



W.A.No.3070 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3070 of 2024 and

CMP Nos.23180, 23182 of 2024

Philomina

Vs.

... Appellant

1. The Commissioner,
Chengalpattu Municipality,
Chengalpattu Town,
Chengalpattu Taluk and District.

2. The Collector,
Chengalpattu District,
Chengalpattu Taluk & District.

3. John Kribakaran

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 14.06.2024 passed in W.P.No.1900 of 2024 and consequently quash the impugned demolition order in Na.Ka.1891 of 2023/F1/ 27.10.2023 passed by the first respondent.



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For the Appellant : Mr.T.R.Shanmugam
For the Respondent : Mrs.V.Yamunadevi,
Special Government Pleader

JUDGMENT

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

The writ petitioner has filed present appeal as against the order passed by the learned single Judge in W.P.No.1900 of 2024 dated 14.06.2024, in and by which her prayer to quash the impugned demolition order dated 27.10.2023 passed by the Chengalpattu Municipality was declined.

2. According to the appellant, she is residing along with her family at No.38, 4th Cross Street, TELC compound, Anna Nagar, Chengalput Town, Chengalput District by paying property tax, electricity consumption charges for several years from her childhood days. It is contended by her that, her father Mr.Kesavelu, while he was alive, had entered into a oral lease agreement with one Mrs.Scilia, d/o Mr.Nathan, three decades before and the



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said Scilia and Nathan already expired. Hence, the appellant has right and title over the property by adverse possession.

2.1. It is contended by the appellant that on the application moved by the third respondent, the first respondent herein has passed the demolition order, without inspecting the site; without considering the possession of the appellants for years together; and also without issuing any pre-notice to the appellant. Hence, she filed the said writ petition to quash the demolition order. After hearing both side, learned single Judge has dismissed the writ petitioner and the said order is impugned herein.

3. Learned counsel for the appellant submitted that, the appellant and her family have claimed adverse possession over the property and they have been in possession of the property for several years by paying necessary property tax, electricity consumption charges and hence, the demolition order ought to have been quashed.

4. The counter affidavit filed by the first respondent before the writ



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court reveals that one Rosemary rani w/o Anthonynathan had made an application seeking permission to demolish the building in Ward No.6, Block No.5, T.S.No.11, Door No.16, 4th cross street, TELC Compound, Anna Nagar, Chengalput Town, since the building is in damaged condition. It is further stated that the said application was moved by the third respondent, who is the power of attorney of the principal owners namely 1. Rosemary rani, 2) Ignatius Ganthinathan and 3) Rebecca of the property and he had produced all the title deeds and relevant documents pertaining to the property. It is further stated in the counter affidavit that, after issuing impugned notice dated 27.10.2023, the appellant herein was issued notice dated 30.12.2023, calling upon her to produce the title documents, in order to substantiate her contention, however, she had not produced any proof for her claims over the property. It the contention in the counter affidavit that the permission for demolition was issued in the name of the owner of the property, only based on prima facie proof of title to the property and not in favour of the third respondent.

5. Learned Single Judge after hearing both side and upon perusing the



documents has observed as " ***this court does not find any scope to interfere with the impugned demolition order passed by the first respondent. If at all the petitioner claims any right either as a tenant or by virtue of adverse possession, it is always open to the petitioner to approach the competent civil court and establish the same and the petitioner cannot invoke writ jurisdiction and all the disputing facts involved in the writ petition required to be adjudicated by way of letting evidence by both the parties and the writ court cannot decide the same***".

6. Considering all the above facts and also after perusing the documents carefully, we are of the view that the issue of adverse possession / right and title over the property between the parties can be decided only by the civil court and hence it is for the appellant to approach the civil court seeking remedy. Further, only after verifying the title documents, the first respondent has issued the demolition order, based on the application made by the original owner of the property. As such, we do not find any material reason to interfere with the decision of the learned Single Judge, as it is right and well founded.



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7. For the forgoing reasons, the Writ appeal is devoid of merits and is dismissed accordingly. There shall be no order as to costs. Connected CMP Nos.23180, 23182 of 2024 are closed.

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

18.10.2024

Internet: Yes/No
Index : Yes/No
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To

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2. The Collector,
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