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W.P.No.35683 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON : 18.04.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.35683 of 2019 and
WMP.Nos.36590/2019, 36592/2019 and 36593/2019

1.G.Kuppan

2.G.Gajendran

.... Petitioners

vs.

1.The Secretary to Government,
Housing and Urban Development Authority,
Fort St.George, Chennai 600 009.

2.The Commissioner Corporation,
Chennai City, Municipal Corporation,
Rippon Building, Chennai 600 002.

3.The Executive Engineer,
Town Planning Section Work Department,
Adyar Zone, No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

4.The Executive Engineer,
Zone XIII, Adyar Zone, No.115,
Dr.Muthulakshmi Salai, Adyar, Chennai 600 020.



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5.The Assistant Executive Engineer,
Zone XIII, Adyar Zone, No.115,
Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

6.The Assistant Engineer,
Zone XIII, Adyar Zone,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

7.The Zonal Officer,
Zone XIII,
Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

8.K.Gopu

9.K.Ravi

10.K.Baskar

11.V.Balaji

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file in letter No.25396/UD-VI(1)/2017-6 dated 27.11.2019 issued by the 1st respondent and to quash the same and pass such orders.

For Petitioners : Mr.David Tyagaraj

For RR 1 : Mr.Stalin Abimanyu
Additional Government Pleader

For RR2 to 7 : Mr.D.B.R.Prabu, Standing Counsel

For RR8 to 10 : Mr.R.Subramanian

For RR11 : Mr.S.Venkatesh

ORDER



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This writ petition has been filed seeking to quash the order of the 1st respondent-Principal Secretary to Government dated 27.11.2019 whereby the petitioner was directed to obtain planning permission for the existing building.

2. The petitioner averred in the writ petition that his grandfather purchased the subject property by way of registered Sale Deed, dated 21.02.1934. They are in absolute possession and enjoyment of the same. A family partition was effected between his three sons, viz., Kannappan, Gnanamoorthy and Duraibabu. Door No.8 was allotted to one Kannappan.

(ii) Respondents 8 to 10 herein had filed two applications before this Court in O.P.No.562 and 563 of 2009 for issuance of letter of administration for the property bearing Door no.8.

(iii) It was contended that the said property belongs to one Muniammal and Thayarammal and it was alleged that the said Muniammal was the second wife of his father Kannappan and accordingly, a letter of administration dated 21.04.2010 was granted.



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(iv) It is the further case of the petitioners that the property bearing Door No.9, is a vacant plot and the said plot was under the petitioners' possession. However, respondents 8 to 10 had attempted to grab the property from his possession, without any right, title or interest over the property.

(v) The petitioners and other legal heirs of late Gnanamoorthy, had filed a Suit in C.S.No.493/2011, before this Court, for declaration to declare that the plaintiffs' 1 to 3 therein are the absolute owners of the property bearing Door No.9.

(vi) The respondents 8 to 11 had also filed a Civil Suit in C.S.No.250/2011, against the petitioner and his brother and sister, for declaration declaring that the legal heirs of Gnanamoorthy does not have any right to claim any part of the property of the vacant land in Door Nos.9 and 10.

(vii) The petitioner and his brother had filed an application in O.A.NO.926/2011, seeking for an order of ad interim injunction, restraining the respondents 8 to 11 from putting up any construction over the property



and the same was dismissed by this Court.

(viii) Aggrieved by the dismissal of injunction application, the petitioners and their brother had filed an appeal before this Court in O.S.A.No.452/2011 and the same was dismissed.

(ix) Taking advantage of the orders in their favour, the respondents 8 to 11 had now put up construction over the land in Door No.9 without any planning permission and therefore, the petitioner has filed W.P.No.13436/2012 to prevent the said construction. This Court had directed the 2nd respondent to inspect the building and to issue necessary notice in accordance with the provisions of the Tamil Nadu Town and Country Planning Act.

(x) Pursuant to the said order, a locking and sealing demolition notice was issued by the respondents 3 to 5, vide letter dated 11.04.2014, and the same was challenged before this Court in W.P.No.19907/2014 by the 8th respondent and in addition, the petitioner has also filed a contempt petition against respondents 2 to 6 for non compliance of the order dated 30.01.2014



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made in W.P.NO.13436/2012. This Court has clubbed both the writ petitions and the contempt petition together and disposed of the matters with certain directions. Based on the orders in W.P.No.19907 of 2014, the respondents 8 to 11 had applied for planning permission with the 3rd respondent, however the same was rejected vide order dated 24.01.2017.

(xi) Against the said rejection order, an appeal was filed by the respondents 8 to 11 to the 3rd respondent. Pending appeal, the respondents 3 to 6 had issued a locking, sealing and demolition notice, dated 08.03.2017. The same was challenged before this Court in WP.No.8544/2017.

(xii) This Court vide order dated 10.04.2017, allowed the writ petition by setting aside the impugned order dated 08.03.2017. Further the appeal which was filed against the rejection order dated 24.01.2017, was returned by the 7th respondent, on the ground that the appeal has to be preferred only to the 1st respondent. Thereafter, de-occupation notice was issued by the respondents 3 to 6, against which, a Writ Petition was filed in W.P.No.26766/2017 and this Court by order dated 12.10.2017 had directed the respondents 8 to 11 to agitate the matter before the 1st respondent.



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3. Hence, the respondents 8 to 11 challenging the locking, sealing and demolition notice and the de-occupation notice, had filed two appeals under Section 80 A and Section 79 of the Town and Country Planning Act, wherein the petitioner herein was impleaded. The petitioner attended the enquiry before the 1st respondent and thereafter an order was passed with a direction to the respondents 8 to 11 to obtain planning permission for the existing building. Aggrieved by the said order, the petitioners are before this Court.

4. A perusal of entire materials available on record would go to show that between petitioners and respondents 8 to 11, civil suits are pending in respect of title over the property. That apart, before the 1st respondent-Secretary to Government, appeal filed by the parties was disposed of on 27.11.2019, whereby, the respondents 8 to 11 were directed to obtain planning permission for the existing building. The 1st respondent further directed the Commissioner, Greater Chennai Corporation to pursue action accordingly.

5. The contention of the learned counsel for the petitioners is that the



existing building was constructed with deviation and if the impugned order sustain, it would continue to result with wrongful gains to the violators of the law. He further submits that the building is under construction and therefore, if the planning permission is obtained for the building, it will be against the Tamil Nadu Combined Development Regulation and Building Rules, 2019.

6. The other contention raised by the learned counsel for the petitioners is that when the competent authority is not satisfied with the title of the building, the direction of the 1st respondent to the respondents 8 to 11 to obtain planning permission for the existing building, is contrary to law.

7. In the counter affidavit filed by the 11th respondent, it is stated that writ petitioner is a 3rd party to the property and he has no legal right to sue a lawful owner of the property namely the 7th to 10th respondents.

8. Admittedly, there is civil suit pending between the petitioners and the respondents 8 to 11 in respect of title and possession in respect of the subject property. In such circumstances, the unauthorised construction put up by the respondents 8 to 11 without planning approval, cannot stand for scrutiny. The



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order that has been challenged before this court is the order dated 27.11.2019 passed by the 1st respondent whereby the respondents 8 to 11 were directed to obtain planning permission for the existing building.

9. The issue regarding title and possession in respect of the subject property is not yet decided in the civil suit filed before this court. In any event, the construction put up already by the respondents 8 to 11 necessarily need planning permission. The first respondent has also directed the Greater Chennai Corporation to pursue action accordingly. The 1st respondent has given necessary opportunities to the concerned owners of the land or other persons responsible for such unauthorised and illegal constructions and directed the respondents 8 to 11 to obtain planning approval. We are only pointing out that unauthorised and illegal constructions should never escape the attention of the authorities and that the Greater Chennai Corporation shall take necessary steps for demolition of such illegal constructions.

10. For the above said reasonings, we do not find any reasons to interfere with the impugned order dated 27.11.2019. The Greater Chennai



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Corporation is directed to take action as against the building in question, if the same do not have any planning permission till date and proceed as per Rules. Such action shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.) (N.M., J.)

18.04.2024

Index : Yes / No
Internet : Yes / No
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