

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM:

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

W.P.No.1958 of 2015
and
M.P.No.1 of 2015

P.Krishnamoorthy

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and
Town and Country Planning,
Secretariat, Fort St. George,
Chennai - 600 009

2. The Commissioner,
Corporation of Chennai
Rippon Building,
Chennai - 600 003

3. The Executive Engineer,
Corporation of Chennai,
Zone-VIII, Shenoy Nagar,
Chennai - 600 030

4. J.Balachander
5. Janardhanan
6. J.Ponniammal

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, directing the 3rd Respondent to seal the premises bearing No.175/61, Mettu Street, Ayanavaram, Chennai - 600 023, comprised in T.S.No.14/4, Block No.29, Ayanavaram Village and consequently to remove the construction which is not in accordance of the approved plan issued to the respondents 4 to 6 in BA/CD08/04276/2012 and PPA/WDC08/04923/2012 as per the directions of this Court made in the order dated 04.06.2014 in W.P.No.14089 of 2014.

For Petitioner : Mr.Ralph V.Manohar for
M/s R.Manickavel

For Respondent
No.1 : Mr.N.Sakthivel
Government Advocate

For Respondent
Nos.2 and 3 : Mr.A.Nagarajan

For Respondent
Nos.4 to 6 : Mr.T.Muruganantham

O R D E R

[Order of the Court was delivered by
M.VENUGOPAL, J.]

The petitioner has focused the present Writ Petition praying for passing of an Order by this Court in directing the 3rd Respondent/ Executive Engineer, Corporation of Chennai, Chennai - 30 to seal the premises bearing No.175/61, Mettu Street, Ayanavaram, Chennai - 23 comprised in T.S.No.14/4, Block No.29, Ayanavaram Village. Further, he has sought for passing of a consequential order in removing the construction which is not in accordance with the approved plan issued to the Respondents 4 to 6 in BA/CD08/04276/2012 and PPA/WDC08/04923/2012 as per the directions of this Court through its Order dated 04.06.2014 in W.P.No.14089 of 2014.

2. According to the Petitioner, all that property viz., House, Ground and Premises bearing Door No.177/62, Mettu Street, Ayanavaram, Chennai - 23 comprised in T.S.No.14/1 Block no.29, Mettu Street, Ayanavaram Village, measuring 2,100 Square Feet belonging to him and his brothers. The property bearing No.175/61, Mettu Street, Ayanavaram, Chennai - 23 comprised in T.S.No.14/4, Block No.29, Ayanavaram Village, which is facing the road, ie., Mettur Street, belongs to Respondents No.4 to 6 and they are occupying the front portion.

3.The stand of the Petitioner is that the Respondents No. 4 to 6 had demolished the old structure and commenced construction of new building on 11.05.2012. The Respondents No.4 to 6 had not put up the construction as per the sanctioned plan and they had not followed any of the Development Control Rules of the 2nd Respondent/Corporation of Chennai and were putting up construction on all the boundary line of North and West. Further, on the Southern side, they had encroached one foot in common passage and

two feet in Eastern side in his property. In spite of his repeated objection, they refused to understand that they are only entitled to 75 feet East to West and 14 feet North to South under the Partition Deed. Indeed, now they are putting up construction measuring an extent of 77 feet East to West and 15 Feet North to South by encroaching one foot into the common passage and two feet on the eastern side in his property.

4.It comes to be known that the petitioner had filed a Suit for Mandatory Injunction in O.S.No.2952 of 2012 against the Respondents No.4 and 5 on the file of the XVI Assistant Judge, City Civil Court, Chennai praying for removal of encroachment in his property and the same is pending.

5.The case of the Petitioner is that he made repeated representations to the Respondents to stop the construction, since the same is in violation of the statutory rules. His complaints were acknowledged by the Respondents No.1 to 3 and on the basis of his complaint, an inspection and enquiry were held and it was found that the construction of the Respondents No. 4 to 6 was unauthorised and that the 3rd Respondent/Executive Engineer, Corporation of Chennai, Zone - VIII, Shenoy Nagar, Chennai - 30 on 22.12.2012 sealed the premises of Respondent Nos. 4 to 6.

6.The plea of the Petitioner is that the Respondents No.4 to 6 had made representations to the Respondents No. 1 to 3 requesting them to remove Lock and Seal in premises enabling them to comply with the Approved Building Plan. Also that, they had stated their intention to the effect that they were willing to rectify deviation and restore the building in terms of the approved plan. As the Respondents No.1 to 3 had not considered the representation to remove the Lock and Seal, the Respondent Nos. 4 to 6 filed W.P.No.14089 of 2014 before this Court seeking a direction to be issued to the Respondents in removing the seal affixed by them on 22.12.2014 in their premises enabling the petitioners therein to bring the building in compliance of the approved plan.

7.The Learned Counsel for the Petitioner brings it to the notice of this Court that in W.P.No.14089 of 2014 filed by the Petitioners therein (Respondents Nos.6, 4 and 5 in present W.P.No.1958 of 2015) on 04.06.2014 this Court passed the following Order:-

"...5.The petitioners are given liberty to make an application before the second and third respondents with a request to permit them to rectify the deviations in the construction of the building in compliance with the approved building plan. In case, any such application is given, the respondents 2 and 3 are directed to grant permission for the purpose of rectifying the deviations. The petitioners are granted eight weeks' time to rectify

the deviations. After rectifying the defects, the respondents 2 and 3 shall inspect the building once again to confirm as to whether the unauthorised structures were all removed. If it is found that the entire unauthorised structure is removed, the respondents 2 and 3 shall process the matter further. In case, the unauthorised structure is not removed within the time given, the respondents 2 and 3 are permitted to take further action, in accordance with law..”

8.The real grievance of the instant Petitioner is that pursuant to the Order passed by this Court on 04.06.2014 in W.P.No.14089 of 2014, the Respondents No. 1 to 3 had removed the lock and seal in the premises bearing No.175/61, Mettu Street, Ayanavaram, Chennai - 600 023, comprised in T.S.No.14/4, Block No.29, Ayanavaram Village belonging to the Respondents No.4 to 6. Furthermore, in the guise of rectifying the building in accordance with the approved building plan started the construction work in a very hasty manner. Moreover instead of rectifying the building in accordance with the approved plan, the Respondents No. 4 to 6 utilised the opportunity and the order of this Court to complete the construction of the building in complete violation of the approved plan. In short, the Respondents, instead of rectifying the building, put up further construction after the order of this Court in complete violation of the approved building plan.

9. At this stage, the Learned Counsel for the Petitioner submits that when the construction was under progress after the order dated 04.06.2014 passed by this Court in W.P.No.14089 of 2014, the Petitioner, through his letter dated 17.10.2014 informed the Respondents No.1 to 3 that the construction put up by the Respondents No. 4 to 6 is not in compliance of the approved plan issued by the Respondents and also requested them to take immediate action as regards the continuous violation in the construction put up by the Respondents No.4 to 6. Although the 1st Respondent/ Secretary to Government, Municipal Administration and Town and Country Planning, Secretariat, Fort St.George, Chennai - 600 009 had acknowledged the letter dated 17.10.2014 of the petitioner, no action was taken by the 1st Respondent to stop the construction.

10.The core contention advanced on behalf of the petitioner is that the Respondents No. 4 to 6 had put up the construction without leaving any setbacks causing great inconvenience to him and other neighbours and that they had put up completely an unauthorised construction in the third floor. The entire building is put up in total violation of the approved plan.

11. It is the version of the petitioner that since no action by the 3rd Respondent, he preferred a complaint to the Mayor of Chennai on 03.11.2014 and subsequently his complaint was transferred

to the same Zonal Office on 06.11.2014. Added further, the complaint was forwarded to the 3rd Respondent on 06.11.2014 for further action. The 3rd Respondent gave a reply dated 24.11.2014 stating that the Respondents No. 4 to 6 inspite of the Order of this Court had not removed unauthorized construction and that action would be taken against the Respondents No.4 to 6 in accordance with law. But till date, the Respondents No.1 to 3 had not taken any steps to remove unauthorized construction. In this background, the Petitioner, has filed the present Writ Petition.

12. Conversely, it is the submission of the Learned Counsel for the 2nd and 3rd Respondents that suppressing the Order dated 04.06.2014 passed in W.P.No.14089 of 2014, the Respondents No. 4 to 6 had filed the W.P.No.30708 of 2014 and it was disposed of at the admission stage itself. Taking into consideration, the Appeal preferred by the Respondent Nos.4 to 6 before the 1st Respondent for regularization of the premises together with the Stay Petition. In reality, this Court had directed the 1st Respondent to dispose of the Appeal dated 17.11.2014 filed under Section 80A of the Town and Country Planning Act, 1971 within a period of eight weeks from the date of receipt of the copy of the order and further directed the parties to the Writ Petition to maintain the status quo as on date of passing of the Order.

13. That apart, the Learned Counsel for the 2nd and 3rd Respondents draws the attention of this Court to the effect that Appeal preferred by the Respondents No. 4 to 6 before the competent authority was held to be a premature one because of the reason that the premises had not yet been sealed by the Corporation of Chennai and that they had only issued Show Cause Notice to the Appellants and moreover, the Appellants were directed to reply to the Show Cause Notice of the 2nd Respondent/Corporation of Chennai and rectify the defects noted in the Show Cause Notice and accordingly, the said Appeal was disposed of. In fact, the Respondents No. 4 to 6 were duly informed by the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai -9, vide Letter No.21775/UD-VI(2)/2014-6 dated 22.04.2015.

14. At this juncture, this Court on going through the contents of the Letter No.21775/UD-VI(2)/2014-6 dated 22.04.2015 is of the considered view that the authority in Paragraph Nos.4 and 5 had observed the following:-

"....4.As per first proviso to section 80-A(1) of the Tamil Nadu Town and Country Planning Act, appeal to the Government shall lie only after the process of sealing is over. Hence, question of granting interim stay does not arise since the premises have not yet been sealed. Accordingly, the request for grant of interim stay in the present case cannot be accepted.

5.In respect of the main appeal, the same is premature, since the premises have not yet been sealed by Corporation of Chennai. They have only issued show cause notice to the appellant...."

and resultantly disposed of the Appeal by issuing necessary directions as stated supra.

15.In view of the Letter dated 22.04.2015 of the Secretary to Government addressed to the Respondents No.4 to 6 and others, to the effect that the Appeal dated 17.11.2014 preferred by them is a premature one etc., this Court comes to an irresistible and inescapable conclusion that the petitioner is not entitled to the reliefs sought for by him in the Writ Petition. Resultantly, this Court, in the interest of Justice, closes the Writ Petition. However, there shall be no order as to costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

ssd

Sub Assistant Registrar

To

1. The Secretary to Government,
Municipal Administration and
Town and Country Planning,
Secretariat, Fort St. George,
Chennai - 600 009
2. The Commissioner,
Corporation of Chennai
Rippon Building, Chennai - 600 003
3. The Executive Engineer,
Corporation of Chennai,
Zone-VIII, Shenoy Nagar,
Chennai - 600 030

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.22332
+1cc to Mr.R.Manickavel, Advocate, S.R.No.22447
+1cc to the Government Pleader, S.R.No.22785

W.P.No.1958 of 2015
and
M.P.No.1 of 2015

PVR(CO)
CA(14/05/2015)