

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.15398 of 2015

V.Harikrishnan

... Petitioner

Vs.

1. The Secretary to Government,
Housing & Urban Development
Department, Secretariat,
Chennai - 600 009
2. The Commissioner,
Corporation of Chennai
Ripon Buildings, Chennai
3. The Executive Engineer,
TP Enforcement - Central Region,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records and quash the impugned order passed by the First Respondent Letter No.18351/UD-VI(2)/2014-5 dated 29.04.2015 and consequently direct the Respondents to grant approval for construction to the petitioner in respect of his property situate at Door No.55-B/2, 2nd Street, Peravallur, Ram Nagar, Chennai - 600 082.

For Petitioner : Mr.J.Ravishankar

For Respondent : Mr.P.S.Sivashanmugasundaram
No.1 Special Government Pleader

For Respondent : Mrs.Karthikaa Ashok
Nos.2 and 3

O R D E R

[Order of the Court was Delivered By M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an Order by this Court in calling for the records and to quash the Impugned Order passed by the First Respondent in Letter No.18351/UD-VI(2) 2014-5 dated 29.04.2015. Further, he has sought for passing of an Order by this Court in directing the Respondents to grant approval for construction of his property situate at Door No.55/B/2, 2nd Street, Peravallur, Ram Nagar, Chennai - 82.

2. According to the Learned Counsel for the Petitioner, the Impugned Order in Letter No.18351/UD-VI(2) 2014-5 dated 29.04.2015 passed by the First Respondent deserves to be quashed because of the reason that the same is against Law, Principles of Natural Justice and without Jurisdiction.

3. The Learned Counsel for the Petitioner contends that the Third Respondent/Executive Engineer had failed to consider that the Petitioner had furnished stability certificate and without passing any Orders upon it issuance of demolition notice is highly illegal.

4. The stand of the Petitioner before this Court is that the extent mentioned in the Impugned Notice dated 04.09.2014 is undoubtedly a wrong one, which clearly exhibits the non-application of mind by the third respondent.

5. The Learned Counsel for the Petitioner proceeds to take a plea that the Third Respondent/Executive Engineer had failed to note that the building in the ground floor was constructed as early as in the year 1988 and infact, the Petitioner had purchased the property during the year 1999. As such, the contention that the ground floor construction is an illegal one, is not sustainable in the eye of law.

6. The other contention of the Learned Counsel for the Petitioner is that based on the Impugned Order passed by the First Respondent the De-Occupation notice was issued on 22.05.2015 by the third respondent, that the petitioner should vacate the house within a period of seven days, failing which, action would be initiated under Section 56(2a) and (5) Clause (a) and (b) (i) and (ii) of the Town and Country Planning Act, 1971, as amended by Act 1961 on 2008.

7. Advancing his arguments, the Learned Counsel for the Petitioner strenuously submits that the Petitioner is a retired Government Official and with great difficulty had invested money in the construction of property in issue and further, it is represented that the Petitioner was not able to attend the personal

hearing and since he was not available in Chennai and had gone abroad and returned only on 09.04.2015. Moreover, his wife is a heart patient and had locked the house and went to her daughter's house and the letter reached the Petitioner's brother's hand only on 07.04.2015 and therefore he was unable to attend the personal hearing.

8. That apart, it is the contention of the Learned Counsel for the Petitioner that the First Respondent suddenly passed the Impugned Order on 29.04.2015, even though the Petitioner had furnished a Stability Certificate.

9. It is not in dispute that the Petitioner filed an Appeal and in his Appeal Petition, he had averred that he purchased the land measuring to an extent of 1193 Sq.Ft., with building (500 Sq.Ft in Ground Floor) through Document bearing No.1448/1999, from the year 1999, the Petitioner is paying the Property Tax. When he commenced construction on First Floor, the Stop Work Notice was issued by the 3rd Respondent/Executive Engineer, TP Enforcement - Central Region, Corporation of Chennai. When he furnished an Application for Planning Permission on 21.07.2014, the same was rejected by the Second Respondent/Corporation of Chennai. Moreover, he was required to produce a stability certificate in respect of the existing building and he produced the stability certificate dated 14.07.2014 issued by United Shakthi Associates, Chennai - 116 and not by Public Works Department. Indeed, the Petitioner was served with Locking and Sealing and Demolition Notice on 04.09.2014.

10. It is to be noted that the Ground Floor was constructed during the year 1988. At this stage, it cannot be lost sight of that the complainant, one Koteeswararao, who was present during the hearing of the Appeal Petition had stated that his flat is situate opposite to the house of the Petitioner and before that, there was a gap of six feet as set back between the compound wall and building of the Petitioner (Appellant in Appeal Petition), but, now, the Petitioner/Appellant had covered the set back area with building on Ground Floor, First Floor and Second Floor. Also that the cracks were visible in one area of the building.

11. Besides that, the plea of the Complainant before the Competent Authority was that the building is an unstable one and it may fall down in the near future and hurt him and others. In effect, the Complainant's stand before the Authority was that due to instability of the building the unapproved constructions put up by the Petitioner/Appellant ought to be demolished.

12. Admittedly, the Petitioner/Appellant had not furnished the Building Plan for Approval. As a matter of fact, the Stability Certificate produced by the Petitioner/Appellant was from a Private Engineer by name, United Sakthi Associates, Chennai - 116.

13.At this juncture, this Court on going through the Impugned Order passed by the First Respondent in letter No.18351/UD-VI(2)/2014-5 dated 29.04.2015, is of the considered view that the First Respondent had categorically come to the conclusion that the Petitioner/Appellant, had violated Development Control Rule Norms and left no set backs and also that etc.,which are all factual aspects and ultimately rejected the Appeal preferred by the Petitioner/Appellant because of the reason that the building was constructed in violation of Development Control Rule norms and further, its stability is also questionable one. Therefore, observations of the First Respondent in the considered opinion of this Court do not suffer from any vice, infirmities, material irregularities or patent illegalities in the Eye of Law. Per contra, the same is just a fair, valid and flawless one. Consequently, the Writ Petition is devoid of merits and it fails.

In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Resultantly, the order passed by the First Respondent in Letter No. 18351/UD-VI(2)/2014-5 dated 29.04.2015 is confirmed by this Court for the reasons assigned in the present Writ Petition.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

ssd
To

Sub Assistant Registrar

1. The Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai - 600 009
2. The Commissioner,
Corporation of Chennai
Ripon Buildings, Chennai
3. The Executive Engineer,
TP Enforcement - Central Region,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (EAST),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

+1cc to Mr.A.Karthikaa Ashok, Advocate, S.R.No.27008
+1cc to the Government Pleader, S.R.No.27066

W.P.No.15398 of 2015

SR(CO)
CA(18/06/2015)