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WP.No.295/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.295/2024 & WMP.Nos.364 & 365/2024

E.Arumugam

... Petitioner

Vs.

- 1.The Commissioner
Greater Chennai Corporation
Ripon Building, Chennai 600 003.
- 2.Regional Deputy Commissioner [South]
Greater Chennai Corporation
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.
- 3.Zonal Officer, Zone XII [Alandur]
Greater Chennai Corporation
No.1, New Street, Near GST Road
Alandur, Chennai 600 016.
- 4.Executive Engineer, Zone XII
Greater Chennai Corporation
Alandur, Chennai 600 016.



WP.No.295/2024

5.The Assistant Engineer/Junior Engineer
Division 160, Zone-XII, Greater Chennai
Corporation, Alandur, Chennai 600 016.

6.The Additional Secretary to Government
Housing and Urban Development Department
Fort St George, Secretariat, Chennai.

7.Veeramuthu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records of the 6th respondent in Letter No.2822/UD-VII [1]/2019-4 dated 11.04.2023 and to quash the said order of the 6th respondent and consequently direct respondents 1 to 6 to proceed in accordance with law for the removal of the unauthorised constructions put up by the 7th respondent in a portion of the property of the petitioner measuring 3844 sq.ft., new Survey No.24/1, Madhava Perumal South Street, Alandur, Chennai 600 016.

For Petitioner : Mr.T.M.Hariharan

For RR 1 to 5 : Mr.D.B.R.Prabhu, Standing counsel

For R6 : Mr.V.Sudalaiselvan
Standing counsel



WP.No.295/2024

WEB COPY

ORDER

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

- (1)The present writ petition has been filed challenging the proceedings of the 6th respondent dated 11.04.2023 with a prayer to quash the same and to direct the respondents 1 to 6 to remove the unauthorised construction put up by the 7th respondent herein in accordance with law, in a portion of the property of the petitioner measuring 3844 sq.ft., new Survey No.24/1, Madhava Perumal South Street, Alandur, Chennai 600 016.
- (2)Brief facts that are necessary for the disposal of this writ petition are as follows:-
- (3)The petitioner claims ownership over an extent of 3844 sq.ft., of land in New Survey No.24/1, Madhava Perumal South Street, Alandur, Chennai 600 016. According to the petitioner, he got the property from his father by way of a registered Settlement Deed dated 26.03.1971. The further case of the petitioner is that his father acquired the property from one Kumarasamy, under a registered Sale Deed dated 02.04.1958 and he was



WP.No.295/2024

WEB COPY

put in possession of the property pursuant to the Settlement Deed executed in his favour by his father.

(4)The petitioner states that the 7th respondent and others interfered with his right in respect of a portion of the suit property and therefore, he filed a suit in OS.No.104/1990 on the file of the Sub Court, Poonamallee, for declaration of his title and recovery of possession. Though the suit was decreed on 02.08.2001 and an Execution Petition was filed by the petitioner in EP.No.123/2012 on the file of Principal District Munsif Court, Alandur, for execution of decree for delivery of possession, the grievance of the petitioner is that the execution proceedings is being stalled. The petitioner has not given any valid reason why he could not execute the decree.

(5)It is in the said circumstances, the petitioner appears to have submitted a representation dated 12.09.2017 to the official respondents to stop the illegal constructions and to take action against the 7th respondent for the unauthorised construction put up by him and others in the property for which the petitioner had a decree for recovery of possession.



WP.No.295/2024

WEB COPY

(6)The petitioner earlier filed a writ petition in WP.No.25257/2017 for issuance of a direction to the official respondents to take action against the 7th respondent and others for unauthorised construction. The said writ petition was disposed of by a Division Bench of this Court on 20.02.2023 with a direction to the State Government to dispose of the revision petition filed by respondents 6 to 14 therein as expeditiously as possible preferably within a period of two months from the date of receipt of a copy of that order and a further direction to the effect that the petitioner's representation should be disposed of simultaneously by respondents 1 to 3 therein depending upon the orders to be passed by the 15th respondent therein in the revision petition filed by respondents 6 to 14 therein.

(7)The examination of records reveal that the petitioner has earlier filed a suit for declaration of his title in respect of the property in suit D and E schedule with an extent of 930 sq.ft. each with reference to four boundaries. When the suit itself was filed only for an extent of 1860 sq.ft., it is not known how the petitioner claims title to a larger extent of 3844 sq.ft., in the present writ petition.



WP.No.295/2024

WEB COPY

(8)The suit for recovery of possession has not been executed despite Execution Petition is pending for 12 years. However, having regard to the fact that the petitioner has not filed any other document except the decree, this Court is unable to presume that the petitioner is the owner of larger extent of property and that the suit was restricted only because the dispute was only with respect to a small extent. The petitioner's specific grievance in the present writ petition is that he is the owner of the property and that the construction put up by the 7th respondent is not only unauthorised, but in the land belonged to the petitioner. The petitioner is against the whole construction as it is his specific contention that the property in which construction is put up by the 7th respondent is fully owned by him. When the petitioner has obtained a decree in respect of a portion of the property, the petitioner is entitled to execute the same if the decree has become final. The petitioner in the present writ petition challenges the order that is now passed by the Government to enable the 7th respondent to rectify the violations, to satisfy the building rules and to obtain necessary approval for rectifying the building as per the Tamil



WP.No.295/2024

WEB COPY

Nadu Combined Buildings Rules, 2019. By this order, the coercive action or proceedings initiated to pull down the structure put up by the 7th respondent, is stayed till the Corporation consider the application for regularization of his building. Even the stay is restricted for a period of three months. In such circumstances, having regard to the scope and nature of the order, this Court is unable to find any legal injury to the petitioner. If the petitioner has obtained a decree as against the 7th respondent and the decree has become final, he is entitled to execute the same uninfluenced by any order that is passed in respect of building constructed by the 7th respondent. The regularization or building plan approval will not be deterring factor that will stand in the way of petitioner executing the Civil Court's decree. When this Court has no materials to accept the petitioner's case that he has title to the entire extent [larger extent], we may not accept the case of the petitioner that the whole construction is in the land of petitioner.

(9) It is also to be noted that the direction issued by this Court in the earlier writ petition does not indicate hearing of the petitioner by the Additional Chief Secretary to Government while considering the revision pending



WP.No.295/2024

under Section 80-A[iii] of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, we find no reason to entertain this writ petition.

(10) Accordingly, the writ petition stands **dismissed**. However, by way of abandon caution, this order shall not prejudice the rights of the petitioner if any, in executing the decree in the manner known to law. Since this Court has not examined the records, any observation or finding in this order about the rights and entitlement of the petitioner or 7th respondent with regard to the property in issue, will not bind the parties. The petitioner can also establish his title beyond the suit 'D' and 'E' schedule property in manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [N.S., J.]
09.01.2024

AP

Internet : Yes



WP.No.295/2024

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