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W.P.No.19085 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024
(Reserved on 06.12.2023)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.19085 of 2023
and
WMP.No.23011 of 2023

V.Sumathi

... Petitioner

vs.

1. The Greater Chennai Corporation,
Rep by its Commissioner,
Ripon Building,
Chennai-600 030.

2. The Executive Engineer,
Zone-8,
Corporation of Chennai,
Shenoy Nagar,
Chennai-600 030.

3. P.R.Sree Ranjini

4. P.R.Praveen Kumar

... Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a Writ of Mandamus, directing the respondent No.2 to



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remove the seal at the premises at Door No.104/152, Mettu Street, Ayanavaram, Chennai-600023.

For Petitioner : Mr.N.Pragasan

For R1 & R2 : Mr.J.Ravindran

Additional Advocate General assisted by
Mr.D.B.R.Prabu, Standing Counsel

For R3 & R4 : Mr.Viduthalai, Senior Counsel
for Mr.V.Balakrishnan.

ORDER

(Order of the Court was made by **J.NISHA BANU, J.**)

The prayer in the writ petition is for issuance of a Writ of Mandamus, directing the 2nd respondent to remove the seal at the premises in Door No.104/152, Mettu Street, Ayanavaram, Chennai-600023.

2. Learned counsel for the petitioner submits that the property in the abovesaid address is the ancestral house of the petitioner and she has been residing in the said property for more than 60 years. While so, the 3rd respondent who is residing behind the abovesaid property of the petitioner, has made a complaint to the respondents 1 and 2 stating that the petitioner has put up unauthorised construction. Since no action was taken, he filed a writ petition in W.P.No.34757 of 2022 for demolition of



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the alleged unauthorised construction by the petitioner. In the said writ petition, the petitioner was not made as a party and her uncle one Karunamurthy was arrayed as 3rd respondent. This Court by order dated 03.01.2023 disposed of the said writ petition directing the respondents 1 and 2 to inspect the property in question after issuing notice to the petitioner and 3rd respondent therein and if there is any unauthorised shed put up in the common pathway, further direction was issued to take immediate action against the 3rd respondent therein and others. Thereafter, the 2nd respondent issued a notice to the petitioner under Sections 56 and 57 of the Town and Country Planning Act, 1971, directing the petitioner to remove the unauthorised construction in the common pathway. According to the petitioner, she submitted a reply stating that she never put up unauthorised construction but she only covered the roof with tin sheets since the thatched roof thereat had fallen down and premises were open to sky. The 2nd respondent issued another notice on 27.02.2023 for locking and sealing. Thereafter, the 2nd respondent on 02.05.2023 sealed the premises of the petitioner and by letter dated 05.05.2023 the petitioner requested the 2nd respondent to remove the seal so that she can remove the tin sheets on the roof but there was no reply. After sending legal notice to respondents 1 to 3, the



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petitioner has filed this writ petition.

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3. Learned counsel for petitioner further submitted that after filing of this writ petition, the petitioner came to know that newly impleaded 4th respondent herein filed W.P.No.16206 of 2023 for a Mandamus directing the respondents 1 and 2 to remove the lock and seal put up by them and to permit him to remove unauthorised shed on the north-east course of his property at Door No.104/152, Mettu Street, Aynavaram, Chennai. In the said writ petition also, the petitioner herein was not made as a party. However, this Court by order dated 24.05.2023 granted one month time to remove the unauthorised construction. Pursuant to the said order, the 4th respondent herein removed all the present petitioner's household belongings kept in her premises. The 4th respondent also filed a suit in O.S.No.3126 of 2023 on the file of VI Assistant City Civil Court, for permanent injunction restraining the defendants from in any manner disturbing the ingress and egress to the plaintiff's property at No.104/152, Mettu Street, Aynavaram, Chennai. In the said suit, Karunamurthy and the petitioner herein were made as parties but subsequently the 4th respondent/plaintiff withdrew the suit on 03.07.2023. The petitioner further states that respondents 2 to 4 have



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mislead the Court and obtained multi various orders in different writ petitions without adding the petitioner as party. Therefore, besides filing an impleading petition to implead the 4th respondent herein, the petitioner has also filed WMP.No.23011 of 2023 for amending the prayer as follows:

'Writ of Mandamus seeking directing to 2nd respondent to hand over the petitioner's premises at Door No.104/152, Mettu Street, Aynavaram, Chennai-600 023 and to deliver possession to the petitioner in the same condition when it was sealed on 02.05.2023 by the 2nd respondent.'

4. Learned counsel for petitioner referred to the civil litigation between Natarajan Naicker, his legal heirs and P.Ravikumar, his wife and children in C.S.No.178 of 2006 on the file of this Court. In the said suit, the plaintiffs who are P.Ravikumar, his wife and respondent 3 and 4 herein/children of P.Ravikumar sought for a declaration to declare the sale deeds dated 03.12.2004, 08.12.2004 and 11.12.2004 executed by the 1st defendant therein/R.Natarajan Naicker in respect of suit schedule 'A, B and C' properties are binding on the defendants 2 to 7 who are legal heirs



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of Natarajan Naicker. In the said suit, the maternal uncle of the petitioner

herein Mr.N.Karunamurthy was arrayed as 5th defendant.

5. According to the learned counsel, as per Document No.625/1946 on the file of Sub Registrar of Sembiam, Chennai, the total extent of property of Natarajan Naicker is 9405 sq.ft comprised in pimash No.980 T.S.No.84, Block No.28, Perambur Purasaiwakkam Taluk forming a part of Survey No.152, New Survey No.104, Mettu Street, Chennai. According to the learned counsel for petitioner, out of the total extent of abovesaid 9405 sq.ft., suit 'A' schedule consists of 2415 sq.ft was sold to the 1st plaintiff/P.Ravikumar by the 1st defendant/Natarajan Naicker by sale deed dated 03.12.2004; suit 'B' schedule consists of 2415 sq.ft was sold to the 2nd plaintiff/wife of P.Ravikumar by the 1st defendant/Natarajan Naicker by sale deed dated 08.12.2004; suit 'C' schedule consists of 2475 sq.ft was sold to the 3rd plaintiff/daughter of P.Ravikumar by the 1st defendant/Natarajan Naicker by sale deed dated 08.12.2004. Out of the total extent of 9405 sq.ft., by virtue of abovesaid three sale deeds, an extent of 7305 sq.ft has been sold by Natarajan Naicker to the plaintiffs 1 to 3 as stated above. Therefore, there is a balance of 2100 sq.ft., being undivided share for the legal heirs of



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Natarajan Naicker which includes the share of the present petitioner's mother Badmavathi who is the 6th defendant in C.S.No.178 of 2006. In order to grab this 2100 sq.ft., which is in possession of the present petitioner and her mother Badmavathi, the entire exercise of filing writ petitions and making complaint of unauthorised construction has been done and the Greater Chennai Corporation also without deciding the ownership of the property in question sealed and de-sealed the property and handed over the same to respondents 3 and 4 pursuant to the orders passed in multiple proceedings initiated by the respondents 3 and 4 by not disclosing the past events and without even making the petitioner as a party to those proceedings. Therefore, it is clearly an abuse of process of law.

6. It is also to be noted that one N.Ramamurthy son of Natarajan Naicker filed C.S.No.526 of 2006 against his father Natarajan Naicker, P.Ravikumar and his wife P.R.Prasanna Kumari and the 3rd respondent herein to declare the sale deed dated 08.12.2004 executed by Natarajan Naicker to the 2nd defendant/P.R.Prasanna Kumari as null and void and not binding on the plaintiff in this suit. Pending suit, Natarajan Naicker passed away in 2012 and therefore, his legal heirs were



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impleaded as defendants 5 to 8 but subsequently the said suit was withdrawn by the plaintiff/N.Ramamurthy. Thus, the learned counsel prays for allowing the amended prayer.

7. When the present writ petition came up for admission on 28.06.2023, learned Standing Counsel appearing for respondents 1 and 2 submitted that pursuant to the order passed in a connected writ petition in W.P.No.16206 of 2023 pertaining to the very same premises in question, the Corporation of Chennai had locked and sealed the premises in question and to that extent this Court directed the Greater Chennai Corporation to file a status report. Accordingly, on 01.07.2023, the 2nd respondent has filed a status report stating that pursuant to the order passed in W.P.No.16206 of 2023, the Greater Chennai Corporation had de-sealed the building in question at Door No.104/152, Mettu Street, Aynaaram, Chennai on 02.06.2023 and as per the undertaking given by the owner of the building before the Court, the owner had removed the unauthorised structure on his own. Therefore, the prayer in the present writ petition has become infructuous.

8. The 2nd respondent has filed additional status report on 13.07.2023 stating that the 3rd respondent herein gave a complaint dated



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14.12.2022 stating that the maternal uncle of the petitioner herein namely Mr.Karunamurthy is putting up an illegal construction of shed in the common pathway at Block No.28, Survey No.84, Door No.104/152, Mettu Street, Aynavaram, Chennai, and requested to take action. Thereafter, the 3rd respondent filed W.P.No.34757 of 2022 for demolition of the abovesaid unauthorised shed and this Court by order dated 03.01.2023 directed the respondents 1 and 2 therein to inspect the property in question after notice to the petitioner and 3rd respondent therein and if there is any unauthorised shed in the common pathway, take immediate action in accordance with law. Pursuant to the said order, inspection was conducted and pre-notice dated 02.02.2023 was issued to Karunamurthy. Since he failed to submit approved plan, the entire structure put up by him was treated as unauthorised one and therefore action was taken by issuing a lock & seal and demolition notice dated 27.03.2023 to Mr.Karunamurthy. After expiry of the statutory period of above notice, further action was taken by issuing a de-occupation notice dated 05.04.2023 to Mr.Karunamurthy. Thereafter, the shed in question was locked and sealed by the officials of Greater Chennai Corporation. Aggrieved by the said locking and sealing, the 4th respondent herein filed W.P.No.16206 of 2023 to de-seal the premises and to permit him to



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remove the unauthorised shed constructed on the north-east corner of his property. This Court by order dated 24.05.2023 granted one month time to the 4th respondent to remove the unauthorised shed. Pursuant to the said order, the Greater Chennai Corporation had de-sealed the building in question at Door No.104/152, Mettu Street, Aynaaram, Chennai on 02.06.2023 and as per the undertaking given by the 4th respondent/owner of the building before the Court, the owner on his own had removed the unauthorised shed erected in the site in question.

9. The 2nd respondent has also filed an affidavit dated 07.08.2023 stating that as per the directions of this Court, the site in question was again inspected by the officials of Greater Chennai Corporation on 05.08.2023 and found that no shed / temporary structure in the said land. The photographs taken at the time of inspection have been annexed with the affidavit. Thus, the learned Standing Counsel for respondents 1 and 2 submits that the prayer in this writ petition has become infructuous.

10. The respondents 3 and 4 have filed written submissions. Learned Senior Counsel appearing for the respondents 3 and 4 submitted



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that the present writ petition is liable to be dismissed as infructuous in view of the orders passed by this Court in W.P.No.34757 of 2022 dated 03.01.2023 and W.P.No.16206 of 2023 dated 24.05.2023. The 3rd respondent herein is the sister of the 4th respondent and she was the owner of the property in Door No.104/152, Mettu Street, comprised in Paimash No.980, T.S.No.84, Block No.28. Aggrieved by the unauthorised construction of shed in the common pathway by one Karunamurthy, the 3rd respondent herein filed W.P.No.34757 of 2022 for demolition of the same. According to the 3rd respondent, the present petitioner who is the sister's daughter of Karunamurthy was also disturbing the 3rd respondent along with her maternal uncle Karunamurthy which fact was also brought to the notice of the Court and considering all these facts only, W.P.No.34757 of 2022 was disposed of directing the respondents 1 and 2 to inspect the property in question and to take action in accordance with law in case of unauthorised shed thereat. Pursuant to the said order, the Greater Chennai Corporation issued pre-notice, lock & seal and demolition notice and de-occupation notice and ultimately unauthorised shed was locked and sealed by the 2nd respondent on 02.05.2023.

11. Learned Senior Counsel further submitted that



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Mr.P.Ravikumar, his wife Mrs.P.R.Prasanna Kumari and their daughter/3rd respondent herein purchased the property at Door No.104/152/4, Mettu Street, Aynavaram, Chennai, from Mr.R.Natarajan Naicker by three different sale deeds executed in the year 2004. The common pathway attached to the said property was sold by Mr.R.Natarajan Naicker separately to Mr.R.Murugan and Mr.S.Rahamathullah by sale deed dated 26.09.2007 and they in turn sold the same to Mr.P.Ravikumar by sale deed dated 02.04.2009. The aforesaid property and common pathway purchased by different sale deeds were settled by Mr.P.Ravikumar, Mrs.P.R.Prasunakumari and Mrs.P.R.Sree Ranjini who are father, mother and sister respectively of the 4th respondent by way of 3 different settlement deeds dated 06.03.2023, 06.03.2023 and 13.03.2023. After the said settlement, the 4th respondent filed W.P.No.16206 of 2023 to de-seal the property in question and to permit him to remove the unauthorised shed constructed on the common pathway. Pursuant to the order passed in the said writ petition, building in question was de-sealed and 4th respondent removed the unauthorised shed. According to the respondents 3 and 4, the petitioner herein is not the owner of the common pathway and she never resided in the property in question and only she used to visit her maternal uncle



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Mr.Karunamurthy, whereas, by virtue of settlement, the 4th respondent has become the absolute owner of the property in question and the common pathway attached to it and the tax receipts stand in the name of 4th respondent's father, mother and sister. Therefore, the present writ petition is totally an abuse of process adopted by the petitioner to grab the property of the 4th respondent.

12. Heard the learned counsel for the parties and perused the materials available on record.

13. The crux of the petitioner's case is that the property in Door No.104/152, Mettu Street, Ayanavaram, Chennai-600 023 is her ancestral property and she is residing in the said property for more than 60 years. While so, the 3rd respondent who is the adjacent owner of the property made a complaint of unauthorised construction by the petitioner to the respondents 1 and 2 and thereafter filed W.P.No.34757 of 2022 for demolition of alleged unauthorised construction without impleading the petitioner as a party. Pursuant to the order passed in the said writ petition, the officials of Greater Chennai Corporation sealed the premises of the petitioner. Further the respondents 1 and 2 did not accede to the



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petitioner's request to de-seal the premises so as to enable her to remove the tin sheets on the roof. Hence this writ petition.

14. The crux of the case of the respondents 1 and 2 is that pursuant to the orders passed in W.P.No.34757 of 2022, notice dated 02.02.2023 was issued to the petitioner's maternal uncle Mr.Karunamurthy. Since he failed to submit approved plan, the entire structure put up by him was treated as unauthorised and was sealed. Thereafter, as per the order passed in W.P.No.16206 of 2023 filed by the 4th respondent herein, the sealed premises in question was de-sealed and the 4th respondent was permitted to remove the unauthorised shed constructed in the property in question. Hence, there is no unauthorised construction as on date and the prayer in the present writ petition has become infructuous. The respondents 3 and 4 would contend that the petitioner is not the owner of the property in question whereas the 4th respondent's father, mother and sister/3rd respondent were the owners of the property in question and by virtue of settlement in 2023, the 4th respondent became absolute owner of the property in question and the common pathway attached to it. As a owner of the property in question, the 4th respondent filed W.P.No.16206 of 2023 and this Court based on the undertaking given by the 4th respondent that he will remove the



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unauthorised shed in the common pathway, directed the officials of Greater Chennai Corporation to de-seal the premises in question and allow the 4th respondent to remove the unauthorised shed thereat. Accordingly, the 4th respondent has removed the unauthorised shed and therefore, the prayer in the writ petition has become infructuous.

15. Perusal of record shows that though the respondents in one voice stated that the unauthorised shed put up in the property in question has been removed and therefore the prayer in this writ petition has become infructuous, learned counsel for the petitioner relying upon the plaint schedule in C.S.No.178 of 2006 submitted that out of the total extent of 9405 sq.ft owned by the petitioner's grandfather/Natarajan Naicker comprised in pimash No.980 T.S.No.84, Block No.28, Perambur Purasaiwakkam Taluk forming a part of Survey No.152, New Survey No.104, Mettu Street, Chennai, Natarajan Naicker sold only an extent of 7305 sq.ft by virtue of three sale deeds in favour of father, mother and sister/3rd respondent of the 4th respondent. The balance of 2100 sq.ft., is the undivided share for the legal heirs of Natarajan Naicker which includes the share of the present petitioner's mother Badmavathi and only in order to grab this 2100 sq.ft., which is in possession of the present



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petitioner and her mother Badmavathi, the entire exercise of filing writ petitions and making complaint of unauthorised construction has been done and the Greater Chennai Corporation also without deciding the ownership of the property in question sealed and de-sealed the property and handed over the same to respondents 3 and 4 pursuant to the orders passed in multiple proceedings initiated by the respondents 3 and 4 by not disclosing the past events and without even making the petitioner as a party to those proceedings. Therefore, it is clearly an abuse of process of law.

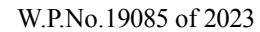
16. Though the petitioner states that the balance 2100 sq.ft in the property in question being the undivided share for the legal heirs of Natarajan Naicker includes the share of the petitioner's mother, no documents have been filed before this Court to prove the title of the petitioner's mother in respect of her share, whereas, the respondents 3 and 4 have filed additional typed set of papers in which, the parent document of the property in question registered in the year 1940, sale deed in favour of Natarajan Naicker in the year 1946, subsequent sale deeds executed by Natarajan Naicker in favour of Mr.P.Ravikumar and his wife Mrs.P.R.Prasanna Kumari and their daughter/3rd respondent in



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the year 2004, sale deeds executed by R.Murugan and S.Rahamathullah in respect of common pathway in favour of Mr.P.Ravikumar in the year 2009 and the recent settlements made by the father, mother and sister of the 4th respondent in his favour in respect of the property in question, have been filed.

17. Perusal of the order dated 20.09.2006 made in W.P.No.25648 of 2006 [enclosed in the additional typed set of papers filed by the petitioner] filed by the petitioner's mother Smt.Badmavathi seeking to grant electricity connection to the property in question, also shows that in the said writ petition, the petitioner's mother Badmavathi has stated that his father Natarajan has unilaterally sold the property including her share to a third party suppressing the family arrangement between them and challenging such sale, the petitioner Badmavathi and her mother filed O.S.No.2808 of 2005 before the 15th Additional City Civil Court, Chennai, seeking declaration of their rights. In the said writ petition, the petitioner Badmavathi has also stated that her father has taken away all the documents of title relating to the property and she is only holding ration card and voters' identity card to prove her lawful possession of the property in question.



19. Be that as it may, it is purely a civil dispute between the petitioner and respondents 3 and 4 which can be decided by a competent civil forum. This Court sitting under Article 226 of the Constitution cannot go into such disputed questions and decide the title of the parties. The respondents 1 and 2 states that the unauthorised shed in the property in question has been removed and as on date, there is no unauthorised construction in the site in question. Therefore, the writ petition and the writ miscellaneous petition seeking amendment of prayer are liable to be dismissed.

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Petition are dismissed. It is open to the parties to approach the civil court to work out their remedy. If the civil court is approached, it shall decide the suit purely on the merit of the case without being influenced by any of the observations made in this order which has been made only for the purpose of disposal of this writ petition. No costs.

(J.N.B., J.) (N.M., J.)
11.01.2024

Index : Yes / No
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J.NISHA BANU, J
AND
N.MALA, J.

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ORDER MADE IN
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DATED = 11 .01.2024