



4.Ravi

5.K. Prema

W.P.No.86



... Respondents.

(R 5 impleaded as per court order

dated 07.08.2019 in W.M.P.No.22778/2019)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of WRIT OF MANDAMUS directing respondents 1 to 3 to take appropriate action against the illegal and unauthorised construction put up by the 4th respondent and acting or claiming on his behalf at Door No. 106, Kodambakkam High Road, Chennai 600 034, in accordance with law and demolish the same and grant suitable reliefs.

For Petitioners : Mr.C.Umashankar, Senior counsel

For Mr.C.Krishnakarthi

For R-1 : Mrs.P.Veena Suresh, Standing counsel

For RR 2 & 3 :Mr.E.C.Ramesh, Standing counsel

For R-4 : No appearance

For R-5 : Mr.T.Gowthaman, Senior Counsel

For Mr.B.Vijayakarhikeyan



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ORDER

Per J.NISHA BANU J.,

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This writ petition is filed praying for issuance of writ of Mandamus to direct the respondents 1 to 3 to take appropriate action against the illegal and unauthorised construction put up by the 4th respondent and acting or claiming on his behalf at Door No. 106, Kodambakkam High Road, Chennai 600 034, in accordance with law and demolish the same and grant suitable reliefs.

2. It is averred in the writ petition that the two petitioners, who are brothers, became absolute owners of the property bearing present door numbers – 106, 108, 109 and 110, Kodambakkam High Road, Madras – 600 034, after the death of their mother. Their mother was an absolute owner, who purchased the said property from one Mr.Krishna Iyer and Co, through an order dated 25.04.1979.

3. The petitioners submit that the back portion of the said property has been occupied by trespassers, who began fabricating sale deeds and putting up temporary, unauthorised constructions on behalf of the 4th respondent.

4. The mother of the petitioners filed an O.A.No.1253 of 2013 seeking injunction



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with respect to the unauthorised constructions and an injunction was granted via O.A dated 22.02.2016. In 2019, unauthorised constructions commenced again. The petitioner registered a complaint on 29.01.2019 in C.S.R No. 102 of 2019 but no action was taken by the police. Subsequently, the petitioner filed a Criminal O.P.No.3315 of 2019 before this Court, seeking directions to the police to implement the order of injunction. The Court, on 07.02.2019, ordered the police to take action within two weeks from the date of receipt of copy of the order. However, no action has been taken till date. Hence, the present writ petition.

5. Chennai Metropolitan Development Authority (CMDA), who is the 1st respondent herein, filed counter affidavit. It is submitted that the present writ petition is not maintainable as CMDA has the duty to take enforcement action, under sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, only in those cases for which CMDA has issued approved plan. In this case, CMDA has not issued approved plan. Therefore, 1st respondent submits that only Greater Chennai Corporation has the duty to take enforcement action.

6. The respondent, Greater Chennai Corporation filed Status Report stating that since there was some discrepancy with respect to the land in question, a letter dated



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31.05.2019 was addressed to the Tahsildar, Egmore Taluk, requesting to furnish the FMB sketch/Topo Sketch/layout and revenue records with respect to the property at Door No.106, in order to take further action. It is further stated that action has been taken against the 4th respondent building by issuing the following notices:

- a) Pre-Notice dated 08.05.2019 under s.56 and s.57 of the Tamil Nadu Town and Country Planning Act, 1971 issuing directions to submit approval plan with 15 days.*
- b) Locking & Sealing and Demolition Notice dated 19.06.2019 under s. 56 and s. 57 read with s.85 of the Tamil Nadu Town and Country Planning Act, 1971.*

7. The 5th respondent was impleaded as a party to this writ petition on the ground that she is in possession of the building in dispute and that the 4th respondent died at the time of filing of the present writ petition. She filed counter affidavit stating that the said building was constructed more than 50 years back. She was put in possession of the mortgaged property, which was very dilapidated; hence, she renovated the same. According to the 5th respondent, as against the notices from the statutory respondents, she filed appeal to the Secretary, Housing and Urban Development Department, Secretariat, and the same is pending consideration by the Government.



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

9. The above pleadings, counter statement and submissions would go to show that the petitioners filed suit in C.S.No.201 of 2011 for recovery of possession. In the said suit, injunction was ordered against the respondents 4 and 5 in O.A.No.1253 of 2015 in C.S.No.201 of 2011. However, the injunction was violated and contempt petition was filed in Cont.P.No.803 of 2019 and the same is pending. It is very clear that the respondents 4 and 5 have put up illegal and unauthorised construction in the subject property. The Greater Chennai Corporation have taken necessary action by issuing notice. Status report is also filed by the GCC stating that they requested the Thasildar, Egmore Taluk, to furnish the revenue records and that further action against the building in question will be taken as per provisions of Tamil Nadu Town and Country Planning Act, 1971 after receipt of the report of the Tahsildar, Egmore Taluk.

10. Admittedly, the 5th respondent is in possession of the mortgaged property and she is taking up renovation work and that there was no planning approval for the construction work that has been carried out in the said building. It is transpired that the petitioners filed suit for recovery of possession and the suit is pending. However, as far



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as unauthorised construction put up by the 4th and 5th respondents is concerned, Greater Chennai Corporation has already initiated action. The 4th and 5th respondents, without planning permission, cannot make any construction in the subject property more so when a civil suit is pending and injunction is granted, pending trial in the said suit. The statutory authorities of Greater Chennai Corporation, having issued Lock & Seal and De-occupation Notice on 12.07.2023, is directed to take further enforcement action as against the unauthorised construction put up by the 4th and 5th respondents and such action shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.J.,)

(N.M.J.,)

18.04.2024

Index : yes/no
Internet : yes/no
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To

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- 1.The Member Secretary,
Chennai Metropolitan Development Authority (CMDA)
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Marg,Egmore, Chennai-600 008
- 2.The Commissioner,
Greater Chennai Corporation
Rippon Buildings, Chennai-600 003
3. The Assistant Engineer, Chennai Corporation
Zone-9, Division-10
Chennai-600 034



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W.P.No.8600 of 2019

J.NISHA BANU, J.

&

N.MALA, J.

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**Order made in
W.P.No.8600 of 2019**

**Dated:
18.04.2024**