



W.P.No.36078/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.36078/2023

C.Jeevarathinam

... Petitioner

Vs.

- 1.The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai -3.
- 2.The Executive Engineer
Zone-7, Greater Chennai Corporation
Door No.536, CTH Road,
Ambattur, Chennai-53.
- 3.The Assistant Executive Engineer
Division 83, Zone-7,
Greater Chennai Corporation
Door No.83, Periyar Nagar
Venkatraman Nagar, Korattur
Chennai-80.
- 4.C.Janakiraman
- 5.M.Sheela



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6.C.Rajakumari

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of mandamus, directing the respondents 1 to 3 to take action against the unauthorised construction put up by the respondents 4 to 6 in the land measuring 2400 sq.ft., situated at Door No.5/3, 4th Stree, Sri Ayyappa Nagar, Kolathur, Chennai-99 on the basis of petitioner's representation dated 07.10.2023 within the time stipulated by this Court.

For Petitioner	: Mr.S.S.Viswanathan
For RR 1 to 3	: Mr.D.B.R.Prabhu Standing counsel for Greater Chennai Corporation

ORDER

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

(1)The present writ petition has been filed by the petitioner seeking a direction to the respondents 1 to 3 to take action against the unauthorised construction put up by the respondents 4 to 6 in the land measuring 2400 sq.ft., situated at Door No.5/3, 4th Stree, Sri Ayyappa Nagar, Kolathur, Chennai-99 on the basis of petitioner's representation dated 07.10.2023.



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(2) Mr.D.B.R.Prabhu, learned Standing counsel accepts notice on behalf of the respondents 1 to 3.

(3) The case of the petitioner is that the father of the petitioner was the absolute owner of the property measuring about 2400 sq.ft. of land at Door No.5/3, 4th Street, Sri Ayyappa Nagar, Kolathur, Chennai-99. It is his case that his father had constructed a house consisting of Ground and first floor measuring 400 sq.ft., in each floor. It appears that the petitioner's father has other children who are also co-owners. The grievance of the petitioner is that his brother and two sisters, who are respondents 4 to 6 herein, have put up constructions independently without effecting a partition among them. The further case of the petitioner is that his brother who has now put up a construction of a building measuring about 600 sq.ft., has not obtained any Planning Permission from the respondent / Corporation and therefore, the unauthorised construction should be pulled off.

(4) The Court heard the submissions of the learned Standing counsel appearing for respondents 1 to 3 and perused the materials placed.



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(5) Having regard to the facts stated in the affidavit filed in support of this writ petition and in the representation of the petitioner, this Court is of the view that the petitioner as a co-owner, may be entitled to a share in every parcels of land along with other co-owners. It is his case that his father had put up a construction measuring 400 sq.ft., which is in his possession. The petitioner who is claiming right as a co-owner, is entitled to seek partition and prevent other co-owners from putting up construction till there is partition by metes and bounds. Even if the petitioner's brother and sisters have put up construction without Building Plan, it is appropriate for the petitioner to approach the competent Civil Court for partition and other consequential reliefs which would be very effective. This Court in cases of this nature, can visualize that the petitioner may not be willing to give consent for plan approval or for regularisation of construction by the respondents 4 to 6 even if the construction is as per Building Rules.

(6) In such circumstances, having regard to the fact that the petitioner is having an effective remedy of approaching Civil Court to establish his



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right and this litigation will not serve the real purpose, this writ petition stands **dismissed** giving liberty to the petitioner to approach the competent Civil Court as indicated above.

(7)It is made clear that the dismissal of this writ petition will not stand in the way of the petitioner getting appropriate relief before the Civil Court when he seeks the relief as a co-owner. No costs.

[S.S.S.R., J.] [N.S, J.]
02.01.2024

AP

Internet : Yes

To

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