



WEB COPY



W.P.No.1028 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2024

DATE OF DECISION : 12.08.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.1028 of 2024

A.Balakrishnan .. Petitioner

v.

1. The Chairman
Tamil Nadu Local Bodies Ombudsman
No.100, Anna Salai
Guindy, Chennai 600 032
2. The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai
3. The Zonal Officer
Central Region, Zone-8
No.368, Pulla Avenue
2nd Cross Street East
Shenoy Nagar, Chennai 600 030
4. The Assistant Executive Engineer
Central Region, Zone-8



W.P.No.1028 of 2024

No.368, Pulla Avenue
2nd Cross Street East
Shenoy Nagar, Chennai 600 030

5. Mrs.T.Ammaponnu

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the 1st respondent herein in his proceedings in Order No.305/Maa/2023 dated 31.10.2023 and to quash the same.

For Petitioner :: Mr.S.Sathish Rajan

For Respondents :: Mr.B.Nedunchezhiyan for R1
Mr.E.C.Ramesh
Standing Counsel for R2 to R4
Mr.P.Thiagarajan for R5

ORDER

S.S.SUNDAR,J.

This writ petition is filed to quash the impugned order passed by the first respondent vide proceedings in Order No.305/Maa/2023 dated 31.10.2023.

2. The petitioner states that he is the absolute owner of the property comprised in Old Survey No.388, R.S.No.128/1 bearing New Door No.44 (Old No.65) in Thiagappa Street, Kilpauk, Chennai-10 to an extent of 3072



W.P.No.1028 of 2024

1/2 sq.ft., of land with building thereon. It is his case that his father purchased the said property from one C.Balasubramaniam by a sale deed dated 04.12.1976. It is the specific case of petitioner that the present building is 50 years old and it is in existence for a few decades. The fifth respondent herein has purchased the property bearing Door No.42 in the same street, which is adjacent to the property of writ petitioner. It appears that the fifth respondent and her husband made several representations to the Corporation officials alleging that the petitioner has made construction without building plan approval. Even though the Corporation officials have issued a show cause notice in the year 2009 for taking action against the petitioner for unlawful construction, it is admitted that there was no follow up action. It is the case of petitioner that the official respondents dropped the proceedings after taking note of the fact that the building is 50 years old and therefore no planning permission is required. It is also stated that the fifth respondent is not residing in the property, which is adjacent to the petitioner's property, as she had vacated about 15 years back. On the basis of the complaint lodged by the fifth respondent, without notice to the petitioner, the first respondent passed the impugned order finding that the



W.P.No.1028 of 2024

officials of the local body have failed to take action, as contemplated under the provisions of the Town and Country Planning Act.

3. The first respondent, who is the authority under the Tamil Nadu Local Bodies Ombudsman Act, 2014, has passed the impugned order. The operative portion of the impugned order reads as follows:-

“மனுதாரர் 10 ஆண்டுகளுக்கு மேலாக சென்னை எழும்பூர் கிராமம் பிளாக் எண் 10, R.S.No.128/1 சென்னை கீழ்ப்பாக்கம் தியாகப்பா தெருவில் சந்தின் நடுப்பகுதியில் கதவு எண் 44/66ல் பெருநகர சென்னை மாநகராட்சியிடம் அனுமதியில்லாமல் கட்டப்பட்டுவரும் கட்டடத்தின் மீது நடவடிக்கை எடுக்க கோரி மனு அளித்தும், 17.9.2009 அன்று stop work notice/notice calling for approved plan மற்றும் 29.12.2021 அன்று De-occupation notice வழங்கிவிட்டு அதன் தொடர்ச்சியாக எடுக்கப்பட வேண்டிய தொடர் நடவடிக்கை எடுக்காமல் இருந்த பெருநகர சென்னை மாநகராட்சி மண்டலம்-8ன் சம்மந்தப்பட்ட அலுவலர்கள் மீது உரிய ஒழுங்கு நடவடிக்கை எடுக்குமாறு பெருநகர சென்னை மாநகராட்சி ஆணையருக்கு இம்முறைமன்றம் பரிந்துரை செய்து ஆணையிடுகிறது. மேலும்,



பெருநகர சென்னை மாநகராட்சி மண்டலம்-8ன் உதவிப்பொறியாளர் தன்னுடைய வாக்குமூலத்தில் தெரிவித்தவாறு மேற்கண்ட கட்டடத்தின் மீது சட்டப்பூர்வ நடவடிக்கையை ஒரு மாதத்திற்குள் எடுக்கும்படியும், அவ்வாறு எடுக்கப்பட்ட நடவடிக்கை குறித்த அறிக்கையினை இம்முறைமன்றத்திற்கு அனுப்பிவைக்குமாறும் பெருநகர சென்னை மாநகராட்சி மண்டலம் 8ன் மண்டல அலுவலருக்கு அறிவுரை வழங்கி இம்முறைமன்றம் ஆணையிடுகிறது.”

4. The petitioner, while attacking the impugned order of first respondent, has raised the following grounds:-

(i) The first respondent passed the impugned order without giving any notice or opportunity to the petitioner before rendering adverse findings against the petitioner about the unauthorized construction and that therefore the order impugned is in violation of the principles of natural justice.

(ii) The order of first respondent is without jurisdiction, inasmuch as the nature of complaint does not fall within the jurisdiction or ambit of the Tamil Nadu Local Bodies Ombudsman Act, 2014.

(iii) Proceedings were initiated by the respondents to stop the construction when the construction was long before 2009. In view of



WEB COPY



W.P.No.1028 of 2024

the specific statutory bar under the Tamil Nadu Local Bodies Ombudsman Act, 2014, the first respondent has no power or jurisdiction to entertain the complaint after the expiry of five years of the violation stated to have taken place.

(iv) The first respondent passed the impugned order only on the basis of the statement of fifth respondent dated 25.09.2023 and on the statement of third respondent dated 18.10.2023. Since the petitioner is the person affected by any order or action in pursuance of the representation of the fifth respondent, the impugned order, without notice to the petitioner or an opportunity to the petitioner to produce the records or to cross examine the third and fifth respondents, is against the principles of natural justice.

5. Even though there are a few more grounds raised by the petitioner, this Court is unable to sustain the impugned order, having regard to the nature of complaint/representation submitted by the fifth respondent. In the representation, the fifth respondent has alleged that the petitioner has encroached the pathway, which is meant for the persons who are residing in and around the locality and that therefore a direction should be issued to the officials of Chennai Corporation to initiate action against the concerned under the relevant statute.



W.P.No.1028 of 2024

6. The Tamil Nadu Local Bodies Ombudsman Act, 2014 (hereinafter referred to as “the Act”) was passed by the Tamil Nadu Legislative Assembly and later received the assent of the Governor on 14.12.2014. This Act is to provide the establishment of Ombudsman for conducting enquiry on the allegations against the elected members of the local bodies and the officers and employees working under the local bodies in the State of Tamil Nadu and for matters connected therewith and incidental thereto. Sections 7, 9 & 10 of the Act read as follows:-

“7. The Ombudsman shall perform all or any of the following functions, namely:—

(i) enquire into any written complaint from the Government or that has come to the notice of the Ombudsman in which corruption or maladministration of a public servant or a local body is alleged;

(ii) pass an order on the proved allegation in the following manner, namely:—

(a) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate investigating agency for necessary action;

(b) where the irregularity involves loss of the fund of the local body, order recovery of such loss from those who are



WEB COPY



W.P.No.1028 of 2024

responsible for such irregularity;

(c) where the irregularity is due to wilful negligence or dereliction of duty of any officer or employee of the local body, recommend for departmental action by the appropriate authority under the relevant rules.

9. The Government may, at the request of the Ombudsman, make available the services of officers and employees of the Government including police personnel to assist the Ombudsman in the conduct of enquiry.

10. (1) Notwithstanding anything contained in this Act, the Government may refer any allegation of corruption or maladministration against a local body or a public servant which is within their knowledge or brought to their notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under this Act.

(2) The Ombudsman may, on receipt of a complaint, examine the complaint and supporting documentary proof and where there is prima facie case, he/she may enquire into it.

(3) The Ombudsman shall not enquire into matters relating to, — (a) any matter in respect of which a formal and public enquiry has been ordered by the Government;

(b) any matter in respect of which an enquiry has been



W.P.No.1028 of 2024

ordered under the Commission of Inquiries Act, 1952 or any matter pending before a Court;

(c) any complaint filed after the expiry of five years from the date on which the occurrence is said to have taken place.

(4) After an enquiry, if the Ombudsman is satisfied that,—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there is no sufficient ground to continue proceedings; or

(c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case, he/she may reject the complaint after recording his/her findings stating the reason therefor, and communicate the same to the complainant.

(5) The Ombudsman shall, subject to the provisions of this Act and the rules made thereunder, have power to regulate its procedure by fixing the time and place of sitting.”

7. A reading of the above provisions would show that the Ombudsman can enquire into any written complaint from the Government or that has come to the notice of Ombudsman in which corruption or maladministration of a public servant of a local body is alleged. The Ombudsman has to pass



W.P.No.1028 of 2024

an order on the proved allegation where the irregularity involves a criminal offence committed by a public servant or involves loss of fund of the local body or is due to wilful negligence or dereliction of duty of any officer of the local body. Section 2(1) of the Act defines “action” as any action taken by way of decision, recommendation, resolution or finding or in execution thereof or in exercise of administrative or legal functions in any other manner. The entire Act enables the Ombudsman to entertain complaints against the local body or officers and employees working in the local body in respect of certain matters. The object of the Act appears to be to ensure accountability of officials and staff of the local body who are government servants.

8. In the whole representation, except the general allegation that the official respondents have not taken action against the unauthorized construction, there is no specific allegation against any named officer for corruption or any illegality committed by the officers by passing orders in utter disregard to the provisions of the statute governing local body. So far as the complaint by the fifth respondent pointing out the unlawful



W.P.No.1028 of 2024

construction put up by the petitioner is concerned, this Court is unable to see any specific allegation about the nature of illegal construction. It is a matter of fact and record that enforcement action was taken by the local body against the petitioner in 2021 and the order of de-occupation notice issued by the local body was challenged by the petitioner before the Government. The Government has now partly allowed the revision under Section 80-A of the Town and Country Planning Act with the following direction:-

“7. After careful consideration of the above facts and submissions, the Government hereby grant three months' time to the revision petitioner to rectify the deviations/violations in the building and to satisfy the rules and to obtain necessary approval for the rectified building as per Tamil Nadu Combined Develop and Building Rules, 2019. Till such time there shall be a stay on further enforcement action against the petitioner's building. Government also direct GCC to de-seal the premises for the said period of three-month time. On expiry of the said period of three months' time, Greater Chennai Corporation shall relock the building, if the petitioner failed to comply the above directions within the time specified..”

9. In view of the order passed by the Government in exercise of its



W.P.No.1028 of 2024

power under Section 80-A of the Town and Country Planning Act, the impugned order passed by the first respondent giving recommendations is totally unwarranted. It is true that the impugned order is prior to the order of State Government. When there is a statutory remedy available to the person who has put up unauthorized construction, in such circumstances, exercising power under the Tamil Nadu Local Bodies Ombudsman Act to issue directions or recommendations to the official respondents will prejudice the statutory remedy available to the petitioner and the rights of individuals. When allegation against the petitioner is that he has put up construction by encroaching into the common pathway, a decision which will unfairly affect the civil rights of individual cannot be passed behind his back without an opportunity being given to the person aggrieved. In this case, the unauthorized construction has to be dealt with in the manner as contemplated under the Town and Country Planning Act. When an individual officer of Government passed an order with corrupt motive, it is a matter for the Ombudsman to enquire into for passing appropriate orders as contemplated under the Act. The fifth respondent, having regard to the complaint, ought to have filed a civil suit if the construction is in



W.P.No.1028 of 2024

encroachment of any common pathway or by obstructing the right of easement enjoyed by the fifth respondent or anyone in that easement. The jurisdiction of the authority under the special statute cannot be expanded to enter into private disputes. Even recommendations which are likely to affect the civil rights of individuals cannot be permitted, as this will lead to undesirable situations for the persons who are not parties before the Ombudsman.

10. The fifth respondent has made several allegations against the petitioner. Since the allegations are in the nature of depriving the personal rights enforceable under the common law, the fifth respondent cannot seek the aid of first respondent. Instead he should approach civil Court. From the counter affidavit filed by the fifth respondent, it is not difficult to deduce that the whole allegation is against the petitioner. There is no specific allegation against any named official. The first respondent, who has limited jurisdiction under the Act, by the impugned order, has travelled beyond his jurisdiction by rendering a finding as against the unauthorized construction without any recommendation as against any named official responsible for



W.P.No.1028 of 2024

such unauthorized construction. This Court is therefore convinced that the recommendation by the first respondent is liable to be quashed for want of jurisdiction and competence.

11. In view of our above conclusions, the impugned order is set aside and the writ petition stands allowed. However, it is open to the official respondents to pursue further action, if required, pursuant to the direction of the Government in the statutory revision filed by the petitioner under Section 80-A of the Town and Country Planning Act. Consequently, W.M.P.Nos.1076 & 1078 of 2024 are closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
12.08.2024

ss

To

1. The Chairman
Tamil Nadu Local Bodies Ombudsman
No.100, Anna Salai
Guindy, Chennai 600 032

2. The Commissioner



W.P.No.1028 of 2024

Greater Chennai Corporation
Rippon Buildings, Chennai

WEB COPY

3. The Zonal Officer
Central Region, Zone-8
Greater Chennai Corporation
No.368, Pulla Avenue
2nd Cross Street East
Shenoy Nagar, Chennai 600 030

4. The Assistant Executive Engineer
Central Region, Zone-8
Greater Chennai Corporation
No.368, Pulla Avenue
2nd Cross Street East
Shenoy Nagar, Chennai 600 030



WEB COPY



W.P.No.1028 of 2024

S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

SS

Order in

W.P.No.1028 of 2024

12.08.2024