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W.P.No.5974 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.5974 of 2024

Aravind Bharathi

... Petitioner

Vs.

1.The Commissioner,
Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.Kesavan

3.Jaishankar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to consider the petitioner's representation dated 14.07.2023 and consequently directing the 1st respondent to remove the illegal encroachment and unauthorised construction made by the 2nd and 3rd respondents.



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For Petitioner : Mr.G.Peranban
for Mr.M.Mohamed Yasin

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

For R2 : No appearance

For R3 : Mr.R.Karunakaran

ORDER

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

The petitioner has filed the above writ petition for issuance of a Writ of Mandamus directing the 1st respondent to consider the petitioner's representation dated 14.07.2023 and consequently directing the 1st respondent to remove the illegal encroachment and unauthorised construction made by the 2nd and 3rd respondents.

2.The petitioner states that the respondents 2 and 3, who have purchased the plots adjacent to the petitioner's property, proceeded with construction without obtaining necessary permission from the Chennai



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Corporation. It is the case of the petitioner that the 2nd and 3rd respondents have encroached the common passage meant for all the three plot owners including the petitioner. The petitioner submitted a representation to the respondents for taking action against the private respondents for unauthorised construction, on 14.07.2023. Finding that the official respondents have not taken any action, the above writ petition is filed.

3.Learned counsel appearing for the 3rd respondent submitted that the construction put up by the 3rd respondent was originally owned by Smt.G.Meenalochini after obtaining permission from the Corporation in the year 2001. It is further stated by the 3rd respondent that the house was constructed by her in the year 2017 by availing loan from Union Bank of India. The 3rd respondent submitted that the petitioner has filed a Civil Suit before the District Munsif Court, Ambattur, in the year 2021 in O.S.No.251 of 2021 on the allegation that the 3rd respondent has encroached the common passage. It is not in dispute that the suit filed by the petitioner is pending from 2021.



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4.It is submitted that the petitioner has submitted his building plan before the Corporation officials and the same is under consideration. The grievance of the petitioner is that the unauthorised construction is extended to the common passage to which the petitioner is also entitled to have access. As a co-owner of the site, the petitioner raised some objections to the unauthorised construction.

5.Having regard to the facts admitted, this Court is unable to entertain the issue regarding right, title and interest over the property which is the subject matter of this lis. It is admitted before this Court that the official respondents have not granted any planning permission nor granted any approval for the building plan submitted by the petitioner. Even though the petitioner has not pointed out any violation of Building Regulations, the construction, if it is in a property belongs to a third party or in a common property to be shared with third parties, is unauthorised. Since a suit has already been filed by the petitioner to establish his title and to get a



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consequential relief of injunction, this Court is of the view that the decision whether the property, in which the whole construction is put up by the private respondents, is the property of the petitioner or a common property, has to be decided only by the Civil Court where the suit is pending. However, subject to the outcome of the said suit, the official respondent may take proper action for removal of unauthorised construction. Till such time a decision is taken by the Civil Court, the official respondent shall not grant any permission or building plan approval to the petitioner. In case the petitioner succeeds in establishing his title, the official respondent shall take action against the private respondents in accordance with law, after giving sufficient opportunity to the private respondents as well as to the petitioner. However, this order will not stand in the way of official respondents for taking action if the construction is in violation of Building Regulations.

6.This writ petition is disposed of accordingly. No costs.

(S.S.S.R., J.) (N.S., J.)
24.06.2024

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Internet : Yes



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Index : Yes / No

Neutral Citation : Yes / No

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N. SENTHILKUMAR, J.

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To

The Commissioner,
Chennai Corporation,
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