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W.P.Nos.33445 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.33445 of 2024
and
W.M.P. No.36223 of 2024 in W.P.No.33445 of 2024

M.A.Moorthy

... Petitioner

VS

1.The Commissioner,
Corporation of Chennai,
Rippon Building Campus,
Chennai – 600 003.

2.The Zonal Officer,
Zone – 13, Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.

3.Assistant Engineer,
Ward-172, Division 40-A, Zonal-13,
Greater Chennai Corporation,
No.5, Five Furlong Road,
Maduvinkarai, Guindy,
Chennai – 600 032.

... Respondents



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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's notice dated 15.03.2024 in reference No.Ma.A.13.Na.Ka.No./Special/2024 and also the notice dated 28.05.2024 in reference no.Nil and to quash the same as illegal and direct the respondents to unlock and de-seal the premises being land measuring an extent of 880 square feet and the structure thereof at Old No.13, New No.16, Chakrapani Road, Guindy, Chennai – 600 032, comprised in T.S.No.9, Block No.2 at Velacherry Village, Velacherry Taluk, Chennai District.

For Petitioner : Mr.S.Anil Sandeep

For Respondents : Mr.Arun Dhanapalan
for Mr.D.B.R.Prabhu,
Standing Counsel

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) and captioned 'Writ



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Miscellaneous Petition' (hereinafter 'WMP' for the sake of brevity) thereat.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 15.11.2024, which reads as follows:

Proceedings in W.P.No.33445 of 2024 and W.M.P. No.36223 of 2024:

'W.P.No.33445 of 2024
and
W.M.P.No.36223 of 2024
in
W.P.No.33445 of 2024

M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Two notices, one dated 15.03.2024 bearing reference ம.அ.13.ந.க.எண்/சிறப்பு/2024 issued by R3 [Assistant Engineer, Greater Chennai Corporation, Chennai] and another dated 28.05.2024 issued by R2 [The Zonal Officer, Greater Chennai Corporation, Chennai] have been called in question. A suit in



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O.S.No.3975 of 2022 on the file of XXIII Additional Judge's Court, City Civil Court, Chennai filed by the writ petitioner along with his spouse M.Sudha was dismissed after full contest in and by judgment and decree dated 13.03.2024.

2. Learned counsel for writ petitioner submits that A.S.No.275 of 2024 in this Court is pending and this appeal is assailing 13.03.2024 decree. In A.S.No.275 of 2024, a Hon'ble single Judge has made interim order dated 20.06.2024 and a scanned reproduction of the same is as follows:

'C.M.P.No.9156 of 2024
in
A.S.No.275 of 2024

RMT.TEEKAA RAMAN,J.,

The unsuccessful plaintiffs are the appellants in A.S.No.275 of 2024. He filed a suit for declaration of tile and for injunction restraining the defendant-Corporation from interfering with the peaceful possession and injunction of the property.

2. The defendant-Corporation filed a written statement and contested the suit.

3. During the trial, the first plaintiff was examined as P.W.1 and Exs.A1 to A9 were marked and an officer of the second defendant was examined as D.W.1 and Exs.B1 to B10 were marked.

4. After the trial, the trial Court has concluded that the plaintiff who seeks the relief of title as to prove the derivative title; however, he has not filed any document and accordingly, the plaintiffs were non-suited and hence the appeal.

5. Heard the learned counsel appearing for the petitioners and Mr.R.Raman Laal, learned



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Additional Advocate General appearing for the respondent-Corporation.

6. In the present C.M.P, the appellants/plaintiffs seeks interim order of injunction restraining from interfering with their possession. The judgment was pronounced on 13.03.2024 and on 15.03.2024, the defendant-Corporation has issued show cause notice for recovery of possession on the ground treating the plaintiff has encroacher under the Municipal Corporation Act on 16.03.2024 they have sealed the premises.

7. The submissions of Mr.R.Raman Laal, learned Additional Advocate General on behalf of the respondent-Corporation is hereby recorded.

8. After perusing the document Ex.A1 relied on by the appellant/plaintiff, I find that the plaintiff claims title on the ground that his father Arumugam has purchased the property from one Gowri and legal heirs of one Arumugam. The said Arumugam appears to have obtained an assignment from the Government.

9. As per the annexure found in the sale deed, wherein this Court has noticed an condition order of assignment was made that no alienation to be effected by the allottee. Since, as per the submissions of the learned Additional Advocate General, Chennai Corporation, the building is already seized and was put under seal by the relevant provision in the Chennai city Corporation Act.

10. It is open to the appellant/plaintiff to move appropriate relief before the appropriate Court for the appropriate relief and hence I am inclined to grant the liberty to the plaintiff/appellant to move appropriate application before the appropriate Court for the appropriate relief.



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11. The pendency of the Civil Suit in A.S.No.275 of 2024 shall not stand in the way, it is open to him to demonstrate the case before the concerned Court. As the alleged derivative of title by the plaintiffs was negated by the trial Court and the premises has already been sealed by the Corporation by following the statutory rules, I am not inclined to pass any order in the above C.M.P.

12. Post the above C.M.P after six weeks.'

3. Issue notice regarding admission.

4. Mr.D.B.R.Prabhu, learned Standing Counsel for Chennai Corporation (for R1 to R3), who is before us on 'Videoconferencing' {VC} platform accepts notice for all three respondents and requests for a short accommodation to get instructions and revert to this Court. To be noted, this is a hybrid hearing, which is a daily / regular / routine feature in this Court. Request acceded to.

5. List one week hence in the Admission Board i.e., Motion List under the cause list caption 'NOTICE REGARDING ADMISSION.

6. List on 22.11.2024.

7. In the next listing, the name of learned standing counsel for Chennai Corporation shall be shown in the cause list.'



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Proceedings in W.M.P. No.36222 of 2024 in W.P. No.33445 of 2024:

**'W.M.P.No.36222 of 2024
in W.P.No.33445 of 2024**

M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

[Order of the Court was made by M.SUNDAR. J.,]

This order will now dispose of the captioned 'Writ Miscellaneous Petition' [hereinafter 'WMP' for the sake of brevity].

2. Captioned WMP has been filed with a prayer to dispense with production of 'two notices, one dated 15.03.2024 bearing reference ம.அ.13.ந.க.எண்/சிறப்பு/2024 issued by R3 [Assistant Engineer, Greater Chennai Corporation, Chennai] and another dated 28.05.2024 issued by R2 [The Zonal Officer, Greater Chennai Corporation, Chennai]' [hereinafter 'impugned notices' for the sake of brevity, convenience and clarity].

3. Mr.S.Anil Sandeep, learned counsel on record for writ petitioner is before this Court.



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4. *Learned counsel for writ petitioner adverting to support affidavit submitted that the writ petitioner was served with only copy of impugned notices and therefore, writ petitioner is not able to file the original impugned notices. Learned counsel drew the attention of this Court to paragraph No.11 of the support affidavit, which reads as follows:*

'11. I state that I had not been served with the original impugned notices and had been provided only with the copy of the impugned notices by the respondents. Hence this writ petition is being filed with the copy of the impugned notices and hence, filing of the original impugned notices may be dispensed with in the interests of justice.'

5. *In the light of the narrative thus far, dispense with prayer is acceded to. Captioned WMP is ordered as prayed for.'*

3. The aforementioned proceedings shall now be read as an



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integral part and parcel of this order. This means that the short forms and abbreviations used in the earlier order will continue to be used in the instant order also.

4. We find that the two impugned notices dated 15.03.2024 and 28.05.2024 are effectively notices under Section 128 of 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' (to be precise under Section 128(1)(b) of 'said Act').

5. As regards title qua property which is subject matter of the impugned notices, appeal suit viz., A.S.No.275 of 2024 is pending and title will obviously be subject to outcome of the appeal suit. Therefore, we refrain from expressing any view or opinion on title. As regards two impugned notices, we hold that the same shall now be construed as notices under Section 128(1)(b) of said Act which means the writ petitioner can send a response in seven days and learned counsel for writ petitioner very fairly consented to send a representation within seven days from today i.e, by 03.12.2024. In the light of proviso to Section 128(1)(b) of said Act, if representation is sent, R1 should pass final orders. Further action as regards impugned notices are concerned



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(not title) will be subject to and depending on the final orders which R1 makes.

6. We dispose of the captioned WP vide this simple order. Consequently, captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) **(K.R.S.,J.)**
26.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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