



WP.No.28263 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.28263 of 2023
and WMP.No.27787 of 2023

M.Jaffar Ibrahim

...petitioner

Vs.

1. Member Secretary,
Chennai Metropolitan Development Authority,
Thala Muthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600008.
2. The Commissioner,
Greater Chennai Corporation,
Rippon Building, EVR Salai,
Poonamalle High Road,
Chennai 600003.
3. The District Revenue Officer/
Zonal Officer, Zone X,
Greater Chennai Corporation,
No.117, N.S.K.Salai,
Kodambakkam,
Chennai 600 024.
4. S.Radhakrishnan

...respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India

seeking to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the 3rd respondent's impugned proceedings in Z.O.X.C.No.A8/6129/2023, dated 01.09.2023 and quash the same and consequently direct the respondents 1 to 3 to inspect the illegal construction erected without building permission in respect of T.S.No.59/2 in an extent of 2991 sq.ft., Mambalam Village, Saidapet, Chennai Corporation limit and to demolish the offending construction in T.S.No.59/2, Mambalam Village, Saidapet, Chennai in accordance with law within time stipulated by this Court.

For petitioner : Mr.G.Jeremiah

For respondents
for RR1 & 4 : No Appearance
for RR2 & 3 : Mr.D.B.R.Prabhu

ORDER

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

This Writ Petition is filed for issuance of a certiorarified mandamus to quash the impugned order passed by the third respondent and



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consequently, direct the respondents 1 to 3 to inspect the illegal construction erected by the fourth respondent without building permission in respect of the property in TS.No.59/2 to an extent of 2991 sq.ft. in Mambalam Village, Saidapet, Chennai and demolish the same.

2. The brief facts which are necessary for disposal of the Writ Petition are as follows:

i) The petitioner and his wife are the co-owners of a land to an extent of 7 grounds in Town Survey No.59/1 in Mambalam Village. The fourth respondent is an adjacent owner of the property in Town Survey No.59/2 measuring an extent of 2991 sq.ft. The grievance of the petitioner is that the fourth respondent purchased an extent of 2991 sq.ft. and obtained patta only to that extent. But he has obtained planning permission by showing more area including the land of petitioner showing it as his 20 feet pathway, car parking etc. It is also stated that the building put up by the fourth respondent is not according to the approved plan.

ii) However, the petitioner himself has admitted that the fourth respondent has filed a suit in OS.No.5585 of 2011 on the file of the



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XVI Assistant City Civil Court, Chennai seeking declaration that the suit property is a 20 feet common pathway and also for a consequential permanent injunction. It is seen from the averments made in the plaint that the fourth respondent has made a claim to have access through the 20 feet common pathway, which is described in the schedule to the plaint in OS.No.5585 of 2011.

3. The petitioner in the affidavit filed in support of this petition has stated that the fourth respondent has not only violated the building permission granted to him but also extended the building beyond his land. In this regard, the petitioner gave representations on 25.05.2022 and 27.01.2023. The third respondent rejected the representations of the petitioner recording the following reasons:

"It is informed that, with regard to issuing Planning Permission for buildings, houses, shops and any other building the Corporation of Chennai is Sanctioning Planning Permission for stilt + first floor with six dwelling units as per the delegation of powers given by the Chennai Metropolitan Development Authority (CMDA). Accordingly, the planning permission of the building in question was obtained by said Mr.S.Radhakrishnan by enclosing the mandatory documents viz., sale deed or settlement deed, patta, encumbrance



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certificate. Further, as per the documents said Mr.S.Radhakrishnan is having access to his property from the 20 feet common passage.

It is informed that, since there is no documents/orders to prove the claim that 20 feet common passage belongs to you and also on account of Status-Quo order dated 11.08.2023 passed by the Hon'ble High Court in CRP.No.2815 of 2023, the Greater Chennai Corporation is not in a position to consider your representation dated 25.05.2022 and the same is hereby rejected.

4. This Court prima facie found that the grievance of the petitioner was considered by the respondent while passing the impugned order. Since the petitioner has not produced any records to show that he is the exclusive owner of the common pathway as it was shown by the fourth respondent while getting planning permission, the representations of the petitioner were rejected.

5. However, the second respondent has filed a status report, dated 16.10.2023 indicating the following deviations in the fourth respondent's building:



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<i>Sl. No.</i>	<i>Description</i>	<i>As per approved plan</i>	<i>As per site</i>	<i>Deviations</i>
I. Set Back				
1	Front	1.52 m	Nil	1.52 m
2	Rear	3.36 m 4.36 m 3.05 m	0.60 m 1.20 m 0.15 m	2.76 m 3.16 m 2.90 m
3	Side 1	1.52 m 3.20 m	Nil	1.52 m 3.20 m
4	Side 2	1.52 m	Nil	1.52 m
II. Height of the Building		7.02 m	15.25 m	8.23 m
III. Floor Area				
1	Ground Floor	133 m ²	254.90 m ²	121.90 m ²
2	First Floor	133 m ²	277.63 m ²	277.63 m ²
3	Second Floor	Nil	277.63 m ²	277.63 m ²
4	Third Floor	Nil	226.84 m ²	226.84 m ²
5	Fourth Floor	Nil	42.02 m ²	42.02 m ²
IV. Usage of the Building - Floor wise				
1	Ground Floor/Stilt	Residential	Commercial	
2	First Floor	Residential	Commercial	
3	Second Floor	Nil	Residential	
4	Third Floor	Nil	Residential	
5	Fourth Floor	Nil	Residential	

6. The second respondent further stated in the status report that action will be taken against the fourth respondent's building as per the provisions of the Tamil Nadu Town and Country Planning Act.



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7. Despite notice to the fourth respondent and a counsel entered appearance earlier, no one represented the fourth respondent at the time of hearing.

8. Considering the facts narrated above, the affidavit filed in support of the Writ Petition and the status report filed, this Writ Petition is disposed of with the following directions:

i) The second respondent shall take appropriate action on the unauthorised construction put up by the fourth respondent as per the status report dated 16.10.2023 mentioning the deviations as extracted above.

ii) It is to be noted that the fourth respondent has to be given sufficient opportunity before further proceedings are initiated.

iii) If any application is filed by the fourth respondent regarding regularisation of the building, the same shall be considered by the second respondent. If no application is filed till date, the fourth respondent is given liberty to file fresh application. Depending upon the outcome of the said application, further action shall be taken by the second respondent within a period of eight weeks thereafter.

iv) It is open to the petitioner to agitate his right over the pathway,



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which is the subject matter of the suit in OS.No.5585 of 2011.

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9. With the above directions, the Writ Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

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

24.01.2024

Index : Yes / No
Speaking order: Yes/No
pvs

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