



W.P. No.12329 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**W.P.No.12329 of 2024
and
W.M.P.Nos.13432 and 13433 of 2024**

Sankar.B,

... Petitioner

.Vs.

1.The Commissioner
The Greater Corproation of Chenani,
Ripon Building, Chenani 600 003.

2.The Senior Planner
Chennai Metropolitan Development Authority,
Chennai 600 008.

3.Executive Engineer, zone viii
Greater Chennai Corporation No 36B,
Pulla Avenue, Shenioy Nagar,
Chennai 600 030.

4.L. Nandakumar

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent/Executive Engineer, Zone-VIII in order No.Z.O.VIII.C.No.7906/2023 dated 18.10.2023 and quash the same and pass orders.

For Petitioners : Ms.Reshmi Christy

For Respondents : Mr.E.C. Ramesh for R1
(Standing Counsel- Greater Chennai Corporation)
: Mrs.Veena Suresh for R2
: Mr. M. Venkateswaran for R4

ORDER

This Writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3 rd respondent/Executive Engineer, Zone-VIII in order No.Z.O.VIII.C.No.7906/2023 dated 18.10.2023 and quash the same and pass orders.

2. The case of the petitioner is as follows:



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(i) The petitioner is a senior citizen and the absolute owner of the property comprised in No. 9(3), Sylvan lodge colony, 2nd street, Kilpauk, Chennai- 600 010. On 19/07/2019, he has obtained sub-division approval and building approval from the Greater Chennai Corporation for construction of residential building with 1 dwelling unit for the mentioned property within the limit of Greater Chennai Corporation showing 2 street as a road accessing to his above stated property. He was enjoying the peacefully possession of the above stated property without any interruption.

(ii) This being so, Mr. L.Nandakumar, the 4th respondent herein has filed an Writ Petition in W.P.No.26093 of 2021 before this Court seeking for consideration his representation dated 16/09/2021 to remove the encroachment made by the petitioner herein by putting up a ramp and flower pots since the same is not considered by the respondents herein. This Court by order dated 05.01.2023 without going into the merits of the case, directed the respondents 1 to 3 to consider the representation of the 4th respondent herein within a period of period of three months, from the date of receipt of a copy of this order.

(iii) Pursuant to the aforesaid order, the 2nd respondent herein



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has conducted a personal hearing and after taking into consideration, the final planning permission obtained by the petitioner from the Greater Chennai Corporation and it is observed from the drawing that the subdivision is fully authorized by Greater Chennai Corporation and the gate facing Sylvan Colony 2nd street is legally not tenable, as the Greater Chennai Corporation has approved the plan and even before the approval of the new construction the gate was in existence and the front gates are placed not close to the compound wall of the 4th respondent and it is sufficiently away from the compound wall and hence the contention of the 4th respondent is not correct and after conducting the hearing and further deliberation 2nd respondent passed an order vide EC/N-I/11267/2022 on 11/04/2023.

(iv) This being so, the 3rd respondent herein passed an order vide Z.O.VIII.C.No. 7906/2023 dated 18/10/2023 directing the petitioner to remove/reduce the length of the ramp and also to remove the flower pots erected in the road portion. Hence, this Writ petition.

3.The learned counsel for the petitioner submits that the



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petitioner has obtained proper building permission from the Greater Chennai Corporation and even before the approval of the new construction the gate was in existence and the front gates are placed not to the compound wall of the 4th respondent and it didn't create any hardship to any residence at the locality. Hence, there was no violation on the part of the petitioner. Further, in the the street where the petitioner is residing all persons have constructed a ramp and this was not taken note of.

4.It has been further submitted by the learned counsel for the petitioner that the petitioner has not made any violation and the ramp and the placed flower pots was not on the road portion and it does not cause any hindrance. Since there is permission, there is no question of treating the same as unauthorized. However, the 3rd respondent without application of mind, has passed the impugned order vide Z.O.VIII.C.No. 7906/2023 dated 18/10/2023 directing the petitioner to remove/reduce the length of the ramp and also to remove the flower pots erected in the road portion of the subject property. Hence, he seeks the relief as prayed therein.

5. The learned counsel for the 4th respondent submits that the



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4th respondent herein is the joint-owner of the above addressed property and the said property is ancestral property originally belonged to his grandfather Late Mr.L.Venkatachala Reddy, who had settled the property to his grandsons to the 4th respondent and his brother. They have been in peaceful possession and enjoyment from year 1980.

6.It has been further submitted by the learned counsel for the 4th respondent that the said property was earmarked in the master/ layout in S.No.3109/37, CIT Nagar, called as Sylvan Lodge Colony from its inception and the 4th respondent's property is in 2nd cross street, Sylvan lodge Colony. The 2nd Cross Street is a dead-end Street. There was no access to the adjacent land in Survey No.3111/16 through 2nd Cross Street, Sylvan Lodge Colony, and the same was having ingress and egress through Dr.Vasudevan Road.

7.The learned counsel for the 4th respondent further submits that the petitioner's property was originally belonged to the 4th respondent's uncle Late Mr.Srinivasalu and Late. Mrs.L.Jayalakshmi,. In their life time, they settled the property to and in favour of their four sons. Vide settlement



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deed dated 31.12.1970, registered as document No.2412/1970. They were continued in possession and enjoyment. After the death of the uncle of the 4th respondent, their sons have partitioned the property vide partition deed dated 2500/2013, registered as Document No.3635/2013. As per the partition deed an undivided share of the Western Portion was allotted to Mr.L.Leelakrishna, Mrs.L.Hemalatha, Mrs.L.Priyanka&L.Teleshwar, and the eastern portion was allotted to Mr.L.Sundareshwar and Mr.L.Maheswar.

8.It has been further submitted by the learned counsel for the 4th respondent that in the year 2019, the said Mr.Leelakrishna and others used the Dr.Vasudevan Road, then they sold their share to the petitioner herein vide sale deed Doc. No.2500/2019. The vendor applied for demolition of the property from the 3rd respondent by falsely saying that he have access to his property through the 2nd Cross Street, Sylvan Lodge Colony and this respondent objected to it, at the time demolition of the building in the property, but the vendor of the petitioner herein requested to permit him to remove the debris through the 2nd Cross Street, Sylvan Lodge Colony. Further, the petitioner also requested till his construction as temporary access to his property. Thereafter, the petitioner had encroached the 2nd



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street, Sylvan lodge by putting up a gate and 10” feet ramp and placing flower pots. Hence, the 4th respondent has filed a suit in O.S. No.5527 of 2022 seeking for mandatory injunction for removal of encroachment which is pending on the file of VI Assistant City Civil Court, Chennai in the stage of Trial. Further, he gave a representation on 16.09.2021 to the authorities concerned in this regard. Since no action was taken, he has filed W.P.No.26093/2021 before this Court, seeking for writ mandamus to consider his representation dated 16.09.2021 and the same was allowed vide order dated 05.01.2023. In pursuance of the order in WP. No.26093/2021, the 3rd Respondent herein had conducted enquiry, after hearing both parties and on personal inspection of the site in question and found that there is an encroachment by the petitioner by putting up a ramp covering the road portion and also constructed/placed flower pots adjacent to the compound of the petitioner building in the road portion. Hence, the 3d Respondent had passed order dated 18.10.2023, and after keeping quiet for long time, the petitioner has come without complying the order of the 3rd Respondent to remove the encroachments on the road with the present writ petition.

9. The learned counsel for the 4th respondent further submits that it is incorrect to state that as being observed by the 2 Respondent in his



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order dated 11.04.2023, the sub division is fully authorized by the greater Chennai Corporation and the gate facing Sylvan Colony 2nd Street is legally tenable. But the 2nd Respondent had rejected the representation of the 4th respondent herein that it could not be consider, since the petitioner had obtained sub division approval and building approval from Greater Chennai Corporation showing 9.15m wide Sylvan Lodge Colony, dead- end Street as a road accessing to the his Plot. The said alleged subdivision and building approval are being obtained by the petitioner only on his mis-representation that could not be a his legal permission. Therefore it is clear that the present writ petition is nothing but clear abuse of process of law and liable to be dismissed.

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

11. On a perusal of the records, it is seen that when the case came up for admission on 30.04.2024, this Court granted interim stay since the petitioner made out a Prima facie case and directed the respondents to produce the relevant photographs and documents to substantiate their case.



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Accordingly, the 4th respondent has produced the photographs and filed counter.

12. Having considered the facts and circumstances of the case and submissions made by the learned counsel on either side, it is seen that the petitioner had obtained sub division approval and building approval from Greater Chennai Corporation showing 9.15m wide Sylvan Lodge Colony, dead end street as a road accessing to his plot. Against this approval, the 4th respondent has not challenged it and however, he has also filed a suit in O.S. No.5527 of 2022 on the file of VI Assistant City Civil Court, Chennai, seeking for mandatory injunction against the petitioner herein. Further, during the pendency of the suit, the 4th respondent has sent various representations as against the petitioner's gate and ramp to the authorities concerned and as no action has been taken on his representations, he has filed the Writ Petition No.26093 of 2021 seeking the relief for the same cause of action by suppressing the suit filed by him.

13. Pursuant to the order of this Court dated 05.01.2023 in Writ Petition No.26093 of 2021, on enquiry after hearing both sides, the 2nd



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respondent passed an order dated 11.04.2023 in EC/N-I/11267/2022 rejecting the contention of the 4th respondent herein. Against this order also, the 4th respondent has not challenged. Despite the 4th respondent has approached the Civil Court and the suit is pending for the same cause of action, he has sent various representations to the authorities concerned as against the petitioner's gate and ramp without impleading the Chennai Corporation. Under such circumstances, the impugned order dated 18.10.2023 passed by the 3rd respondent is unwarranted and ought not to have been issued to the petitioner. Hence, the impugned order dated 18.10.2023 passed by the 3rd respondent is hereby quashed. However, it is left open to the parties to agitate all the issues in the pending suit.

14. In the result, the Writ petition is allowed. No costs.

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Index : Yes/No
Internet: Yes/No
Lbm

V.BHAVANI SUBBAROYAN, J.,

Lbm



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To
WEB COPY

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