
for R1 : Mr.M.Chidambaram
for RR2 to 4 : No Appearance
for R5 : Mr.A.Selvendran, Spl.G.P.
for R6 : Mr.S.Surya
for M/s.A.S.Kailasam & Associates.

ORDER

(The Order of the Court was made by S.S.SUNDAR, J)

This Writ Petition has been filed challenging the order passed by the fourth respondent dated 08.05.2017, directing the petitioner to remove the encroachment within 7 days from the date of receiving the final order.



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Prima facie this Court is convinced that the impugned order, purported to have been issued one under Section 220 r/w. 222 of CCMC Act IV of 1919 is in violation of principles of natural justice as the above notice is not preceded by a show cause notice.

3. It is seen that this Court, in the earlier Writ Petition filed by the petitioner in WP.No.44240 of 2016, directed the respondents to maintain status quo as on date till such time an order is passed in compliance of the direction issued in WP.No.26087 of 2016 dated 18.08.2016. The Division Bench of this Court while disposing of the Writ Petition in WP.No.26087 of 2016, dated 18.08.2016 directed the respondents to do needful in accordance with law. It is further stated that any order shall be passed after hearing the private respondent, who is the petitioner herein.

4. It is in this circumstances, the present Writ Petition is filed by the petitioner questioning the authority of the fourth respondent to pass order as if the petitioner is in encroachment. This Court is convinced that the impugned order is liable to be quashed on the short ground that the same is in violation of principles of natural justice. It is to be noted that the dispute



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in this Writ Petition is regarding the existence of a pathway. The sixth respondent claims that the property in respect of which some pathway right is claimed by the first respondent belongs to them. The version of the sixth respondent is supported by the petitioner, who alleges that in the property there is no encroachment in the public pathway or passage as complained.

5. In the said circumstances, this Court finds that the above disputed question cannot be resolved by this Court. Therefore, while setting aside the impugned order on the ground of violation of principles of nature justice, this Court directs the parties to approach the Civil Court for appropriate remedy. It is admitted by the learned counsel appearing for the first respondent that the first respondent filed a suit in OS.No.7111 of 2014 on the file of V Assistant City Civil Court, Chennai. Though the said suit is for bare injunction, it is open to the first respondent to file an amendment petition or file a suit on fresh cause of action claiming appropriate relief. Depending upon the outcome of the suit, it is open to the Corporation to take appropriate action in case it is established before the Civil Court that the property has been encroached by the petitioner or the sixth respondent. In view of the fact that this Court has to preserve the status quo, the petitioner and the first respondent are directed to main status quo as on date



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without prejudice to the rights of the sixth respondent claiming ownership.

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6. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J.) (K.R.S.J.)
06.07.2023

Index : Yes / No
Speaking order: Yes/No
pvs

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