



WEB COPY



WP.No.12321/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.12321/2020
& WMP.No.15135/2020

Loga Shanmuga Perumal

... Petitioner

Vs.

1.Puducherry Planning Authority
rep.by Member Secretary
Jawajar Nagar, Boomiapet
Puducherry.

2.Periasamy @ Jambu
3.K.Balasubramaniam
4.K.Ganesamoorthy
5.Meenatchi
6.S.Hariprasad

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of mandamus directing the 1st respondent to demolish the unauthorised construction of the five storied residential building at No.1, Manakulavinayagar Street, 100 feet Road, ECR, Kailash Nagar,



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Lawspet, Puducherry in RS.No.156/1, Cadhasakar No.1307 2/2/2/2 now in Patta RS.No.156/1-A to an extent of 1403 sq.ft.

For Petitioner	: Mr.R.Dakshina Murthy
For R1	: Mr.J.Kumaran, AGP
For RR 2,3,5&6	: Mr.R.Asokan
For R4	: Mr.M.Gnanasekar

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1) This writ petition is filed by the petitioner seeking for issuance of a writ of mandamus to direct the 1st respondent to demolish the unauthorised construction of the five storied residential building at No.1, Manakulavinayagar Street, 100 feet Road, ECR, Kailash Nagar, Lawspet, Puducherry in RS.No.156/1-A to an extent of 1403 sq.ft.
- (2) The petitioner is none else than the brother of the 2nd respondent and son of respondents 3 and 5. It appears that there is a property dispute between the petitioner and the private respondents.
- (3) The petitioner is a resident of Puducherry. It is the case of the petitioner that he purchased the property bearing Door No.1, Manakulavinayagar Street, along with the 2nd respondent and two others and there was a



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palatial bungalow in the middle of the land purchased by them where the members of the family were living. It is the further case of the petitioner that in the south-western corner of the existing bungalow, there is a vacant space which was meant for parking and other purposes. The petitioner has further stated that against the wish of other joint owners, the 2nd respondent started putting up construction without any sub-division or partition of property by metes and bounds. The petitioner, though refers to several transactions among the co-owners, submitted a representation to the 1st respondent that the construction put up by the 2nd respondent and others, in the joint property is without fulfilling the obligations and that the private respondents had engaged in illegal construction of a huge building. The petitioner states that the 1st respondent, though issued a notice on 06.08.2020 to stop the construction, respondents 2 to 5 continued with the construction illegally and completed the construction despite the objection raised by the petitioner and other co-owners. The petitioner also refers to several representations to the Government and the revenue officials who have initiated proceedings under Section 145 of Cr.P.C. Stating that the official respondents are not taking action in



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accordance with the statute, the petitioner has come up with the present writ petition.

(4) Heard the learned counsel for the petitioner ; learned counsel appearing for the 1st respondent ; learned counsel appearing for respondents 2, 3, 5 and 6 and the learned counsel appearing for the 4th respondent and perused the materials placed.

(5) The property dispute between the petitioner and the private respondents is admitted. It is seen that the 1st respondent has issued a notice on 06.08.2020 calling upon the petitioner's brother / 2nd respondent herein to stop all works alleging some violations under Puducherry Town and Country Planning Act, 1969. Thereafter, a Notice was also issued to the petitioner's father / 3rd respondent herein. It is also admitted that the 1st respondent has again issued notice for demolition of the unauthorised construction put up by the respondents 2, 3 and 5.

(6) The 1st respondent has filed a counter affidavit *inter alia* pointing out that as against the orders issued for stopping the work and for demolition, private respondents have filed an appeal and they have also applied for regularisation of the building under the proposed scheme which is yet to



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be introduced in Union Territory of Puducherry. However, it is stated that the regularisation of unauthorised construction can be considered under the scheme which is yet to be finalised by the Government of Puducherry.

(7) The petitioner's mother / 5th respondent herein has filed a counter affidavit admitting the construction, but it is stated that the construction is not extended to five floors and it is only a three floor building. The construction in the fourth floor, according to her, is for the purpose of lift. It is stated by the 5th respondent that the construction is not in violation of any building regulations. The private respondents have unanimously stated that they have filed a statutory appeal as against the order passed by the 1st respondent for removal of unauthorised construction and they have applied for regularisation under a scheme which is yet to be notified by the Government of Puducherry.

(8) The fact that the building put up by the private respondents is regularisable under the scheme which is yet to be finalised is evident from the counter of the 1st respondent.

(9) The learned counsel for the private respondents submitted that when the official respondent has already initiated action for removal of



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unauthorised construction, till such time the statutory appeal preferred by the private respondents is disposed of on merits and the regularisation application is also considered, the 1st respondent may not take any coercive action for demolition of the construction.

(10)The learned counsel for the petitioner repeatedly submits that the whole building which is unauthorised, cannot be allowed to exist.

(11)The petitioner is not really aggrieved by the construction as he has not stated about any legal injury he has suffered on account of the construction being put up contrary to the approved plan. His real grievance is that the private respondents shall not be allowed to put up construction unless the rights of parties towards their respective share is settled. The private respondents have specifically taken a stand that the petitioner has been given substantial property and there was a division of property by agreement according to the rights of individuals. This is a factual issue. The petitioner who may have grievance, has to approach the Civil Court for appropriate relief by filing a suit for partition or for other reliefs. When the petitioner approaches the Civil Court, he may also get an interim order, which would preserve his right during the pendency of



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the suit. However, the petitioner has now filed this writ petition only to stall the construction probably to give pressure to the private respondents for some sort of settlement against their wish. The conduct and attitude of the petitioner only shows the lack of *bona fides* in the litigation.

(12) In view of the fact that the petitioner's brother and parents have already put up construction by spending a huge money and they have also sought for regularisation of their construction, which will be decided once the regularisation scheme is finalised by the Government of Puducherry, this Court, in the absence of *bona fides*, finds that the writ petition is liable to be dismissed with cost.

(13) However, the learned counsel for the petitioner requested to waive cost.

(14) Hence, the writ petition stands **dismissed for want of merits and *bona fides***. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
08.02.2024

AP
Internet : Yes
Neutral Citation: Yes/No

To



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The Member Secretary
Puducherry Planning Authority
Jawajar Nagar, Boomiapet
Puducherry.



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and
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