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W.P.No.14002 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**W.P.No.14002 of 2024
and W.M.P.No.15186 of 2024**

G.Muthukrishnan

...Petitioner

vs.

1.The Principal Secretary to Government,
Housing & Urban Development Department,
Fort St. George,
Chennai – 600 009.

2.The Greater Chennai Corporation,
Rep. by its Commissioner,
Rippon Buildings,
Chennai – 600 003.

3.The Assistant Engineer,
Greater Chennai Corporation,
Division 192, Chennai.

4.The Executive Engineer,
Greater Chennai Corporation,
Zone-15, Chennai.

5.The Assistant Executive Engineer,
Greater Chennai Corporation,
Unit 44, Chennai.

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the proceedings of the 1st respondent dated 21.03.2024 passed in Letter No.5916784/UDVII(2)/2023-3 and quash the same.

For Petitioner : Mr.C.S.Kiran

For Respondents : Mr.R.Vigneshwaran for R1
Government Advocate

Mrs.K.Aswini Devi for R2 to R5
Standing Counsel

ORDER

(Order of the Court was made by S.S.Sundar, J.)

The writ petition is filed challenging the order passed by the first respondent dated 21.03.2024 in the statutory revision filed by the petitioner under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971.

2.The brief facts necessary to dispose of the case are as follows:

The petitioner states that along with his brothers, he obtained patta for New Survey No.98/11 by the Special Tahsildar under the Natham Settlement Scheme in the year 2010. The petitioner admits that he has put up construction without any planning permission. Respondents



issued notice on 30.08.2023 to the petitioner stating that the house constructed by the petitioner in New Survey No.98/11 was unapproved.

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Though the petitioner submitted a reply to the notice, the respondents 2 to 5 had passed an order to lock and seal the premises by proceedings dated 06.10.2023. The petitioner challenged the aforesaid order by a statutory provision under Section 80(A) of the Tamil Nadu Town and Country Planning Act, 1971 before the first respondent. The first respondent has passed the impugned order rejecting the statutory revision filed by the petitioner upon satisfying himself that the petitioner is not even the owner of the property and that he has encroached into the poramboke land including a road portion. Challenging the same, the petitioner preferred the above writ petition.

3.Learned counsel appearing for the petitioner submitted that the impugned order is without jurisdiction in as much as the first respondent has exceeded its jurisdiction by making observation that the petitioner has encroached into the public property (poramboke land). Learned counsel further submitted that by impugned order, the petitioner has been held to be an encroacher of public road without following the procedures under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998. Learned counsel further submitted that the petitioner who is in possession and



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enjoyment of the property for a long time has now been declared to be encroacher in an enquiry where the scope is confined to the issue whether the construction put by the petitioner is unauthorized.

4. When the learned counsel for the petitioner asked to produce the building plan approval, fairly submitted before this Court that the building has been constructed without any permission or building plan approval. This fact itself is sufficient to hold that the construction is unauthorized without even going into the other issues.

5. Learned counsel submitted that the petitioner has got patta and other documents and therefore, the impugned order based on the premise that the petitioner has encroached into the public property cannot be sustained.

6. The petitioner has put up construction without planning permission and therefore, the entire construction is unauthorized. The fact whether the petitioner has encroached on public land or not is not an issue before the first respondent. However, the first respondent cannot ignore the facts which are brought to the notice of the first respondent as the first respondent is duty bound to consider if there are records to show



that some strangers are putting up construction on the public land or Government land.

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7.Be that as it may, the petitioner has not filed any suit before the civil Court seeking declaration of his title even though there is a dispute. It is in the said circumstances, this Court is inclined to pass the following order:

(i).The respondents shall maintain *status quo* for a period of three months from the date of receipt of a copy of this order.

(ii).It is open to the petitioner to file a civil suit for declaration of his title and consequential prayer based on the documents to establish his title. If a suit is filed and an interim order is granted by the civil Court, the respondents shall wait till the issue is considered by the civil Court. It is also open to the petitioner to submit a building plan in case civil court declares his title.

(iii).In case, the petitioner is unable to get an order from the civil Court to protect his possession or construction, it is open to the respondents to proceed further pursuant to the order of the first respondent impugned in this writ petition.



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8. With the above directions, the writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

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(S.S.S.R.,J.) (N.S.,J.)

03.07.2024

Index: yes/no

Speaking order: yes/no

Neutral Citation: yes/no

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To

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