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W.P.No.6511 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.6511 of 2020

Tmt.M.C.Thennarasi alias Tennagam .. Petitioner

v.

1. The Principal Secretary
Housing and Urban Development
[UDVII(1)] Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai 600 009
2. The Member Secretary
Chennai Metropolitan Development
Authority (CMDA)
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Marg
Egmore, Chennai 600 008
3. The Commissioner
The Greater Corporation of Chennai
Ripon Building, Chennai 600 003
4. K.B.Rajendran



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5. Selvi.K.Dhanalakshmi (P-in-P)

6. Selvi.K.Vasanth (P-in-P)

7. Selvi.K.Devi (P-in-P)

8. K.Pushpalatah (P-in-P)

(R5 to R8 impleaded vide order
dt. 5.2.2024 in WMP.16429/20
in WP.6511/20)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the issuance of impugned order in G.O.(3D) No.105, Housing and Urban Development (UD-VII(1) Department dated 13.08.2019 issued by the first respondent herein and quash the same, consequently de-seal the premises at Old No.25, New No.34, Dr.Ambedkar First Street, Villivakkam, Chennai 600 049.

For Petitioner :: Mr.C.Umashankar

For Respondents :: Mr.R.Kumaravel
Additional Government Pleader
for R1
Mrs.P.Veena Suresh
Standing Counsel for R2
Mr.D.B.R.Prabhu
Standing Counsel for R3
Mr.K.B.Rajendran
Party-in-Person for R4 to R8



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ORDER

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

The present writ petition is filed for issuance of a writ of certiorarified mandamus calling for the entire records pertaining to the impugned order in G.O.(3D) No.105, Housing and Urban Development (UD-VII(1) Department dated 13.08.2019 issued by the first respondent herein and quash the same and to consequently direct the official respondents to de-seal the premises at Old No.25, New No.34, Dr.Ambedkar First Street, Villivakkam, Chennai.

2. Though final orders were dictated by this Court on 23.02.2024, before signing the order, we entertained a doubt as regards maintainability of this writ petition and therefore, we directed the matter to be listed under the caption “for being mentioned”. Accordingly, the matter is listed today under the caption “for being mentioned”. After hearing the learned counsel on either side, this Court now passes the following order :



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3. The petitioner appears to have put up construction in the property bearing Old No.25, New No.34, Dr.Ambedkar First Street, Villivakkam, Chennai. The petitioner states that the said property originally belonged to her mother and the same was allotted to the petitioner by way of a compromise decree in the partition suit. It appears that there is a dispute regarding title to the property in which the petitioner has put up construction. It is the case of petitioner that there was a compromise decree in O.S.No.1287 of 1986 and by that decree, the petitioner, her mother by name Mrs.Rameshwari and her brother by name Mr.Muthuraman were allotted specific properties. Since the property allotted to the petitioner is on the rear side, it is contended that there is a common passage left to be used by the petitioner and her brother. The said passage was kept in common at the time when the petitioner sold portion of the property to a third party. It appears that the fourth respondent's mother Mrs.Sampoornamma purchased the property from Mrs.Ashraf Unnissa, who had purchased the property from the petitioner. It is the case of petitioner that the passage is being used by the petitioner's brother and herself along with the fourth respondent's family. It is the case of petitioner that the fourth respondent herein has filed



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number of cases against the petitioner. The fourth respondent's suit for injunction against the petitioner is stated to be pending. The multiple litigations initiated by the fourth respondent would show that the fourth respondent, who is expected to approach the Civil Court, has instituted parallel proceedings involving the official respondents. It was only on account of the pressure given by the fourth respondent, it is stated by the petitioner that proceedings for lock and seal of the building put up by the petitioner was initiated by the Corporation.

4. The fourth respondent, who is appearing in person, submits that the petitioner has now encroached upon the pathway and put up unauthorized construction. It is in that context, the fourth respondent wants to establish that the construction put up by the petitioner is in the property kept as common for the usage by the fourth respondent. It is also alleged that the petitioner has not provided side set back. Based on the complaint given by the fourth respondent, the official respondents appear to have initiated action.



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5. Earlier, the fourth respondent approached this Court by way of a writ petition in W.P.No.28504 of 2019 for issuance of a writ of certiorarified mandamus, to call for the records of the 1st respondent pertaining to G.O.(3D) No.105, dated 13.08.2019, in Ir.No.21797 /UD 7-1/ 2018 -1 and quash the same partially in respect of 16th paragraph which reads as follows:- “Further as the actual sub-division of the plot can be carried out only after the civil Court decides the matter the Committee decided to reject the appeal and direct the party to approach the competent Authority with an application for planning permission based on the civil court verdict” and consequently direct the third respondent to remove the illegal unlawful and unauthorised constructions viz. ground, first, second and third floors by encroaching the Dr.Ambedkar First Street, Villivakkam Chennai 600 049 put up by fourth respondent therein, who is the petitioner herein. This Court, by order dated 01.10.2019, referring to the earlier order passed in W.P.No.12609 of 2017 dated 14.02.2018 filed by the fourth respondent, disposed of the writ petition leaving it open to the fourth respondent to avail the remedy by way of civil suit before the competent civil Court. It is to be seen that this Court, even in the previous writ



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petitions filed by the fourth respondent, in W.P.No.12609 of 2017, held that dispute regarding common passage has to be resolved only by civil Court and this Court cannot delve into it.

6. Now the petitioner has challenged the order passed in the Appeal, which is preferred by the petitioner under Section 79 of Town and Country Planning Act as against the order referring to quash the planning permission for the existing building. After referring to the request of objector on the construction put up by the petitioner, without considering the factual contentions raised by the petitioner, the Appeal filed by the petitioner was dismissed. This Court finds that the first respondent has dealt with the contentious issues on facts at the instance of a third party, namely, the fourth respondent, on the basis of the earlier order passed by this Court dated 14.02.2018 in W.P.No.12609 of 2017. A perusal of the impugned order shows that the first respondent has in fact referred to the previous orders passed by this Court holding that the contentious issues regarding title should be decided only by the civil Court. In both the writ petitions filed by the fourth respondent earlier, this Court reiterated that the remedy



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of the fourth respondent is only to approach the civil Court to establish that the construction is by encroachment into a common pathway. Except the allegation that the petitioner has encroached into the pathway which, according to the fourth respondent, is a common pathway for the petitioner and the fourth respondent and the other members, this Court is unable to justify the order passed by the first respondent to reject the Appeal by referring to the pendency of civil dispute. Earlier order proceeds on the footing that the petitioner had obtained a plan and had to rectify the defects in tune with the sanctioned plan.

7. The disputes regarding the passage, whether it is a common passage and whether the parties have right over the same and whether construction has been put up in passage, have to be dealt with only by the civil Court and this Court cannot delve into it in the writ petition. However, parties cannot be made to suffer irretrievable damage even without an adjudication of their rights in the Civil Suit.



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8. In view of the specific order passed by this Court in the earlier writ petition holding that the statutory appeal is not maintainable, we are unable to entertain this writ petition as against the order in the Appeal to the Government. Learned counsel for the petitioner, however, submits that the petitioner is entitled to file an independent application for planning permission in view of the new Tamil Nadu Combined Development and Building Rules, 2019. With such liberty preserved to the petitioner to file a fresh building plan permission in the manner known to law, without expressing any opinion on the merits of the petitioner's claim, this writ petition is closed. If the petitioner wants to file an application, either for regularisation or a new building plan permission or approval, the same shall be made within a period of two weeks from today. On such application being made by the petitioner, the same shall be processed and final orders shall be passed by the official respondents within a period of 16 weeks from the date of receipt of such application. Till such time the application for regularisation or building plan permission submitted by the petitioner is considered and disposed of on merits, the respondents shall not initiate any coercive action as against the petitioner. It is also open to the private



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respondents to prosecute their Civil Suit and depends upon the same, they are also entitled to be heard, if they get a Civil Court's decree in their favour. No costs. Consequently, W.M.P.Nos.7730, 7731 & 17690 of 2020 are closed.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
25.03.2024

ss/mkn

To

1. The Principal Secretary to Government
Housing and Urban Development
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Secretariat, Fort St.George
Chennai 600 009
2. The Member Secretary
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