



WEB COPY



W.P.No.31736 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 31736 of 2022

R.Venkataraman

... Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Principal Secretary,
Housing and Urban Development Department,
Secretariat, Chennai-09.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-08.

3. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai-03.

4. The Zonal Officer (Zone -VIII),
Door No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-30.

5. P.K.Gopalakrishnan,



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6. Manju Agarwal

7. Usha Agarwal

8. Ajay kumar Agarwal

9. Amit Kumar Agarwal

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to take appropriate actions for demolition of the building constructed over the property situated in S.No.207/9 in Thirumangalam Village, Koyembedu.

For Petitioner : Mr.P.Munusami
For Respondents : Mr.S.Balamurugan
Government Advocate for R1
Mrs.P.Veena Suresh
Standing Counsel for R2
Mr.D.B.R.Prabhu
Standing Counsel for RR3 & 4
Not ready notice for R5
Mr.Thomas T.Jacob for RR 6 to 9

ORDER

(Order of the Court was made by J.Nisha Banu,J.)

This Writ Petition has been filed to direct the respondents 2 and 3 to take appropriate action for demolition of the building constructed over the



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property situated in S.No.207/9 in Thirumangalam Village, Koyambedu, which is a subject matter of a suit for partition.

2.It is the case of the petitioner that his grandfather – Raja Pillai was the absolute owner of the property comprised in S.No.207/9 in Thirumangalam Village and he died intestate on 05.12.1957, leaving behind his son – Gopal Pillai, his daughter and the petitioner's mother – Pattammal as his legal heirs. Mr.Gopal Pillai also passed away on 25.10.1981. Subsequent to the death of Gopal Pillai, his legal heirs, without obtaining any consent from the petitioner's mother, had executed sale deeds dated 30.04.1985 and 14.05.1986 on the file of the Sub-Registrar, Anna Nagar, with respect to the property mentioned above, in favour of the 5th respondent.

3.After knowing about the illegal sale deeds, petitioner's mother preferred a suit for partition in O.S.No.28 of 1986 before the Sub-Court, Chengalpet and a preliminary decree dated 13.11.1992 had also been passed by the said Court in favour of the petitioner's mother.

4.While so, during the pendency of the said suit, the 5th respondent had further alienated his property, in favour of the 6th and 7th respondents and deceased Saroj Agarwal, vide sale deed dated 06.04.2011. Further, the 5th



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respondent had also executed a deed of indemnity dated 06.04.2011, undertaking to indemnify the 6th and 7th respondents and deceased Saroj Agarwal, if the above mentioned suit for partition is decided against the 5th respondent.

5.Despite knowing that the property's title is disputed, the respondents 6, 7 and deceased Saroj Agarwal, obtained building plan approval dated 30.03.2012 and completed the construction in the property. The petitioner's representation to respondents 2 and 3 seeking cancellation of building plan was ignored. The 3rd respondent also granted building plan approval in favour of respondents 6 to 9.

6.The learned Standing counsel appearing for the 2nd respondent filed counter and would submit that the respondents 6 to 9 were issued with the planning permission by the CMDA for the existing Basement + Ground floor + First floor and proposed additional construction of second floor Residential building with 3 dwelling units in PP No.B/Spl.Bldg./265 A & B/2018 in letter No.B3/18253/2017 dated 30.11.2018.

7.The submissions made by the learned Standing counsel appearing for the 2nd respondent was not disputed by the respondents 6 to 9 and they would



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further submit that the appeal filed by the petitioner under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 has also been dismissed as infructuous by the 1st respondent – Government, vide its order dated 08.07.2019, on the ground that the respondents 6 to 9 were issued with the building plan approval.

8.Heard both sides and perused the materials available on record.

9.Admittedly, the issue involved in this Writ Petition is civil in nature and the petitioner's mother had already preferred a suit for partition in O.S.No.28 of 1986 before the Sub-Court, Chengalpet. Now, the suit is at the stage of passing a final decree. After passing of the final decree, the petitioner is at liberty to proceed in the manner known to law.

10.With the above observation, this Writ Petition stands dismissed.

No costs.

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

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Index : Yes / No
Speaking Order : Yes/No
Internet:Yes/No
Neutral Citation: Yes/No
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