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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MS. JUSTICE **P.T.ASHA**

CONT.P.No.150 of 2023

1.Mohammed Iqbal Sait,
S/o Abdul Sattar,

2. Mohammed Imtiaz Sait,
S/o Mohammed Iqbal Sait,

3. Mohammed Aejaaz Sait,
S/o Mohammed Iqbal Sait,

All residing at No.15,2nd Floor,
Thirupura Sundari Colony, Rajaji Nagar,
Pallavaram, Chennai- 600 043.

...Petitioners

Vs

Abdul Kareem,
S/o Abdul Gani,
No.13, Gandhi Nagar, 2nd Street, Nellikuppam Road,
Nandivaram, Guduvancheri, Chengalpattu Taluk,
Kancheepuram District.

... Respondent

PRAYER:

This Contempt petition is filed under Section 11 of Contempt of Courts Act 1971, praying to punish the respondent for contempt of court for having violated deliberately and wantonly the order of this Hon'ble



Court dated 22.07.2022 and made in C.M.P.No.11683 of 2022 in S.A.No.588 of 2022.

For Petitioners : M/s.N.A.Nassir Hussain

For Respondent : M/s.Ravikumar Paul , Senior counsel
for M/s.Paul and Paul

ORDER

The above contempt petition has been filed alleging that the respondent/ contemnor had violated the interim order of injunction granted by this Court on 22.07.2022 in C.M.P.No.11683 of 2022 in S.A.No.588 of 2022. This Court had ordered statutory notice to the contemnor who is appearing before this Court.

2. Considering the fact that the entire issue revolved around the factum of encroachment of 30 feet road, this Court had appointed an Advocate Commissioner to demarcate the B - Schedule property and file a report thereon. The Advocate Commissioner, M/s.S.Sahana Banu has also filed her report along with the survey sketch, photographs, etc., on 01.08.2023. The learned counsel for the petitioner has also filed the entire



pleadings and exhibits in O.S.No.104 of 2008 on the file of the District Munsif at Chengalpattu which is the genesis for this proceedings.

3. Before discussing the issue, it is necessary to touch upon the facts which has culminated in filing of this petition.

4. The petitioner herein had filed O.S.No.104 of 2008 on the file of the District Munsif at Chengalpattu seeking for a declaration that the petitioner herein is entitled to enjoy the frontage right at every point on the western side of the A-schedule property over 30 feet wide road and a mandatory injunction directing the defendant to remove the pillars and other encroachments made in B-schedule road.

5. The B-schedule property has been described as follows:

“SCHEDULE-B:

*All that piece and parcel of 30 feet wide
Muthusamy Salai shown in the layout on the western
side of Plot No: 1 & 2 remains as traingular piece of*



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land with 30 feet width at the north-western end of Plot No 2 and ends at the south-western end of Plot No:1 being the frontage both Plot No:1 & 2 referred in Schedule-A in Survey No:19/1B, Vallanchery Village, Chengalpattu Taluk, Kancheepuram District”.

6. I do not intend to delve on the facts of the case, suffice it to state that the suit despite contest was decreed in favour of the petitioner by Judgment and decree dated 30.11.2018. This Judgment and decree dated 30.11.2018 was taken up on appeal by the contemnor who is the defendant therein before the Additional Subordinate Judge, Chengalpattu at Kancheepuram District in A.S.No.6 of 2019. The appeal was allowed in favour of the respondent herein by Judgment and decree dated 25.03.2022 which is the subject matter of challenge in S.A.No.588 of 2022 which is pending on the file of this Court.

7. From the documents submitted by the petitioner it appears that pending the suit an Advocate Commissioner has been appointed originally in I.A.No.1598 of 2008. She has also submitted her report which is



marked as Ex.C1 in the suit. The Commissioner has fixed and localised the Bi-Junction stone separating the suit village (Vellancherry village) and the Thailavaram village. She has opined that there is no survey stones in the suit properties. With the help of the Divisional Inspector of Survey, the Advocate Commissioner has marked G.S.T. Road, Lay out road, Bi-Junction stone and the remaining land in the Thailavaram village. Survey sketches were also marked as Ex.C4 and Ex.C5. There is an interim report originally made by the very same Advocate Commissioner in the I.A.No.539 of 2008 to which she has also attached a rough sketch. The Advocate Commissioner would submit that during her visit the construction was ongoing and the same was at plinth beam level, with six newly constructed wet beams. The Advocate Commissioner also noted that arrangements were made for erecting the concrete column pillars which is nine in number. It is after this interim report, the report in I.A.No.1598 of 2008 with reference to the Bi-Junction stone has been filed. This Advocate Commissioner was once again asked to inspect and file a report in I.A.No.743 of 2017. During this visit, the Advocate Commissioner confirmed the existence of the pillars and also the fact that there is a new



cement cover drainage channel put up in the B-schedule property with 5 manual holes which is about 10 feet in breadth.

8. Thereafter, the first appeal was allowed by a Judgement and decree dated 25.03.2022. The second appeal has been filed in the month of July 2022. In the affidavit that has been filed in support of the application for interim injunction, the petitioner herein has not stated about the existence of that the pillars. On the contrary, the petitioner has stated that an attempt was made to put up the pillar. Further, the petitioner has claimed a right over the 30 feet road stretching over Plot Nos: 1 & 2, belonging to the petitioner. However, it has been brought out from the documents that the 30 feet road when it reached Plot No:1 tapers into triangular cone. Be that as it may, since these facts were not brought to the notice of the Court, this Court had proceeded to grant an injunction restraining the respondent from putting up the construction in B-schedule property, when already construction had been put up atleast in the form of the pillars. Alleging violation in this interim order of injunction, the present contempt petition has been filed.



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9. In the affidavit filed in support of the contempt petition, the petitioner would submit as follows:

“I humbly submit that in spite of the injunction granted by this Hon'ble Court, with scant respect to the orders of this Hon'ble Court the respondent is willfully, deliberately proceeding with the construction in the 30 feet road subject matter of the suit, in gross violation to the orders of this Hon'ble Court which is nothing but contempt”.

10. The petitioner would submit that they issued a legal notice to the respondent and the same was returned by the respondent. The respondent on entering appearance in the contempt petition has filed counter, in which they have *inter-alia* contended that the construction has been made as soon as the judgment dated 25.03.2022 in A.S.No.06 of 2019 was passed and before the interim injunction dated 22.07.2022 was passed in the S.A.No.588 of 2022. The respondent has categorically stated



that the construction of five shops had been completed by 17.07.2022 and all the shops had been electrified in the month of May 2022 itself. The petitioner would submit that she has sunk a borewell on 27.04.2022 and the property has been leased out to one, Mrs.M.Begum Bee on 07.07.2022. Therefore, the constructions had been put up before the order of this Court and no construction was put up thereafter.

11. Since there was serious dispute about the above this statement, the Advocate Commissioner had been appointed by this Court to note down the physical features. She has submitted a report in which it is seen that the ground floor portion has been completed and there are pillars standing which indicates that the respondent has proposed to put up the first floor. The contempt petitioner has not clearly stated as to when the construction had taken place. The averments in the contempt petition are also bereft of the details. Even according to the petitioner, the 30 feet road does not continue to be 30 feet throughout the stretch from Plot No. 2 to 1. Therefore, it becomes imperative that the plaintiff had given the exact measurements of the roads and the extent of encroachment and otherwise



made thereon. These details are absent in the pleadings. Further, the Advocate Commissioner has noted that the petitioner has also encroached nearly two feet into the 30 feet road made in both the plots on the western side abutting the road.

12. Therefore, considering the fact that contempt has not been made out, the contempt petition is dismissed. However, taking into account the fact that the respondent has put up the pillars on the first floor and taking note of the fact that the second appeal is still pending, the respondent shall not put up any construction over and above the construction already put up as seen in the photographs sent by the Advocate Commissioner till the disposal of the second appeal.

13. The Advocate commissioner submitted her final report for which objection has also been filed. The petitioner shall pay a further sum of Rs.25,000/- to the Advocate Commissioner as a final remuneration, within a period of one week from today.



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Accordingly, the contempt petition is dismissed. No costs.

20.09.2023

Internet: Yes

Index: Yes/No

Speaking/Non speaking order
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P.T.ASHA, J.

ssa/apd

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