

(2009) 04 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 7955 of 2009 and M.P. No. 1 of 2009

Babu and Sasikala

APPELLANT

Vs

The Member Secretary, Chennai Metropolitan Development
Authority, The Commissioner, Corporation of Chennai and
Subramani

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Citation : (2009) 3 LW 772 : (2009) 5 MLJ 191

Hon'ble Judges : H.L. Gokhale, C.J.; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : D. Ashok Kumar, for the Appellant; D. Veerasekaran, for R1 L.N. Pragasam, for R2, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—Heard Mr. D. Ashok Kumar in support of this petition, Mr. D. Veerasekaran, learned Counsel appearing for the first

respondent and Mr. L.N. Pragasam, learned Counsel appearing for the second respondent. The third respondent is a private party.

2. This writ petition is filed, seeking a direction against respondents 1 and 2 to take action against respondent No. 3 for the alleged illegal

construction put up by him. The petitioner has already filed a suit for the very same purpose and the learned Judge of the City Civil Court has

returned the plaint, by relying upon the decision of a Division Bench of this Court reported in the case of Consumer Action Group Vs. The State of

Tamil Nadu and The Chennai Metropolitan Development Authority, . The relevant direction in paragraph 32 (xv) of the said decision reads as

follows:

No Civil Court shall entertain any suit or proceedings or Application in respect of the action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements. All pending and future petitions filed/to be filed against CMDA and the Corporation relating to the illegal and unauthorised construction of buildings and or encroachment, and the demolition notice shall be placed before the special bench to be nominated by the Chief Justice.

3. As far as this paragraph is concerned, it is clear that it deals with illegal construction and encroachment on roads and pavements by the individuals or Organizations. When Chennai Metropolitan Development Authority or Municipal Corporation takes action against them, the aforesaid paragraph states that their suits will not be entertained by the Civil Courts.

4. As far as the present proceeding is concerned, it is a proceeding by a person against a neighbour, seeking a direction to the Chennai Metropolitan Development Authority and Corporation and it is not a suit by an encroacher. Hence, the suit can very well be proceeded with. The plaint will therefore be resubmitted to the Civil Court for proceeding further.

5. In such view of the matter, this writ petition is dismissed, with a liberty to proceed with the Civil suit. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.