

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2015

DATE OF DECISION : 3.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.P.Nos.33697 of 2014 and 941 of 2015
and
M.P.Nos.1 to 3 of 2014 and 1 to 3 of 2015

W.P.No.33697 of 2014 :

Rupert J.Barnabas ... Petitioner

Vs.

1. The Chennai Metropolitan Development Authority
rep by its Member Secretary,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Commissioner,
Corporation of Chennai,
Ripon Building,
Park Town, Chennai-600 003.
3. The Executive Engineer,
Corporation of Chennai,
Zone 5 Division 58,
62, Basin Bridge Road,
Old Washermenpet,
Chennai-600 021.
4. The Chennai Metropolitan Water Supply
and Sewerage Board,
rep by its Managing Director,
No.1, Pumping Station Road,
Chindadripet, Chennai-600 002.

5. TANGECO.,
rep by its Chairman,
144, Mount Road,
Chennai-600 002.

6. Chuganlal Renka

7. Vishal Renka

8. Harikumar,
Proprietor,
Sriram Constructions,
No.2, Chockavel Subramania Street,
Choolai, Chennai-600 112.

.. Respondents

W.P.No.941 of 2015 :

Vishal M.Ranka

.. Petitioner

Vs.

1. The Chennai Metropolitan Development Authority,
rep by its Member-Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

2. The Corporation of Chennai,
rep by its Commissioner,
Ripon Buildings, Park Town,
Chennai-600 003.

3. The Executive Engineer,
The Corporation of Chennai,
Zonal Office V, Division No.58,
No.62, Basin Bridge Road,
Old Washermenpet,
Chennai-600 021.

.. Respondents

W.P.No.33697 of 2014 filed under Article 226 of Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to demolish and permanently remove the illegal, unsanctioned and unauthorised construction carried out by the respondents, 6,7 and 8 at Old Door No.9, New No.17, Vichoor Muthia Street, Choolai, Chennai-600 112.

W.P.No.941 of 2015 filed under Article 226 of Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the impugned locking and sealing notice in Notice No.597/Dn.58/2014, dated 12.12.2014 issued by the third respondent,

which has culminated in the stop work notice in ref. Notice No.A.767, dated 7.1.2015 issued by the first respondent and consequently quash the same holding them as illegal and ultravires, thereby forbear the respondents, their officials and subordinates from initiating any coercive action in respect of the premises bearing Old No.9, New No.17, Vichoor Muthia Street, Purasawalkam, Chennai-600 007 pending disposal of the revised plan submitted by the petitioner on 23.12.2014 before the third respondent.

For Petitioners : Mr.T.Mohan for M/s.S.Jim Raj Milton
in W.P.No.33697 of 2014
Mr.R.Thiyagarajan in W.P.No.941 of 2015

For Respondents : Mr.N.Sampath for R-1 in both W.Ps.
Mr.R.Arunmozhi for RR2 and 3
in W.P.No.33697 of 2014
Mr.A.Nagarajan for RR2 and 3
in W.P.No.941 of 2015
Mr.N.Ramesh for R-4 in W.P.No.33697 of 2014
Mr.P.R.Dhilip Kumar for R5
in W.P.No.33697 of 2014
Mr.R.Thiyagarajan for R7 in WP.No.33697/2014
No appearance for R-6

COMMON ORDER

SATISH K.AGNIHOTRI, J.

Both writ petitions, W.P.No.33697 of 2014 and W.P.No.941 of 2015, are being considered and decided by a common order as the question of law and facts involved are one and the same.

2. The writ petitioner in W.P.No.33697 of 2014 (hereinafter referred as "the first petitioner"), stating to be a resident of Dally Street, Choolai, Chennai, came up with this petition, seeking a direction to the first and second respondents to demolish and remove the illegal, unsanctioned and unauthorised construction carried out by 6th, 7th, and 8th respondents at Old Door No.9, New No.17, Vichoor Muthia Street, Choolai, Chennai-600 112.

3. The brief facts as projected by the first petitioner are that Dally Street in Choolai is full of narrow roads and old buildings and they have been taken over by the multistoreyed and special buildings with no attention being paid to infrastructure availability, such as water, sewerage capacity, fire safety, parking, etc. The 6th and 7th respondents, who are the owners of the property in question, were accorded permission for construction of 1+2 with car park on the ground floor. They built the superstructure through 8th respondent without proper sanction and also secured power supply from

the fifth respondent, water supply and sewerage connection from the fourth respondent before completion of the building.

4. Looking into the unhygienic condition and also the illegal construction of building unauthorisedly, the first petitioner made representations on 19.04.2014 and 29.04.2014 through email to the second respondent, i.e., the Commissioner, Corporation of Chennai, for taking action against the illegal and unauthorised construction. It was duly received by the office of the second respondent. Thereafter, one more email was sent on 23.7.2014. Nothing was done and no action has been taken. One more representation was made on 27.11.2014, pointing out continuation of illegal and unauthorised construction by the 6th, 7th and 8th respondents, causing enormous problems to other residents of the area. As nothing has come out of the said representations, the first petitioner was constrained to file the instant petition seeking aforesaid direction.

5. This court, taking cognizance of the matter, issued notice on 18.12.2014, making it returnable on 22.12.2014. On 22.12.2014, the learned counsel appearing for the second respondent brought to the notice of the court that a stop work notice has been issued on 18.11.2014. It was further submitted that despite stop work notice, the respondents 6, 7 and 8 are continuing with the construction activities at breakneck speed. Thus, this Court directed not to proceed with the construction, by an order of interim injunction. The said order continued thereafter.

6. The petitioner in W.P.No.941 of 2015, who is the 7th respondent in W.P.No.33697 of 2014, (hereinafter referred to as "the 7th respondent"), also came up with the writ petition, without disclosing the fact of currency of W.P.No.33697 of 2014 in respect of the same matter, challenging the legality of the locking and sealing notice dated 12.12.2014 under the provisions of Section 57 read with Section 85 of the Town and Country Planning Act, 1971 and also the notice dated 7.1.2015 issued by the first respondent for removal of illegal and unauthorised construction. This Court directed the status quo as obtained on 13.01.2015 to be maintained.

7. The learned counsel appearing for the first petitioner would submit that the authorities are guilty of nonfeasance. Once the illegality of unauthorised construction was brought to the notice of the authorities, they were under statutory obligation to take action immediately to ensure that the construction is carried out in accordance with the sanctioned plan properly approved. The authorities have completely ignored the judicial pronouncements in

Consumer Action Group Vs. The State of Tamil Nadu and others¹ and also in S.Prakash Chand Jain Vs. The State of Tamil Nadu, rep by its Secretary, Housing and Urban Development Department, Fort St. George, Chennai and others².

8. The third respondent being the Executive Engineer of the Corporation, who is in-charge of the Zone, submitted his response by way of affidavit, stating that respondents 6 and 7 had deviated the sanctioned plan as under :

Sl.No	Description	As per Approved plan	As on site	Deviation / Violation
1	Front Set Back	1.52 M	Nil	1.52 M
2	Back Set Back	1.03 M	0.45 M	0.58 M
3	Side Set Back 1 Side Set Back 2	Nil Nil	0.45 M 0.45 M	Nil Nil
4	No. of Floors	GF & P, FF& SF (Part)	GF&P, 1 st , 2 nd , 3 rd & 4 th Floors	2 nd (Part), 3 rd , 4 th Floors unauthorized
	F.S.I	1.49	3.56	2.07
	Floor Deviation Areas : GF & Parking	71.67&89.00 Sqm	56.92 & 92.94 Sqm	39.46 Sqm 109.81 Sqm
	1 st Floor	160.57 Sqm		
	2 nd Floor	90.22 Sqm.	200.03 Sqm	200.03 Sqm.
	3 rd Floor	-----	200.03 Sqm	200.03 Sqm.
	4 th Floor		200.03 Sqm.	200.03 Sqm.
			200.03 Sqm.	

Accordingly, a stop work notice was issued on 18.11.2014. Paying no heed to the stop work notice, the 6th, 7th and 8th respondents have been proceeding with the illegal constructions as alleged. Thereafter, a locking and sealing notice was issued on 12.12.2014. No action for demolition of the illegal and unauthorised construction could be taken on account of the status quo ordered by this court on 13.1.2015 in W.P.No.941 of 2015.

¹

² 2014 (2) MLJ 551.

9. The 7th respondent in his writ petition as well as in his counter affidavit, had taken a usual stand that there is no unauthorised, illegal construction and the first petitioner has also made unauthorised construction.

10. We have considered the rival submissions made by the parties, perused pleadings and documents appended thereto.

11. In the course of the argument, it is stated by the learned counsel for the 7th respondent that he has made an application under the provisions of Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 for the grant of revised planning permission on 19.1.2015.

12. Section 49 of the Act contemplates grant of permission by the appropriate planning authority to any person to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under Section 26 on an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed. Section 56 of the Act empowers the authorities to require removal of unauthorised development. Sub Section (3) of Section 56 provides that any person aggrieved by notice for removal of unauthorised development, may, within the period specified in the notice, apply for permission under Section 49 for the retention of the land or building or works or for the continuance of any use of the land or building to which the notice relates.

13. Indisputably, in the instant case, notice under Section 57 was issued on 12.12.2014 giving a specified period of 30 days to secure the compliance of the sanctioned plan. Thus, the alleged application under Section 49 ought to have been made within 30 days from 12.12.2014. The said application was made much after the notice period and as such, the said application cannot be entertained. Filing of such application will not deter this court from disposal of the instant writ petitions. It is informed that initially, an application was made to the second respondent, which was returned back to present before the competent authority, i.e., the first respondent.

14. There is no dispute in regard to carrying out unauthorised construction by creating several deviations in the plan. The 6th and 7th respondents have not denied the fact of unauthorised illegal construction.

15. A Division Bench of this court, while considering the scope of regularization under the provisions of the Act, in Consumer Action Group¹ (supra) held as under :

1 2006 (4) CTC 483.

"26. The catena of decisions referred to above unwaveringly show that the word "environment" is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. There is constitutional obligation on the State Government and the Municipalities, not only to ensure and safeguard proper environment, but also an imperative duty to take adequate measures to promote, protect and improve both man-made and natural environment. The Municipal Laws regulating the building construction activities have been enacted to achieve a larger purpose of public health, safety and general welfare. Any violation of zoning and regulation laws, takes a toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. Though municipal laws permit deviation from sanctioned constructions being regularised by compounding but that is by way of exception. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. At the time of planning, experts in the field of town planning take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, the need of household industries etc. Regularising the constructions erected in violation of the regulations has serious consequences. Regularisation in many cases for the violation of the front setback, will not make it easily feasible for the Corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirement of side set back will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight fire in a high-rise building. The violation of the floor space index, will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire stair case and other fire prevention and fire fighting measures would seriously endanger the occupants resulting in the building becoming a very veritable death trap. The waiver of car parking and

abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens. The Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. If the laws are not enforced and the orders of the Court to enforce and implement the laws are ignored, the result can only be total lawlessness."

16. Again, in S.Prakash Chand Jain¹ (supra), a Division Bench of this Court, relying on several decisions of the Supreme Court, held as under :

"19.The unholy nexus between the builder and certain officials of the CMDA and Corporation gives encouragement to more and more people to violate the building laws with impunity....."

17. In respect of other issues as to whether the 6th and 7th respondents were rightly granted electricity connection and water and sewerage connections, without obtaining completion certificate from the CMDA, in S.Prakash Chand Jain (supra), it was held as under :

"29.The Division Bench in Consumer Action Group, rep. by its Trustee vs. The State of Tamil Nadu, by its Secretary to Government, Law Department, 2006 (4) CTC 483, held that water and electricity connection should be contingent on completion certificate. Sl.No.(ix) of the direction reads thus:-

(ix)To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

1 2014 (2) MLJ 551.

30.The Development Control Rules prohibit use of building without obtaining completion certificate. The direction to provide electricity, water and sewerage connection without insisting Completion Certificate from CMDA would amount to permission to put the building to use which is prohibited by statute. The Electricity, Water and Sewerage Boards are not bound to entertain application for such amenities without submitting the Completion Certificate issued by CMDA.

31.The authorities exercising statutory functions under various enactments must assist CMDA to implement the Development Control Rules. If such authorities entertain request and provide electricity, water and sewerage connection, it would help the builder to bypass the mandatory requirement of the Statute, requiring completion certificate to occupy the building. We therefore hold that the Chennai Metro Water Supply and Sewerage Board and Tamil Nadu Electricity Board, have no authority to issue electricity, water and sewerage connection without producing of the Completion Certificate from CMDA. We are therefore of the view that the builders have no right to approach the Court for mandamus to provide electricity, water and sewerage connections, without insisting completion certificate from CMDA."

18. It is further informed that there are several other buildings in the locality / area, which have come up illegally without proper approval and sanction. Thus, the respondents 1 to 3 in W.P.No.33697 of 2014 are directed to take extensive survey of the locality / area to find out the fact of illegal unauthorised construction, if any, in the locality. If it is so, after affording proper opportunity of hearing by way of notice / statutory notice prescribed under the provisions of the Act, the authorities shall take action as advised to achieve the purpose of public health and general welfare of the residents of the locality.

19. For the reasons and an analysis as aforesaid, it is evident that 6th, 7th and 8th respondents have no regard to the law. Despite stop work notice, they have carried on construction illegally and unauthorisedly, perhaps to secure equitable remedy in the pending petition. The said respondents have completely disregarded the requirements of permission, sanction and approval for development and construction of the building. They have openly defied the notices, orders issued by the authorities under the provisions of law. Thus, we direct the official respondents to take action forthwith for demolition of the unauthorised illegal construction, in accordance

with law and on its own merit and also withdraw all other facilities, which were illegally extended to 6th, 7th and 8th respondents. Such exercise shall be completed within a period of two weeks from the date of receipt of copy of this order.

20. Resultantly, W.P.No.33697 of 2014 is allowed to the above extent. No costs. W.P.No.941 of 2015 is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

vvk

-s/d-

Assistant Registrar(CS-II)

Dt:3/2/2015

True Copy

Sub-Assistant Registrar

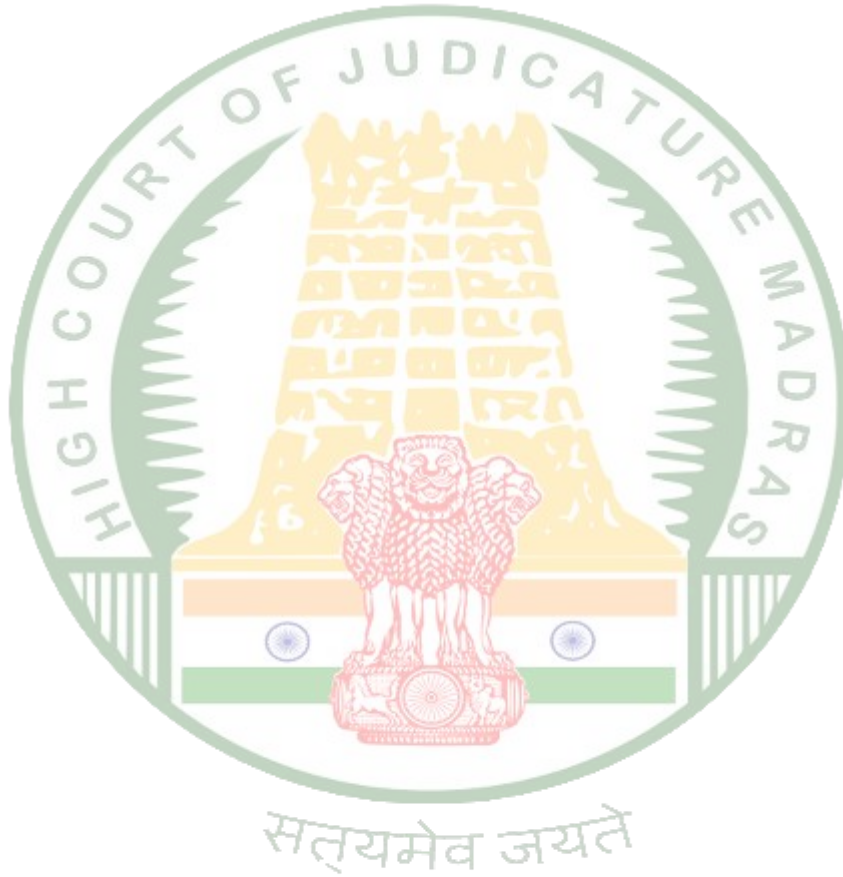
To

1. The Member Secretary,
The Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai,
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5. The Chairman,
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144, Mount Road,
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+ 1 cc to to Mr.R.Arunmozhi, Advocate SR 5382
+ 2 cc to Mr.R.Thiagarajan, Advocate SR 5447
+ 1 cc to Mr.S.Jim Raj Milton, Advocat SR 5460
+ 1 cc to Mr.P.R.Dhilipkumar, Advocate SR 5379

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W.P.Nos.33697 of 2014
and 941 of 2015



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