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W.P.No.35007 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.35007 of 2022

and

W.M.P.No.34438 of 2022

Sreedala Devi

.. Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.The Assistant Commissioner,
Greater Chennai Corporation,
Zone IX, Mylapore,
Chennai – 600 004.

3.The Inspector of Police
E2, Royapettah Police Station,
Royapettah,
Chennai – 600 014.

4.Vijayalakshmi

5.Indira

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take necessary action against the 4th and 5th respondents from illegally demolishing the building situated in bearing



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Plot No.11, Old Municipal Door No.60/5, New Door No.3, Old No.2, 9th Street, Dr.Radhakrishnan Road (formerly Edward Elliots Road), Mylapore, Chennai – 600 004 measuring an extent of 2178 sq.ft in R.S.No.1071/36 in Block No.22, Mylapore and to safeguard the petitioner life and property based on the petitioner's representation dated 16.09.2022.

For Petitioner : Mr.S.Saravanan

For R1 and R2 : Mr.D.B.R.Prabhu
Standing Counsel

For R3 : Mrs.R.L.Karthika
Government Advocate

For R4 and R5 : Mr.K.V.Sundararajan

ORDER

(Order of the Court was delivered by V.M.VELUMANI, J.)

The Writ Petition is filed for a direction to the respondents 1 and 2 to take necessary action against the respondents 4 and 5 from illegally demolishing the building situated in bearing Plot No.11, Old Municipal Door No.60/5, New Door No.3, Old No.2, 9th Street, Dr.Radhakrishnan Road (formerly Edward Elliots Road), Mylapore, Chennai – 600 004 measuring an extent of 2178 sq.ft in R.S.No.1071/36 in Block No.22, Mylapore and to safeguard the petitioner life and property based on the petitioner's representation dated 16.09.2022.

2. Heard Mr.S.Saravanan, learned counsel appearing for the



petitioner, Mr.D.B.R.Prabhu, learned Standing Counsel appearing for the respondents 1 and 2, Mrs.R.L.Karthika, learned Government Advocate appearing for the 3rd respondent as well as Mr.K.V.Sundararajan, learned counsel appearing for the respondents 4 and 5 and perused the entire materials on record.

3. According to the petitioner, the property measuring to an extent of 4.06 Grounds comprised in R.S.No.1017/36 in Block No.22 situated at Plot No.11, Old Municipal Door No.60/5, New Door No.3, Old No.2, 9th Street, Dr.Radhakrishnan Road, Mylapore, Chennai was joint family property of petitioner's husband S.R.Baaskaran, his brother S.R.Sridhar and respondents 4 and 5 herein. They entered into Memorandum of Understanding on 26.04.2017 whereby the property was partitioned and the petitioner's husband was allotted 'B' Schedule Property measuring 4677 $\frac{3}{4}$ sq.ft., being eastern portion of 'A' Schedule Property. The petitioner's brother-in-law was allotted 'D' Schedule Property and the respondents 4 and 5 were allotted 'C' Schedule Property. The property has common roof and the petitioner and respondents 4 and 5 are the absolute owner of common building and sharing the same roof with their building. The petitioner's husband died on 17.03.2021 due to corona. The



petitioner, her minor son and daughter are residing in the property allotted to her husband. While so, the respondents 4 and 5 started demolishing their portion without informing the petitioner and no objection certificate from the petitioner. In view of the common roof, the demolition by respondents 4 and 5 is damaging the petitioner's property. The petitioner has given representation dated 16.09.2022 to the respondents 1 and 2, who informed her that the respondents 4 and 5 obtained permission for demolition and reconstruction on 27.05.2022.

4. The learned counsel appearing for the petitioner submitted that the respondents 1 and 2 granted permission for demolition and reconstruction without inspecting the property in question. In view of the demolition made by the respondents 4 and 5, the petitioner's property is damaged and there is a life threat to the petitioner, her minor son and daughter. The petitioner gave a complaint dated 19.12.2022 to the 3rd respondent/Police and the 3rd respondent issued C.S.R.No.450/2022. The 3rd respondent/Police did not take any action. The respondents 1 and 2 without inspecting the property mechanically granted permission for demolition and sanctioned the planning permission in favour of respondents 4 and 5 and hence, the petitioner has come out with the



present writ petition.

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5. The 5th respondent has filed counter affidavit. The learned counsel appearing for the respondents 4 and 5 submitted that the petitioner's husband put up additional construction. At that time, he did not obtain no objection certificate from the respondents 4 and 5. The respondents 4 and 5 are unable to divide the portion allotted to them and therefore, they decided to demolish the portion and reconstruct the same. They have obtained permission for demolition and reconstruction from the respondents 1 and 2. The respondents 1 and 2 granted permission only after verifying the documents. The portion of the respondents 4 and 5 can be demolished without causing any damages to the petitioner's property. The petitioner's husband put up construction without strengthening the roof. The respondents 4 and 5 will take necessary precautions and safeguard methods while demolishing their portion, so that the portion under occupation of the petitioner will not be damaged and prayed for dismissal of the writ petition.

6. Mr.D.B.R.Prabhu, learned Standing Counsel appearing for the



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respondents 1 and 2 submitted that the respondents 4 and 5 applied through online for demolition and reconstruction of their property along with supporting documents. After scrutinising the documents, the respondents 1 and 2 granted permission for demolition and reconstruction. He further submitted that if this Court direct the respondents 1 and 2, the respondents 1 and 2 will inspect the property in question and proceed further in accordance with law.

7. It is the submission of the petitioner that the property allotted to the petitioner's husband under Memorandum of Understanding, which is now under the occupation of the petitioner has common roof with the property of respondents 4 and 5. According to the petitioner, the respondents 4 and 5 started demolishing their portion of the building which is causing damage to the petitioner's property. The respondents 4 and 5 in their counter affidavit have stated that they will take all necessary precautions while demolishing their property, so that no damage will be caused to the property under occupation of the petitioner.

8. In such circumstances, the respondents 1 and 2 are directed to



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inspect the property of the petitioner and respondents 4 and 5, after issuing notice to the petitioner as well as respondents 4 and 5 and if found that demolition by respondents 4 and 5 are causing damage to the petitioner's property, take appropriate action including cancellation of the permission granted to respondents 4 and 5, within a period of three months from the date of receipt of a copy of this order. Till the respondents 1 and 2 inspect the property and pass appropriate orders, the respondents 4 and 5 are restrained from demolishing the property. The respondents 1 and 2 are directed to complete the proceedings within a period of six months.

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

(V.M.V., J) (R.H., J)
20.02.2023

Index : Yes / No
Neutral Citation : Yes / No
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V.M.VELUMANI, J.
and
R.HEMALATHA, J.

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To

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