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WP.No.34898 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.34898 of 2023

WMP.No.34890 and 34891 of 2023

Srimath Sundaramurthy Swamigal Trust
represented by its Trustee, M.Kandappan
Chennai-80

Petitioner

Vs

1. The Additional Secretary (Technical),
Housing and Urban Development Department, Chennai-9
2. The Commissioner, Greater Chennai Corporation, Chennai-3
3. The Zonal Officer, Greater Chennai Corporation,
Zone VII, Ambattur, Chennai
4. The Assistant Executive Engineer, Unit19, Ward-84,
Greater Chennai Corporation, Chennai

5. Jayakumar

Respondents

Prayer:- This Writ Petition has been filed, under Article 222 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st Respondent in Letter No.5164484/UD VI (2)/2023-2, dated 19.10.2023 and to quash the same and consequently to direct the 3rd Respondent to remove the encroachment and unauthorised construction made in TS.No.49, Block No.70, Ward No.E, Korattur Village, Ambattur Taluk.

For Petitioner : Mr.R.Devan



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For Respondents : Mr.R.Vigneshwaran, GA-RR1
Mr.D.B.R.Prabhu, Standing Counsel-RR2 to 4
Mr.A.R.Suresh-R5

ORDER

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

1. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st Respondent in Letter No.5164484/UD VI (2)/2023-2, dated 19.10.2023 and to quash the same and consequently to direct the 3rd Respondent to remove the encroachment and unauthorised construction made in TS.No.49, Block No.70, Ward No.E, Korattur Village, Ambattur Taluk.
2. The brief facts, which are necessary for disposal of this Writ Petition, are as follows:-
 - (a) The Petitioner is a Trust and it claims ownership in respect of a property, which is the subject matter of this Writ Petition. The Petitioner admits that a large extent of property, including the subject property was sold in favour of the Trust by one Desu Reddiyar by a document dated 17.10.1936. However, it is admitted that the said Desu Reddiyar sold an extent of 7.5 cents (3270 sq.ft.) to one Varadarajulu Reddiyar, the grand father of the 5th Respondent by way of a registered sale deed dated 02.08.1939.
 - (b) It is the case of the Petitioner that the Petitioner Trust owns an extent of 7 ares 15 sq.m and the said land is in enjoyment of the Trust. Claiming



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ownership over the substantial portion of the land, the Petitioner has given a representation to the 2nd Respondent to recover the property of the Temple from the 4th Respondent. Based on the representation of the Petitioner, it is contended that the Official Respondents have taken action against the 5th Respondent under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act. The Petitioner has filed a Writ Petition earlier for issuance of Writ of Mandamus directing the 3rd Respondent herein to take action against the 5th Respondent. The said Writ Petition was disposed of with a direction to the Official Respondents to take a decision on the representation of the Petitioner.

- (c) After the order passed by this Court in the earlier Writ Petition, the 5th Respondent has filed a suit in OS.No.201 of 2022 on the file of the District Munsif Court, Ambattur, for permanent injunction against the Petitioner herein and the 3rd Respondent. It is also admitted that as against the order passed by the 3rd Respondent, the 5th Respondent has filed a revision petition. It is stated that the 3rd Respondent has locked and sealed the premises of the 5th Respondent. Aggrieved by the order passed by the 3rd Respondent dated 01.03.2023, a statutory revision was filed by the 5th Respondent under Section 80A of the Tamil Nadu Town and Country Planning Act. The 1st Respondent, Revisional Authority has now disposed of the statutory revision in the following lines:-

“4. Personal hearing was conducted on 05.10.2023. The



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revision Petitioner and Greater Chennai Corporation Official were present.

(i) Greater Chennai Corporation official informed that the land is classified as Government poramboke land and the building does not have any approval. Hence the building was sealed on 06.07.2023.

(ii) The Petitioner produced the copy of the TSLR issued by the Special Tahsildar, Ambattur, dated 20.04.2004 for S.No.916/2Apt as Gramanatham and also produced a certificate of enjoyment issued by Village Administrative Officer Korattur Village in letter No.546/2022/C2, dated 05.05.2022 in favour of he Petitioner. The Revision Petitioner stated that he will obtain planning permission for the building. The Petitioner requested to consider and grant time to get necessary planning permission for the said building.

5. It is observed that the Petitioner's site lies in S.No.916/2 of Korattur Village which is zoned as Mixed Residential and Continuous building Area as per Second Master Plan for Chennai Metropolitan Area. The Petitioner's building is unauthorised. The Petitioner produced a copy of the TSLR issued by Tahsildar Ambattur to prove his ownership wherein it has been mentioned as Gramanatham as per Adangal records Development is permissible in lands classified as "Grama Natham". However the genuineness of the TSLR produced by the Petitioner is to be confirmed.

6. After careful consideration of the above facts and submissions made, the Government hereby grant three months time to the Petitioner to obtain planning permission for the building as per Tamil Nadu Combined Development and Building Rules, 2019. Greater Chennai Corporation is directed to de-seal the building for the said period of three months time. Greater Chennai Corporation shall confirms the genuineness of the TSLR issued by the Tahsildar for the site for considering issue of the planning permission for the building of the Petitioner files an application for approval of the building. If the Petitioner fails to comply the above directions Greater Chennai Corporation shall proceed with further action to relock the building."

Aggrieved by the order passed by the 1st Respondent in the statutory



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revision preferred by the 5th Respondent, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side and considered their submissions and also perused material records placed before this Court.
4. The learned counsel for the Petitioner submitted that the 3rd Respondent initiated proceedings only at the instance of the Petitioner and that therefore, the order passed by the 1st Respondent in the revision petition without hearing the Petitioner is invalid. The learned counsel further submitted that the 1st Respondent has passed an order exceeding its jurisdiction which was conferred on the 1st Respondent under the provisions of the Tamil Nadu Town and Country Planning Act. The learned counsel further submitted that the property in issue belongs to the Petitioner and that therefore, the impugned order without hearing the Petitioner who is the person interested, is liable to be quashed. The learned counsel also further submitted that the unauthorised construction put up by the 5th Respondent over the land of the Petitioner cannot be allowed and that the Petitioner has a valid right, which can be agitated even before the Government.
5. From the grievance of the Petitioner and the representation submitted by the Petitioner earlier, this Court finds that the object behind this litigation is to see that the disputed property is restored to the Petitioner. By the impugned order, the 1st Respondent has only granted three months time to the Petitioner to obtain planning permission for the building with a further direction to the Authorities to take action whether the building put up by the



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Petitioner is in conformity with the approval granted by the Respondent.

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6. It is true that the dispute regarding title is not considered by the 1st Respondent while passing the impugned order. That does not mean that the Petitioner has a valid right to challenge the proceedings. The Petitioner is not a party and therefore, the order impugned presuming title of the 5th Respondent is not binding on the Petitioner. The Petitioner is a person aggrieved by alleging unlawful possession by the 5th Respondent and hence, objecting to the construction on the ground that the construction is an encroachment of the Petitioner's property and hence, he is not entitled to be heard in the statutory revision, where the 5th Respondent challenges the enforcement action taken by the Official Respondents against the 5th Respondent. The Petitioner admits that a civil suit filed by the 5th Respondent is pending. Even though there is no interim order, the main contention raised by the Petitioner is on the strength of its claim for title in respect of the property, which according to the Petitioner has been encroached by the 5th Respondent by putting up unauthorised construction. Therefore, the Petitioner's grievance can be addressed only by the civil Court if he approaches with proper prayer. The Petitioner cannot seek remedy before this Court in a Writ Petition especially when serious disputed question of fact is involved. Therefore, this Court is of the view that this Writ Petition need not be entertained as the Petitioner has an alternative and efficacious remedy of approaching the civil court to ventilate their grievance treating the order impugned is not binding.



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7. In fine, this Writ Petition is dismissed. However, liberty is preserved to the Petitioner to approach the civil Court to establish its right to the property in issue. When a civil suit is filed by the Petitioner, the civil court is expected to decide the question of title uninfluenced by any of the observations made by this Court in this order or by the 1st Respondent in the impugned order. No costs. Consequently, the connected WMPs are closed.

(S.S.S.R.J.) & (N.S.J.)
10.06.2024

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

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2. The Commissioner, Greater Chennai Corporation, Chennai-3
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