



W.P.No.14387 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.14387 of 2020 and

WMP Nos.4828, 4832 of 2021

A.Jayapal

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai 600 009.
2. Member Secretary,
Chennai Metropolitan Development Authority
Egmore, Chennai 600 008.
3. The District Collector, Chengalpattu District,
Chengalpattu.
4. The Deputy Director of Town and Country Planning,
No.124, GST Road, Periyar Shopping Complex,
Chengalpattu 603 001.
5. The Commissioner, Kattangulathur Panchayat Union,
Kattangulathur, Chengalpattu District.



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6. S.V.Shriramulu, Chairman,
S & P Foundation Private Limited,
4th floor, No.7, City Towers, III Cross Street,
Kasturiba Nagar, Adyar, Chennai 600 020.

7. Vijayakumar Surana

8. Casa Grande Enterprises LLP,
NPL Devi, New No.111,
Old No.59, L.B.Road, Chennai 600 041.

9. The Secretary to Government,
Public Works Department, Chennai.
(R9 suo motu impleaded, vide order date 6.11.2023
made in W.P.No.4387/2020.

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India to issue a writ of mandamus, directing the respondents 2, 4 and 5 to take action under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act 1971 (TN Act 35 of 1972) against the unauthorized construction of compound wall put up by the 6th to 8th respondents in survey Nos.119, 152 and 148 in Nedungundrum Village, Vandalur Taluk, Chengalpattu District and to direct the third respondent to ensure that the main canal and its channels of PWD lake in Nedungundram Village are restored.

For Petitioner : Mr.A.Jayapal, party in person

For Respondents : Mr.V.Manoharan, Addl.Govt.Pleader
for respondents 1, 3, 4 and 9



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Mr.V.Sudalai Selvam, Standing counsel
for second respondent

Mr.Ganesh, for eighth respondent

No appearance for respondents 5, 6 and 7

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed by the petitioner seeking direction to the respondents 2, 4 and 5 to take action under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act 1971 (TN Act 35 of 1972) against the unauthorized construction of compound wall put up by the 6th to 8th respondents in survey Nos.119, 152 and 148 in Nedungundrum Village, Vandalur Taluk, Chengalpattu District and to direct the third respondent to ensure that the main canal and its channels of PWD lake in Nedungundram Village are restored.

2. The father of the petitioner had purchased various lands in Nedungundram Village, Vandalur Taluk in the year 1959 and after his demise, the petitioner inherited 1.38 acres of agricultural land in S.Nos.120/2, 122/1 and 122/2, Scheduled as " C " Property, through a



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registered Will in doc.No.23/1999, dated 16.02.1999 executed by his father.

The 6th respondent had purchased lands from the brothers of the petitioner, on south, west and east of his land and constructed office building with an entry gate, encroaching the main canal, near Kalyani pond and also the lands belonging to Agastheeswarar Temple of Nedungundrum Village. Subsequently, he sold the lands to M/s Erica Projects Limited, New Delhi in the year 2008, who in turn sold to 7th respondent, vide doc.No.4367/2016 of Tambaram sub Registrar Office. The 7th respondent, hand in glove with the respondent No.7 and 8, has raised compound wall in S.No.119 and the respondents 7 and 8 raised compound wall in S.Nos.152 and 148, encroaching the property of the petitioner and also the canal and its channels. The petitioner made a representation to the Sub Collector, Chengalpattu District about the encroachment made by the respondents 6, 7 and 8 without any plan and approval. Further, the seventh respondent attempted to construct compound wall in S.Nos.115,116 and 119, for which the petitioner had given complaint on 24.03.2020, through Electronic Media to the Chief Minister cell. However, no action was taken. Hence this writ petition has been filed.



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3. The second respondent (CMDA) filed counter affidavit stating that as per records, no planning permission was issued to the site, described in the writ petition. Further it is stated that the CMDA has delegated powers to all the local bodies within Chennai Metropolitan area to take action on all types of unauthorized/deviated constructions, under the provisions of Tamil Nadu Town and Country Planning Act, 1971. Therefore, the further course of action has to be pursued only by the Commissioner, Kattankulathur Panchayat Union, under the delegation of powers issued by CMDA and also as per the local body Act.

5. The learned Standing Counsel appearing for the second respondent (CMDA) submitted that, now, the power is vested with the local authorities to take necessary action on the unauthorized and deviated constructions, as per the Local Body Act. Therefore, the Commissioner of Kattankulathur Panchayat Union has to take necessary action in the above matter.

6. The learned Additional Government Pleader appearing for the respondents 1, 3, 4 and 9 submitted that, the subject matter of the property is



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situated in Nedungundram Village, which comes under the jurisdiction of the CMDA, however, they are not competent authority to decide the issue, whereas, the 5th respondent is the competent authority to take necessary action on the subject matter of the property.

7. Despite notice has been served, none appeared on behalf of the 5th respondent and also no counter affidavit has been filed by them.

8. On perusal of records shows that, the petitioner has submitted his representation to the Sub Collector of Chengalpattu District, seeking demolition of the wall, which is put up around the land of the petitioner, without leaving any passage. However, the said Sub Collector, Chengalpattu District is not party to the writ petition. Further, the petitioner has not given any representation to the concerned local body, namely Kattankulathur Panchayat Union with regard to the alleged unauthorized construction of compound wall.



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9. In such circumstances, considering the submission made by the learned counsel for the official respondents as well as the petitioner, and also taking into account the fact that as per the Local Body Act, the power is vested only with the local authorities, viz., Commissioner of Kattankulathur Panchayat Union to take necessary action on the unauthorized and deviated constructions, we inclined to dispose the writ petition with the following directions.

i) The petitioner is directed to the make a representation with regard to the unauthorised construction made by the private respondents to the 5th respondent, namely the Commissioner, Kattankulathur Panchayat Union, Kattankulathur, Chengalpattu District, within a period of four weeks from the date of receipt of a copy of this order.

ii) On such representation being received, the fifth respondent is directed to consider the same and take further course of action, in accordance with law, within two weeks from the date of receipt of the representation.



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10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.) (K.B.J.)

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Internet: Yes/No

Index : Yes/No

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To

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2. Member Secretary,
Chennai Metropolitan Development Authority
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and
K. KUMARESH BABU, J.

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