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W.P.No.32734 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.32734 of 2023

Nirmala Manoharan
rep by her General Power of Attorney Agent
Vijay Gideon Manohar
S/o Dr.D.Manoharan .. Petitioner

-VS-

1. The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai 600 003
2. The Executive Engineer
Greater Chennai Corporation
No.6/64, Zone-XIV
Puzhuthivakkam Main Road
Puzhuthivakkam, Chennai 600 091
3. The Assistant Executive Engineer
Greater Chennai Corporation
No.6/64, Unit-42, Zone-XIV
Puzhuthivakkam Main Road
Puzhuthivakkam, Chennai 600 091



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4. The Tahsildar
Office of Sholinganallur Taluk
No.1, 1st Cross Street
New Kumaran Nagar
Sholinganallur, Chennai 600 119

5. The Inspector of Police
S-7 Police Station
No.13, Big Street
Arulmurugan Nagar Extension
Ranga Nagar, Madipakkam
Chennai 600 117

6. N.Rajesh Kumar .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to take action as against the unauthorised / illegal construction of the building by the 6th respondent upon the land comprised in survey No.11/ 1A1E2, Pallikaranai Village, Ram Nagar South Extension, 8th Street, Sholinganallur Taluk, Madipakkam, Chennai, based on the representation of the petitioner dated 16.10.2023 within a time frame.

For Petitioner :: Mr.V.C.Selvasekaran

For Respondents :: Mr.D.B.R.Prabhu
Standing Counsel for R1 to R3
Mrs.S.Anitha
Special Government Pleader
for R4 & R5
Mr.R.Asokan for R6



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ORDER

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

This writ petition is filed for issuance of a mandamus directing the respondents 1 to 3 to take action as against the unauthorised / illegal construction of the building by the 6th respondent in the land in Survey No.11/1A1E2, Pallikaranai Village, Ram Nagar South Extension, 8th Street, Sholinganallur Taluk, Madipakkam, Chennai, based on his representation dated 16.10.2023.

2. Except stating that the sixth respondent is putting up construction without any planning permission, the petitioner has not filed any verifiable material to substantiate his averment in the affidavit filed in support of the petition. Be that as it may, the petitioner's mother appears to have filed a civil suit in O.S.No.315 of 2016 before the District Munsif Court at Alandur praying for the following reliefs:-

“20. The Plaintiff therefore humbly prays that this Hon'ble Court may be pleased to grant Judgment and Decree in favour of the Plaintiff:-



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- (a) Permanent injunction restraining the defendants 1 and 2, their men, agents, servants or anybody else claiming under or through them from alienating or encumbering the B-schedule mentioned property till proper measurement, location and demarcation of B-schedule mentioned property is finalized by the fifth defendant;
- (b) Permanent injunction restraining the defendants 1 and 2, their men, agents, servants or anybody else claiming under or through them from putting up any sort of construction in the suit B-schedule mentioned property till proper measurement, location and demarcation of suit B-schedule mentioned property is finalized by the fifth defendant;
- (c) Permanent injunction restraining the defendants 1 and 2, their men, agents, servants or anybody else claiming under or through them from in any manner interfering with the peaceful possession and enjoyment of the suit A-schedule mentioned property of the Plaintiff;
- (d) Mandatory injunction directing the 5th defendant through his subordinates to measure, locate and demarcate the suit A and B schedule properties based on the concerned revenue records;
- (e) for the costs of the suit.”



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3. The petitioner has not mentioned about the stage of the suit.

However, the counsel appearing for the sixth respondent has produced before this Court the order passed by the learned Principal District Munsif at Alandur in I.A.Nos.546 to 548 of 2016 in O.S.No.315 of 2016. From the order, it is seen that the petitioner's mother has filed I.A.No.546 of 2016 for grant of interim injunction restraining the defendants 1 & 2 therein from putting up any construction in the petition schedule property till proper measurement, location and demarcation of the property is finalized. I.A.No.547 of 2016 is filed for grant of interim injunction restraining the defendants 1 & 2 therein from in any manner interfering with the peaceful possession and enjoyment of the suit property by the petitioner's mother. I.A.No.548 of 2016 is filed to appoint an Advocate Commissioner to measure, locate and to demarcate the suit mentioned properties. All these applications were dismissed by the trial Court by order dated 20.06.2023. Even though the applications were dismissed mainly on the ground that the contentious issues raised by the petitioner can be considered only at the time of trial, the fact that the petitioner's mother has filed the suit and that she is unable to get interim orders, which is sought to be achieved by filing this



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writ petition, is not disputed. After the dismissal of the interlocutory applications filed by the petitioner's mother in the suit filed by her, the petitioner has submitted a representation before the official respondents on 16.10.2023. The second defendant in the said suit is the sixth respondent herein against whom the petitioner has expressed his grievance. The petitioner, who failed to obtain any interim order in the civil suit filed by her mother, appears to have approached the respondents with the representation and then has filed the writ petition for the relief referred to above.

4. From the entire plaint, this Court is unable to find the specific case of the petitioner as regards ownership. Except stating that the constructions commenced by the sixth respondent while putting up a pillar is interfering with the petitioner's right and enjoyment of the property, this Court is unable to find the real cause for filing the suit. The petitioner, while approaching this Court, should come forward with clean hands. The petitioner has not even disclosed the fate of the interlocutory applications. Since the petitioner approached this Court only after the dismissal of the interlocutory applications in June, 2023, this Court finds no bona fides in



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the writ petition. The petitioner may pursue his remedy before the civil Court in accordance with law.

5. It is not in dispute that the sixth respondent has applied for planning permission. According to him, the construction is in accordance with the plan submitted. Even if there are deviations or violations, it is open to the sixth respondent to approach the respondents for regularization if it is permissible. From the records available, this Court is not in a position to conclude that the building is totally unauthorized or that the building is by encroaching into the property of the petitioner. Even if there is an encroachment by the sixth respondent, the petitioner may seek appropriate remedy for recovery of possession in the pending suit. Hence, giving liberty to the petitioner and her mother to prosecute the pending suit, this writ petition is closed. Consequently, W.M.P.No.32341 of 2023 is also closed. There shall be no order as to costs.

Index : yes/no
Neutral citation : yes/no
ss

(S.S.S.R.,J.) (N.S.,J.)
12.01.2024



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