



C.R.P. No. 3335 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3335 of 2024
and C.M.P.No.17915 of 2024

1. M.A.Majid @ Saleem

2. M.A.Iqbal

... Petitioners

Vs

Ameerunissa Begum Sashiba Endowment,
Represented by its President.

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to dismiss the E.P.No.1139 of 2013 on the file of the XXVIII Assistant City Civil Court, Chennai arising out of the judgment and decree dated 12.09.2011 in O.S.No.4131 of 2011 passed by the I Assistant City Civil Court, Chennai.

For Petitioners	:	Mr.G.M.Ramasubramanian for Tatva Legal Chennai
For Respondent	:	L.Gavaskar



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ORDER

This Civil Revision Petition has been filed seeking to dismiss the execution petition in E.P.No.1139 of 2013 on the file of the XXVIII Assistant City Civil Court, Chennai arising out of the judgment and decree passed by the I Assistant City Civil Court, Chennai, in O.S.No.4131 of 2011 on 12.09.2011.

2. The brief facts of the case is as under :

2.1. The respondent/plaintiff, a Muslim Religious and Charitable Endowments had filed a suit in O.S.No.4131 of 2011 seeking to direct the petitioners/defendants to quit, vacate and deliver vacant possession of the plot bearing No.15, Maroof Sahib Street, Mount Road, Chennai 600 002 after removing the superstructure standing on the land and to direct the defendants to pay arrears of rent for the period of July 2003 to October 2009 amounting Rs.13,072/- and to pay past damages for use and occupation of Rs.1200/- from November 2009 to March 2011 amounting to Rs.20,400/- and also to pay future damages for use and occupation at Rs.1200/- per month from April 2011 till delivery of vacant possession. The suit came to be decreed on 12.09.2011 and the petitioners/defendants have not filed any appeal challenging the said judgment and



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decree and it has become final.

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2.2. Thereafter, the respondent/plaintiff has filed an execution petition in E.P.No.1139 of 2013 to execute the judgment and decree. The petitioners have also entered appearance and on 30.07.2024, the execution Court had passed the following order :

“Counsel for Decree Holder Present. Bailiff report received stating that delivery warrant executed partly. A careful perusal of bailiff report dated 29.07.2024 it shows that the delivery warrant executed partly and the superstructure of the schedule mentioned property was not removed and it has been mentioned that the decree holder sought time to remove the superstructure. Therefore, the bailiff locked the schedule mentioned property and handover the key to the Central Nazir. Counsel for the decree holder also sought time to take steps to remove the superstructure of the suit property. Considering the report of the bailiff dated 29.07.2024 as well as the request of, counsel for the decree holder, the time extended till 30.08.2024 to completely execute the delivery warrant dated 01.07.2024. Call on 30.08.2024.”

Challenging the execution proceedings, the present Civil Revision Petition has been filed by the revision petitioners/Judgment Debtor.



2.3. The ground taken in the revision petition is that as per Section 246 of the Chennai City Municipal Corporation Act, the permission of the Greater Chennai Corporation is required for demolition of any superstructure falling within the jurisdiction of Greater Chennai Corporation and thereby, the Corporation is a necessary party and since the Corporation has not been added as a necessary party, the Execution Petition has to be dismissed.

3. Learned counsel for the petitioners submitted that the land in question belongs to the respondent Trust, whereas, the superstructure was put up by the petitioners with their hard earned money after obtaining No Objection Certificate vide letter dated 24.01.1995 from the respondent. He further submitted that though the decree was obtained by the respondent on 12.09.2011, the respondent Trust has graciously allowed them to stay in the place for a long time and that only now, the order has been passed in the execution petition for demolition of the building. He also submitted that as per Section 246A of the Chennai City Municipal Corporation Act, 1919, the permission has to be obtained from the Chennai Corporation for demolition of the building, whereas, in this case, the Chennai Corporation has not been added as a necessary party and in such circumstances, the



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execution petition is not maintainable and has to be dismissed.

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4. The submissions made by the learned counsel for the respondent are as follows :-

4.1 The respondent/plaintiff is a religious endowment which has been carrying out the philanthropic activities for the welfare of the poor and needy. The petitioners/defendants, who are residing in the premises for more than 30 years, have failed to pay the rent, thereby, the respondent/plaintiff had filed a suit in O.S.No.4131 of 2011 before the Ist Assistant City Civil Court cum Wakf Tribunal, Chennai and in which, decree was passed on 12.09.2011.

4.2. Thereafter, the petitioners had filed an application in I.A.No.3284 of 2017 in O.S.No.4131 of 2011 to condone the delay of 1959 days in filing the petition to set aside the ex-parte decree dated 12.09.2011 and the same was allowed by the trial Court on 05.04.2018. Challenging the same, the respondent approached this Court in C.R.P.No.2109 of 2018 and this Court, by an order dated 30.06.2021 was pleased to set aside the order condoning the delay in filing the petition to set aside the ex parte decree and thereby, the Judgment and decree passed in O.S.No.4131 of 2011 has been confirmed and no appeal has been filed



against the same.

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4.3. Thereafter, the execution petition in E.P.No.1139 of 2013 had been and since the petitioners did not appear, they were set ex parte and an order of eviction was passed against the petitioners on 12.06.2014. Thereafter, the petitioner has filed an application in E.A.No.5155 of 2015 seeking to set aside the ex parte order passed in E.P.No.1139 of 2013 and the same was dismissed for default on 25.04.2017. Subsequently, the petitioners had filed E.A.No.2575 of 2018 to set aside the dismissal order passed on 25.04.2017. After hearing the matter, the XXVIII Assistant City Civil Court, Chennai, had dismissed the same. Against the dismissal of E.A.No.2575 of 2018, the petitioners have not preferred any appeal as on date.

4.4. While so, on 12.07.2024, the Bailiff had visited the petition premises to execute the decree passed in O.S.No.4132 of 2011 and the petitioners have vacated from the premises and have handed over the key to the Central Nazir of the City Civil Court, Chennai. The delivery warrant after execution was filed before the execution Court and thereafter, the Court had ordered for removing the superstructure which is existing on the respondent endowment land.



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4.5. On 06.08.2024, the Bailiff has visited the petition premises and had partly removed the superstructure. At the time of removing superstructure, some persons claiming to be the agents of the petitioners have created ruckus on the ground that there is no order from the Greater Chennai Corporation for removing the superstructure. Due to which, the Bailiff was unable to remove the remaining superstructure and while so, the present civil revision petition has been filed.

4.6. Subsequently, based on the request given by the respondent/plaintiff, the Greater Chennai Corporation had granted permission vide U.14/C.No./Spl/2024 dated 14.08.2024 for demolishing the superstructure by following all safety measures and guidance. The respondent has also paid the necessary fees for the same.

4.7. Due and appropriate permission has been obtained from the authorities for demolishing the building and when a Greater Chennai Corporation is not a necessary party to decide the proceedings, the non impleadment cannot be a ground to terminate the execution proceedings. The respondent endowment has obtained the decree in the year 2011 and even after a period of 13 years, the respondent are unable to execute the decree, since the petitioners are adopting one



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or the other method to scuttle the process and no grounds have been raised in this petition to dismiss the execution petition.

5. Heard the learned counsel for appearing for both the petitioners and the respondent and perused the materials available on record.

6. The ground urged in the revision seeking to dismiss the execution petition is that the Greater Chennai Corporation is a necessary party and that the continuation of the execution proceedings without including the Greater Chennai Corporation as a necessary party is not proper. It is stated by the respondent/decreed holder that the petitioners have already vacated and handed over the possession and that the respondent has obtained proper permission from the Greater Chennai Corporation and in such circumstances, there is no requirement to implead them as a necessary party. The ground raised by the petitioners cannot be sustained. The respondent/decreed holder has obtained proper permission from the Greater Chennai Corporation for demolition subject to conditions and in the event of any violation of any condition, it is for the Corporation to take action and the execution petition cannot be terminated for that reason. This Court finds no merit in the grounds



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raised by the petitioners and it is only a feeble attempt taken by the petitioners to delay the execution of the decree obtained in the year 2011.

7. In view of the above, this Court does not find any merits in this petition. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is also closed. No costs.

05.09.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The XXVIII Assistant City Civil Court, Chennai
2. The I Assistant City Civil Court, Chennai.



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A.D.JAGADISH CHANDIRA, J.

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