

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.2183 of 2011
& M.P.No.1 of 2011

The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai.

.. Appellant

Vs.

1. Santhosh Devi Jain
2. Manoj Kumar Jain

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.09.2011 made in M.P.No.2 of 2011 in W.P.No.12752 of 2011 on the file of this Court.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to extend the time by six months from 29.9.11 to 29.3.12 by directing the respondent to remove the lock and seal in premises No.13 & 14 Vadamalai Street, Wall Tax Road, Sowcarpet, Chennai-79 for carrying out the rectification work.

WP.No.12752/11: Presented under Article 226 of the Constitution of India to issue a writ of mandamus, directing the respondent to remove the lock and seal in premises No.13 & 14 Vadamalai Street, Wall Tax Road, Sowcarpet, Chennai-79.

For appellant : Mr.K.Raja Shrinivas

For respondents: Mr.Navaneethakrishnan for Mr.S.Saravanan

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

Heard Mr.K.Raja Shrinivas, learned counsel appearing for the appellant-CMDA and Mr.Navaneethakrishnan, learned counsel appearing for Mr.S.Saravanan, learned counsel for the respondents.

2. This Writ Appeal is directed against the order of the learned single Judge, dated 28.09.2011 made in M.P.No.2 of 2011 in W.P.No.12752 of 2011, wherein, in respect of the prayer for extension of time by six months from 29.09.2011 to 29.03.2012 by directing the

appellant/CMDA to remove the lock and seal in the premises bearing Nos.13 and 14, Vadamalai Street, Wall Tax Road, Sowcarpet, Chennai-600 079, for carrying out the rectification work, the learned single Judge, while ordering the petition, granted four months from the date of the order to the respondents/writ petitioners to complete the removal of the unauthorised constructions and deviations in the said premises.

3. It is seen that originally, the Writ Petition in W.P.No.12752 of 2011 was filed by the respondents herein praying for issuance of a Writ of Mandamus to direct the appellant/CMDA to remove the lock and seal put up in the said premises, pending disposal of the appeal before the Government of Tamil Nadu. The learned single Judge, by order dated 08.06.2011, disposed of the Writ Petition with the following observations:

"3. Petitioners state that their property has been locked and sealed by the respondent for admitted violation. The present writ petition has been filed for a mandamus to remove the lock and seal put up on 26.05.2009 so as to enable the petitioners to carry out the rectification in the construction, which according to the respondent authority is in violation of the provisions of the Tamil Nadu Town and Country Planning Act.

4. In view of the submission made by the learned counsel for the respondent, the respondent is directed to remove the lock and seal put up by them in the above premises on receipt of a copy of this order.

5. Petitioners are, thereafter, directed to remove the unauthorised constructions and deviations within three months from the date of removal of the seal and lock. If the petitioners failed to comply with the above said direction within the stipulated time, the respondent authority is at liberty to proceed in accordance with law. Both the parties are directed to comply with the direction as above.

6. The writ petition is ordered as above. No costs. Consequently, connected miscellaneous petition is closed."

4. Subsequently, it is seen that by the impugned order, dated 28.09.2011, the learned single Judge extended and granted four months time, as observed supra, as against which, the CMDA is on appeal before us.

5. Earlier, it seen that there was a direction to remove the unauthorised constructions and deviations within three months from the date of removal of lock and seal by the appellant/CMDA, by order, dated 08.06.2011 of the learned single Judge, and though it is seen that the appellant/CMDA have obeyed the order by removing the lock and seal in the said premises, but due to the re-lock and re-seal by the CMDA, the respondents/writ petitioners could not execute the order within the time stipulated by this Court and hence, they subsequently prayed for extension of time in M.P.No.2 of 2011 in

W.P.No.12752 of 2011, and the learned single Judge, by the impugned order, dated 28.09.2011, granted four months' time from the date of order to complete the removal of the unauthorised constructions and deviations in the said premises.

6. During the course of hearing of the Writ Appeal on 23.03.2015, this Court passed the following order after hearing the learned counsel appearing for the parties:

"Heard Mr.K.Raja Shrinivas, learned counsel for the appellant-CMDA and Mr.Navaneethakrishnan, the learned junior counsel appearing for Mr.S.Saravanan, learned counsel on record for the respondents.

2. This is a matter which is now being heard in a very unfortunate situation, wherein, the litigants (respondents herein) are taking shelter under the impugned order of this Court passed by the learned single Judge and they have continued with the impugned order of the learned single Judge for more than two years, when the limitation in the impugned order itself was for only four weeks to remove the unauthorised construction and ultimately, they have not obeyed the order of the learned single Judge, and are litigating the matter in this Writ Appeal by taking adjournments continuously. It is seen that the learned counsel for the respondents has taken efforts in informing the respondents about the matter, more particularly, the second respondent herein, who had been issued with notice by the counsel, which returned with postal endorsement as "not known". When that being the position, this Court cannot wait further for the respondents, and the Writ Appeal has to be disposed of at an early date. The learned junior counsel appearing for the learned counsel on record for the respondents, informs that his senior Mr.S.Saravanan, learned counsel has gone to native place and will be returning only by 25.03.2015. Hence, to give a last opportunity to the respondents, post the Writ Appeal on 26.03.2015 at the end of motion list as first item."

7. Subsequently, on 26.03.2015, this Court observed and directed as follows:

"This writ appeal, an unfortunate one, is filed by the Chennai Metropolitan Development Authority (C.M.D.A.), against an interim order granted by a learned single Judge of this Court dated 28.09.2011 in and by which further period of four months was granted to the writ petitioners to complete the removal of unauthorised constructions and deviations in the premises situated at Nos: 13 and 14, Vadamalai Street, Wall Tax Road, Sowcarpet, Chennai-600 079.

2. Today we have heard the learned counsel appearing on either side in the presence of the respondents/writ petitioners.

3. The order in the main writ petition viz. W.P. No: 12752 of 2011 was passed as early as on 08.06.2011, directing the writ petitioners, the respondents herein, to remove the unauthorised constructions and deviations within a period of three months from the date of removal of the seal and lock. Though there was no order of stay granted by this Court in this writ appeal, both the parties have remained silent for more than four years and thus, the unauthorised constructions remains to be demolished.

4. Now, the respondents inform this Court that because of the lock and seal put up in the premises, they are not in a position to remove the unauthorised construction. Learned counsel appearing for the C.M.D.A. submits that the lock and seal could not be removed because of the pendency of the writ appeal.

5. In these circumstances, the learned counsel appearing for the appellant is directed to inform the concerned authority to inspect the premises in question and find out how much time it may take to remove the unauthorised construction. Counsel for the respondents/writ petitioners is also directed to file an affidavit about the time they may take to set right the building in question as per the approved plan.

Place the matter on 31.03.2015. Registry is directed to furnish a copy of this order to both the learned counsel on or before 27.03.2015."

8. Accordingly, as directed in the said order dated 26.03.2015, both the parties have filed the report/affidavit, stating as follows: Inspection report, dated 30.03.2015, through Senior Planner CMDA, Chennai-600 008:

"3. The building in question is situated at Door Nos.13 and 14, Vadamalai Street (Wall Tax Road), near Thirupathi Street, Chennai-600 079 was inspected by the CMDA Enforcement Officials consisting of the Deputy Planner-North-I Division along with Planning Assistant Grade-III on 30.03.2015. The building consists of Ground Floor + 6 Floors in-tact as re-locked and sealed on 12.09.2011.

It is further stated that the respondent got approval from Chennai Corporation for Ground + One Floor (1st Floor) for four residential dwelling units only; but unauthorisedly constructed 2nd, 3rd, 4th, 5th and 6th floor and hence to demolish the unauthorised portions, it may take three months time."

Affidavit, dated 31.03.2015 filed by the second respondent, on his behalf and also on behalf of the first respondent:

"2. I respectfully submit that we are the joint owners of the property situated at Door No.13 and 14, Vadamalai Street, Chennai-600 079 and comprised in R.S.No.7691, Block No.66, Zone No.3, Division No.43.

3. I respectfully submit that we had submitted a revised plan to the appellant herein to regularise the construction put up by us prior to 2007 on 18.11.2008 followed by another revised plan on 17.12.2008. The appellant herein rejected our application to regularise the construction as per the revised plan by letter dated 20.04.2009 in No.C3/2378/2009. We had filed an appeal on 28.05.2009 to the Government challenging the proceedings of the appellant herein, dated 20.04.2009 in C3/2378/2009. The Additional Secretary to Government, Housing and Urban Development appointed by its letter No.12476/UOI/2009-2, dated 18.06.2009 has directed to maintain status quo. Even before the Government passed an order in our Appeal, the appellant herein had locked our premises on 26.05.2009. Therefore, we filed a writ petition in W.P.No.12752 of 2011 before this Hon'ble Court for issuance of a writ of mandamus by directing the appellant herein to remove the lock and seal put up pending disposal of the appeal before the Government.

4. I respectfully submit that this Hon'ble Court by an order, dated 08.06.2011 disposed of the writ petition by directing the appellant herein to remove the lock and seal on the receipt of a copy of the order and directed to remove the unauthorised construction within 3 months from the date of removal of the seal and lock. Pursuant to the order passed by this Hon'ble Court, I made an application to the appellant to open lock and seal in the aforesaid premises. The respondent directed us to remit an amount of Rs.34,155/- which we paid.

5. I respectfully submit that while we were undertaking restoration, even before the expiry of 3 months, granted by this Hon'ble Court, the appellant herein again locked and sealed our premises on 12.09.2011. Thereafter, we filed an application in M.P.No.2 of 2011 in W.P.No.12752 of 2011 for grant of extension of time. This Hon'ble Court by an order dated 28.09.2011 granted further period of four months to complete the removal of the unauthorised construction. The appellant herein did not remove the lock and seal inspite of the order granted by this Hon'ble Court in extending time. However filed the above appeal, our premises has been under lock and seal all along. Therefore, we could not remove unauthorised construction and confirm the sanctioned plan.

6. I respectfully submit that our building is contiguous to the adjacent building. Therefore, we have to remove the structure manually by taking utmost care. Therefore, it is humbly prayed that this Hon'ble Court may be pleased to grant six months time for us to remove the unauthorised construction and comply to the sanctioned plan.

7. Therefore, it is humbly prayed that this Hon'ble Court may be pleased to extend the time by six months by directing the appellant to remove the lock and seal in premises No.13 and 14, Vadamalai Street, Wall Tax Road, Sowcarpet, Chennai-79 for carrying out the rectification work....."

9. We have heard the learned counsel appearing for the parties and perused the material documents available on record along with the above said report/affidavit filed by the respective parties.

10. It is seen that the building in question consists of Ground Floor + 6 Floors and it was originally locked and sealed by the appellant/CMDA due to unauthorised constructions and deviations, and thereafter, on a direction from this Court for carrying out the rectification work by the respondents/writ petitioners, the lock and seal was removed and again it was locked and sealed on 12.09.2011 after unlocking and unsealing the premises for a short time subsequent to the order of this Court, dated 08.06.2011. This Court has directed the respondents/writ petitioners to carry out the rectification work by granting four months time from 28.09.2011 (i.e. from the date of the order), in view of the fact that since the premises in question was re-locked and re-sealed on 12.09.2011, the respondents could not carry out the rectification work as directed by this Court earlier.

11. When this Court took up the matter for final disposal of the Writ Appeal, it was questioned as to why the matter in question is kept pending so long without any further development by any of the parties, for which, the respondents/writ petitioners explained that there was a change of counsel and due to some difficulties, they could not move this Court for appropriate direction and hence, the matter is pending from 2011 onwards. Equally, the appellant/CMDA is also not serious in taking further course of action in the matter with regard to the unauthorised constructions and deviations and that the rectification has not been completed within the time frame stipulated by this Court. We are not appreciating the approach of both the parties in keeping the matter pending till this point of time, as seen from the report submitted by the appellant/CMDA, extracted above, and the affidavit of the respondents, quoted above. The respondents/writ petitioners are in need of further time to carry out the rectification and remove the unauthorised constructions and deviations. In the said affidavit, they have sought for six months' time, while the appellant/CMDA sought for three months' time for the

said removal of unauthorised constructions and deviations. It is seen from the above extracted affidavit of the respondents that the building in question is surrounded by other buildings, and therefore, the unauthorised constructions and deviations can be rectified only by manual operations and not through machinery. It is consistently pleaded by the respondents that the reason for not carrying out the rectification is the re-lock and re-seal of the premises by the appellant on 12.09.2011.

12. In the light of the above stated position and also taking into account the various factors involved in this case in carrying out the rectification and the delay caused by both parties, the unauthorised constructions and deviations have to be removed by the respondents/writ petitioners on unlocking and unsealing the premises in question by the appellant/CMDA and as suggested supra in their respective affidavit/report of the parties. Therefore, considering the peculiar facts and circumstances of the case and the reason stated by the respondents in the said affidavit that the building in question was re-locked and re-sealed by the appellant/CMDA, we are inclined to grant four months' time from the date of receipt of a copy of this judgment to both parties, i.e. for removing the lock and seal by the appellant/CMDA and also to carry out the rectification work and restore the premises/building in question as per the planning permission, by the respondents/writ petitioners by removing the unauthorised constructions and deviations in the said premises. The appellant/CMDA shall utilise the services of their officials in removing the lock and seal of the premises. Any failure on the part of the respondents/writ petitioners will be viewed seriously. It is needless to state that the respondents/writ petitioners shall co-operate with the appellant/CMDA in carrying out the rectification work in the presence of the officials of the appellant/CMDA.

13. With the above observations/direction, the Writ Appeal is disposed of. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

Copy to
The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore, Chennai.

+1 cc to Mr.S.Saravanan, Advocate, sR.18493

+1 cc to Mr.K.Raja Shrinivas, Advocate, SR.18067.

tej (co)
krd 23/4

W.A.No.2183 of 2011