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WP.No.14723/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.14723/2023 & WMP.Nos.14238 & 14244/2023

1.S.Vijayan
2.S.Pachayappan
3.S.Susiyaraj
4.S.Kandhan
5.Lakshmi
6.Senjilakshmi
7.S.Gnanamoorthy
P1 to P7 are represented by
their Agent V.Indumathi

... Petitioners

****Cause Title amended as per
order dated 24.01.2024 in
WMP.No.1398/2024 in WP.No.14723/2023**

Vs.

1.The State of Tamil Nadu
rep.by its Additional Secretary [Technical]
Housing and Urban Development
Fort St George, Chennai.

2.The Member Secretary



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Chennai Metro Development Authority
Thalamuthu Natarajan Building
Gandhi Irwin Road, Chennai.

3.The Commissioner
Corporation of Chennai, Ripon Building
Chennai-3.

4.The Executive Engineer
Corporation of Chennai
Zonal Office-3, No.1
Thattankulam Street, Bazar Road
Madhavaram, Chennai 600 060.

5.T.Chandran

6.The Tahsildar
Madhavaram, Chennai.

... Respondents

****R6 suo motu impleaded vide order
dated 31.10.2023 in WP.No.14723/2023**

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records related to the Impugned Order Letter No.4129323/UD-VI[1]/2023-2 dated 27.03.2023 on the file of the 1st respondent, quash the same and direct the respondents to consider the representation as per accordance with the law.

For Petitioners	: Mr.P.Seniyangiri
For RR 1 & 6	: Mr.M.Muthusamy, GA
For R2	: Mr.R.Thamaraiselvan
For RR3 & 4	: Mr.E.C.Ramesh
For R5	: Mr.M.Gnanasekar



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ORDER

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

(1)The present writ petition has been filed by the petitioner to quash the order of the 1st respondent dated 27.03.2023 whereby the 5th respondent herein was granted three months time to rectify the violations in the building put up by him and the Corporation was directed to de-seal the building for the said purpose and on failure on the part of the 5th respondent to comply with the directions, to re-seal the premises and to direct the official respondents to consider the representation of the petitioner dated 14.04.2023 seeking removal of unauthorised construction put up by the 5th respondent herein.

(2)The petitioners state that they are the owners of the property located in old S.No.448, Puzhal Village, Tiruvallur District. It is their case that the 5th respondent herein, knowing that the property does not belong to him, has put up construction in the land belonging to the petitioners without any approval from the official respondents. It is also stated by the petitioners that the 5th respondent has not provided the side setback and



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adhered to other building regulations. The petitioners have made objections to the official respondents and it is admitted that at one point of time, the official respondents have initiated proceedings for lock and seal. Thereafter, the 5th respondent filed a revision petition before the Government as against the order passed by the 4th respondent to lock and seal the premises. After holding an enquiry, the 1st respondent, taking note of the fact that the dispute is pending before the Civil Court regarding title, granted three months time to the 5th respondent to rectify the violations and to obtain necessary approval for building as per the Tamil Nadu Combined and Development Building Rules, 2019.

(3) In view of the direction, a consequential order was also passed directing the Corporation to de-seal the building for a period of three months to rectify the violations. It is against the said order, the present writ petition is filed by the petitioner mainly on the ground that the 5th respondent has put up the construction unauthorisedly without even holding title.

(4) The main contention raised before this Court is that the 5th respondent claims title over the property on the basis of an unregistered Sale Deed obtained from a stranger and the petitioners have filed a suit for



injunction.

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- (5) The learned counsel for the petitioner now realise that the remedy of the petitioners is to file a suit for recovery of possession at least in respect of the property in which the building is constructed.
- (6) Though the dispute is regarding title, *prima facie* this Court is convinced that the 5th respondent has no title as he admits that his claim is based on an unregistered Sale Deed which is not even admissible in evidence.
- (7) The fact that the construction put up by the 5th respondent is not in dispute. The learned counsel for the 5th respondent submits that patta had been issued by the Tahsildar. Though this Court directed the 6th respondent / Tahsildar to file a report, no report has been filed.
- (8) It is to be noted that the Tahsildar has no power to issue patta or record mutation of revenue records unless the property from the holder of patta is transferred in favour of any person by a valid document. Under Section 12 of the Tamil Nadu Patta Passbook Act, the Tahsildar can effect mutation only when there is a transfer of interest inter parties or by devolution by succession. Again under Section 14 of the Tamil Nadu Patta Passbook Act, the Tahsildar is competent to transfer patta pursuant



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to a declaration of one's title by Civil Court.

(9) In this case, the petitioners' contention that the 5th respondent is not entitled to patta, is correct. Even though the 5th respondent has not been in lawful possession and his claim on the basis of patta is false, the Civil Court may grant appropriate relief to the petitioners when they file a suit for recovery of possession after establishing their title. However, this Court is not inclined to grant any relief to the petitioners in view of the admitted fact that the 5th respondent is in possession by putting up a construction. This order will not be taken for granted by the official respondents to acknowledge the unauthorised construction. The construction put up by the 5th respondent is illegal and unauthorised. If the construction is in accordance with the Building Regulations, the 5th respondent is entitled to hold the property to the extent the building would survive without any deviation.

(10) Therefore, the official respondents are directed to take further action as against the 5th respondent to bring the building in accordance with the approved plan. As indicated earlier, it is open to the petitioners to file



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appropriate suit and this order will not stand in the way of the petitioners getting appropriate relief from the Civil Court upon establishing petitioners' right.

(11)With the above observations, the writ petition stands **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [N.S., J.]
02.04.2024

AP
Internet : Yes

To

- 1.The Additional Secretary [Technical], State of Tamil Nadu
Housing and Urban Development
Fort St George, Chennai.
- 2.The Member Secretary
Chennai Metro Development Authority
Thalamuthu Natarajan Building
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S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

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