



W.P.No.25693 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 26.06.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR**

**W.P.No.25693 of 2023**

**and**

**W.M.P.Nos.25121 & 25123 of 2023**

K.Karthikeyan

... Petitioner

Vs.

1.Member Secretary,  
Chennai Metropolitan Development Authority,  
Gandhi Irwin Road, Egmore,  
Chennai – 600 008.

2.The Commissioner,  
Greater Chennai Corporation,  
Ripon Building, Chennai – 600 003.

3.The Executive Engineer (T.P.)  
Building Department,  
Town Planning Section-Works,  
Greater Chennai Corporation,  
Amma Maaligai, Ripon Building,  
Ripon Building Campus, Chennai – 600 003.



W.P.No.25693 of 2023

WEB COPY

4.The Executive Engineer,  
Zone VIII,  
Greater Chennai Corporation,  
13-B/36-B, Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

5.Devar Jawahar

6.Amrithammal @ Ramamirtham

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the Planning Permission vide PPA/WDCN08/02096/2023 dated 01.06.2023 an Building Permission vide BA/WDCN08/03737/2023 dated 01.06.2023 pending on the file of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents issued in favour of the 5<sup>th</sup> respondent and to quash/revoke the same under Section 54 of the Town and Country Planning Act and consequently to direct the respondents 1 to 4 to demolish the illegal construction/development at Old Door No.F8/20, New No.4, Block No.8, Plot No.8/20, F Type, Survey No.T.S.No.335/2 (Part) TNHB Phase-I, Sidco Nagar 8<sup>th</sup> Main Road, Villivakkam, Chennai – 600 049, put up by the 5<sup>th</sup> respondent or his agent or representative or any one acting under him.



WEB COPY



W.P.No.25693 of 2023

For Petitioner : Mr.S.Subbiah  
Senior Counsel  
for Mr.P.C.Harikumar

For R1 : Mrs.Veena Suresh  
Standing Counsel

For R2 to R4 : Mr.D.B.R.Prabhu  
Standing Counsel

For R5 : Mrs.Dakshayini Reddy  
Senior Counsel  
for Mr.K.T.S.Sivakumar

For R6 : No appearance

### **ORDER**

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

This writ petition is filed challenging the building planning permission issued in favour of the 5<sup>th</sup> respondent and to direct the official respondents to demolish the illegal construction/development put up by the 5<sup>th</sup> respondent at Old Door No.F8/20, New No.4, Block No.8, Plot No.8/20, F Type, Survey No.T.S.No.335/2 (Part) TNHB Phase-I, Sidco Nagar 8<sup>th</sup> Main Road, Villivakkam, Chennai – 600 049.



W.P.No.25693 of 2023

2. Brief facts that are necessary for the disposal of this writ petition are as follows :

2.1. The petitioner claims that he is the adopted son of one Sri.V.R.Ramakrishnan, who, admittedly, is the original owner of the property by virtue of a sale deed which is registered as Doc.No.1964 of 1992. It is the case of the petitioner that Sri.V.R.Ramakrishnan adopted the petitioner and executed a Will dated 03.02.1997 bequeathing a portion of his Estate to his wife (adoptive mother of the petitioner) and the remaining properties to the petitioner. The subject matter of this writ petition, according to the petitioner, was bequeathed in favour of the petitioner.

2.2. The case of the petitioner is that, under the Will executed by Sri.V.R.Ramakrishnan, the petitioner's natural father by name Mr.M.R.Kandasamy was appointed as Executor. The natural father of the petitioner has filed an Original Petition in O.P.No.8 of 2009, seeking probate of the Will. It is now admitted that the said proceedings had been converted as Testamentary Original Suit in T.O.S.No.28 of 2010.



WEB COPY

2.3.The petitioner states that the 6<sup>th</sup> respondent, who is the adoptive mother, executed a settlement deed in favour of her sister on 30.11.2012, and on the same day, the sister of the 6<sup>th</sup> respondent settled the property in favour of her son by name Mr.K.Ravi Kumar. The petitioner's case is that the two settlement deeds are sham and nominal and not binding on the petitioner. It is admitted that the petitioner's natural father, the Executor of the Will, died and the petitioner has now transposed himself as 2<sup>nd</sup> petitioner to prosecute the proceedings in T.O.S.No.28 of 2010. It is also admitted that the son of the sister of the 6<sup>th</sup> respondent executed a sale deed in favour of the 5<sup>th</sup> respondent on the basis of the settlement deed executed by his mother. It is contended by the petitioner that the said sale deed is to defraud the petitioner and it is also sham and nominal and also hit by Doctrine of *lis pendens*.

2.4.The petitioner is now residing in United Nations. Hence, his grievance is that the respondents 5 and 6 encroached the property and have demolished the existing building. It is his further case that the respondents 5 and 6, during the pendency of the probate proceedings, submitted an



W.P.No.25693 of 2023

application for building permission and based on the plan, the 5<sup>th</sup> respondent has proceeded with the construction. Therefore, a representation was submitted by the petitioner to stop the alleged unauthorised construction put up by the 5<sup>th</sup> respondent and to take action under Section 57 of the Tamil Nadu Town and Country Planning Act, 1971. His representation was also to cancel the building permission granted to the 5<sup>th</sup> respondent. In the subsequent representation, the petitioner has called upon the official respondents not to entertain any application for development under the Tamil Nadu Combined Development and Building Rules, 2019 or under any other Rules. The petitioner, after issuing a legal notice to the official respondents, has approached this Court. It is his specific case in all his notices and representations that the petitioner is the absolute owner and the title dispute is pending in T.O.S.No.28 of 2010. After coming to know about the building plan approval granted to the 5<sup>th</sup> respondent by proceedings dated 01.06.2023, the above writ petition is filed.



W.P.No.25693 of 2023

3.Learned Senior Counsel appearing for the petitioner submitted that the petitioner is the absolute owner of the property by virtue of the Will executed by the original owner in his favour. It is admitted that the unregistered Will is the subject matter of T.O.S.No.28 of 2010 before this Court. However, till such time this Court grants Letters of Administration, the petitioner cannot claim title placing reliance on the Will. Though the petitioner has stated that he is the adopted son of Sri.V.R.Ramakrishnan, the petitioner has not even disclosed the date of adoption anywhere in his pleading.

4.Learned Senior Counsel appearing for the petitioner referred to the Certificates issued by the Tahsildar showing the petitioner as a legal heir along with the 6<sup>th</sup> respondent as legal heir of Sri.V.R.Ramakrishnan. It is also admitted that the 6<sup>th</sup> respondent has obtained Legal Heirship Certificate showing her as the sole legal heir of the deceased Sri.V.R.Ramakrishnan. Though the proprietary of the Legal Heirship Certificate is disputed by the learned Senior Counsel, this Court, having regard to the admitted facts and the position that the petitioner is yet to prove the factum of adoption as well



W.P.No.25693 of 2023

the Will, is of the view that the Tahsildar, who is the executive authority, cannot decide the legality of the petitioner's claim relying upon the Will or the alleged adoption.

5.It is also admitted that the adoption is not supported by any document. It is admitted before this Court that the natural father of the petitioner himself has claimed exclusive title to one of the property of the adoptive father Sri.V.R.Ramakrishnan as his heir to the exclusion of all while alienating the same. Therefore, the father of the petitioner himself has not recognised the adoption pleaded by the petitioner when he dealt with the property of the deceased Sri.V.R.Ramakrishnan.

6.Be that as it may, the question before us is, whether the planning permission obtained by the 5<sup>th</sup> respondent is valid. The petitioner himself has admitted that the respondents 5 and 6 have entered into possession. While the 6<sup>th</sup> respondent is admittedly the wife and sole legal heir of the deceased Sri.V.R.Ramakrishnan in the absence of adoption, the petitioner has to establish his right to succeed to the property only by proving the Will



W.P.No.25693 of 2023

or the adoption. When the factum of adoption is not supported by any deed, the learned Senior Counsel appearing for the petitioner relied upon a few documents in which Late Sri.V.R.Ramakrishnan has described the petitioner as his adopted son. The 6<sup>th</sup> respondent has never acknowledged the petitioner as her adopted son. Admittedly, there is no deed of adoption. In the absence of any pleading as to the manner of adoption or as to the date and place of adoption giving any indication that there was actual giving and taking, this Court is not in a position to accept the contentions of the petitioner on the basis of adoption. It is now admitted before this Court that the petitioner has filed two suits in respect of two different properties. However, there is no suit filed in respect of the property which is the subject matter of this writ petition.

7.From the overall circumstances indicated above, this Court finds that the respondents 5 and 6 are in lawful possession and enjoyment of the property and therefore, they are entitled to develop the property unless they are prevented by doing so by order of Court in a suit or proceedings initiated by the petitioner.



W.P.No.25693 of 2023

WEB COPY

8.Learned Senior Counsel appearing for the petitioner submitted that the planning permission earlier obtained is not the subject matter of this writ petition, but the revised plan, which is vitiated for the inherent defects. Learned Senior Counsel appearing for the petitioner submitted that the impugned planning permission, dated 01.06.2023, refers to certain conditions and that the order impugned is liable to be revoked by the official respondents on the admitted facts. While granting planning permission, the Executive Engineer has observed that the order is subject to certain conditions. Learned Senior Counsel relied upon Condition No.3, which reads as follows :

“இ) மனுதாரர் தனது மனுவில் கொடுத்த தவறான தகவல் தவறான முறையீடுகள் உண்மைக்குப் புறம்பான குறைபாடு மற்றும் நடைமுறை வழக்கத்திற்கு மாறான குறைகள், சூமாசடியான வழிமுறை ஆகியவற்றின் பேரில் அளிக்கப்பட்ட திட்ட அனுமதியை மாற்றவே, முபமையாக திரும்பப் பெறவோ பெருநகர சென்னை மாநகராட்சிக்கு முழு அதிகாரம் உண்டு.”

9.Admittedly, the planning permission was obtained by an individual



W.P.No.25693 of 2023

who derived title through the legally wedded wife of the original owner Sri.V.R.Ramakrishnan. In the absence of a Will or proof of adoption, Smt.Amrithammal @ Ramamirtham, the 6<sup>th</sup> respondent, is the absolute owner of the property. Till such time the alleged Will propounded by the petitioner is probated in the manner known to law, the petitioner cannot rely upon the said Will for any purpose before any Civil Court. The position of the 6<sup>th</sup> respondent as legal heir of Late Sri.V.R.Ramakrishnan is admitted and not an issue in any proceedings. In the absence of any other proceedings except T.O.S.No.28 of 2010, this Court is of the view that the 5<sup>th</sup> respondent is in lawful possession and enjoyment of the property and therefore, the 5<sup>th</sup> respondent has every right to deal with the property as an absolute owner on the basis of settlement deed. Any development or construction put up by the 5<sup>th</sup> respondent will be construed to be in accordance with law. However, the petitioner, on establishing his title on the basis of the alleged Will or on the basis of adoption, may initiate appropriate proceedings against the 5<sup>th</sup> respondent, if his title is declared in the manner known to law. He can also seek recovery of possession.



10.The grievance of the petitioner is that, if the construction is permitted, the same will be detrimental to the petitioner in establishing his case. In the counter affidavit filed by the 3<sup>rd</sup> respondent, it is stated as follows :

*“9.I submit that since the 5<sup>th</sup> respondent herein is having title over the property in question a Legal Opinion has been sought and the revised planning application was processed by obtaining an affidavit from the 5<sup>th</sup> respondent herein in the Non-Judicial Stamp Paper duly attested by the Notary Public mentioning that if the petitioner Mr.K.Karthikeyan proved his title report of law or any valid registered document, the planning permission issued in favour of the applicant, viz., the 5<sup>th</sup> respondent herein will be cancelled.*

*10.I submit that if the petitioner proves his title over the property in question the planning application accorded to the 5<sup>th</sup> respondent will be revoked by the Greater Chennai Corporation.”*

11.Considering the peculiar facts and circumstances of the case, the learned Senior Counsel appearing for the 5<sup>th</sup> respondent has no reservation for giving liberty to the petitioner to seek cancellation of planning



W.P.No.25693 of 2023

permission in case the petitioner's claim regarding title over the property is upheld in any other proceedings. With this liberty preserved to the petitioner, this writ petition is dismissed for want of merits.

12.The observations made in this order on the merits of the contentions of the petitioner or the contesting respondents are only for the purpose of this case and any Civil Court or this Court deciding the proceedings in T.O.S.No.28 of 2010 can independently consider the issues on merits uninfluenced by any of the observations made in this order. It is open to the 5<sup>th</sup> respondent, being the purchaser of substantial property from 6<sup>th</sup> respondent, to implead himself as a party in the Testamentary Original Suit in T.O.S.No.28 of 2010. No costs. Consequently, connected miscellaneous petitions are closed.

**(S.S.S.R., J.) (N.S., J.)**  
**26.06.2024**

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To



W.P.No.25693 of 2023

WEB COPY

1. The Member Secretary,  
Chennai Metropolitan Development Authority,  
Gandhi Irwin Road, Egmore,  
Chennai – 600 008.
2. The Commissioner,  
Greater Chennai Corporation,  
Ripon Building, Chennai – 600 003.
3. The Executive Engineer (T.P.)  
Building Department,  
Town Planning Section-Works,  
Greater Chennai Corporation,  
Amma Maaligai, Ripon Building,  
Ripon Building Campus, Chennai – 600 003.
4. The Executive Engineer,  
Zone VIII,  
Greater Chennai Corporation,  
13-B/36-B, Pulla Avenue, Shenoy Nagar,  
Chennai – 600 030.

**S.S. SUNDAR, J.**  
**and**  
**N. SENTHILKUMAR, J.**

mkn



WEB COPY



W.P.No.25693 of 2023

**W.P.No.25693 of 2023**

**26.06.2024**