

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No. 26816 of 2015

Arumuga Nainar

...Petitioner

vs.

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Secretariat, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore,
Chennai.8.
3. The Commissioner,
Thiruverkedu Municipality,
Sivan Koil Street,
Thiruverkadu,
Chennai.77.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus to forbear the 2nd and 3rd respondents from locking, sealing and demolition of the petitioner building comprised in Plot No.69-A Moovendar Nagar, Noombal, Chennai-7 in pursuance of Locking and Sealing Notice dated 29.7.2015 in Letter No.7/2015/F1 during the pendency of Appeal dated 17.8.2015 preferred on the file of the 1st respondent.

For petitioner : Mr. B. Vijay
For respondents : Mr. P.S.Sivashanmugasundaram
Spl. Govt. Pleader - R1 & R2
Mr. C. Johnson - R2

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. P.S.Sivashanmugasundaram, learned Special Government Pleader accepts notice for the respondents 1 and 3 and Mr. C. Johnson, learned counsel accepts notice for the second respondent. With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal, at the admission stage itself.

2 This writ petition is filed seeking a writ of mandamus to forbear the respondents 2 and 3 from locking, sealing and demolition of the petitioner building comprised in Plot No.69-A Moovendar Nagar, Noombal, Chennai-7 in pursuance of Locking and Sealing Notice dated 29.7.2015 in Letter No.7/2015/F1 during the pendency of Appeal dated 17.8.2015 preferred on the file of the 1st respondent.

3 At this stage, it is better to point out certain provisions of law under which an appeal is to be decided. The second proviso to Section 80-A of the Act prescribes that the application for revision/appeal filed under Section 80-A of the Act shall be disposed of by the Government within 90 days from the date of receipt of the application. Grant of 90 days time to dispose of the appeal is certainly with some object, perhaps, to obtain views of the authorities and also to provide an opportunity of hearing to all the parties concerned. In that process, 90 days time may be required to render justice between the parties.

4 Now, the petitioner has come up with the instant writ petition within 8 days from the date of preferring the appeal, seeking a mandamus which is normally issued against an authority for non-action or inaction or against wrong action. Certainly, this is not a case where issue of non-action, wrong action or inaction has arisen, as, the Appellate Authority has not been given an opportunity to take action, within the reasonable time. Thus, this writ petition

for issuance of a writ of mandamus is not maintainable, at this stage.

5 We deprecate this practice of rushing to the Writ Court invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without waiting for a decision within the prescribed statutory period. This practice is tantamount to abuse of judicial process.

6 It is also brought to our notice that an application for interim relief has also been filed under Section 80-A(3) of the Act. We expect that the authorities will consider the application for interim relief, at the earliest, preferably within a period of two weeks, whenever an application for interim relief is filed along with the memorandum of appeal.

7 In view of the foregoing, status quo, in respect of the property in question, as obtained today, shall be maintained for a period of two weeks from today and the petitioner is also restrained from making any further construction on the property in question, in the meantime.

8 The writ petition stands disposed of, with the above observation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ra

Note: Registry is directed to mark a copy of this order to the Appellate Authority forthwith.

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Secretariat, Chennai.

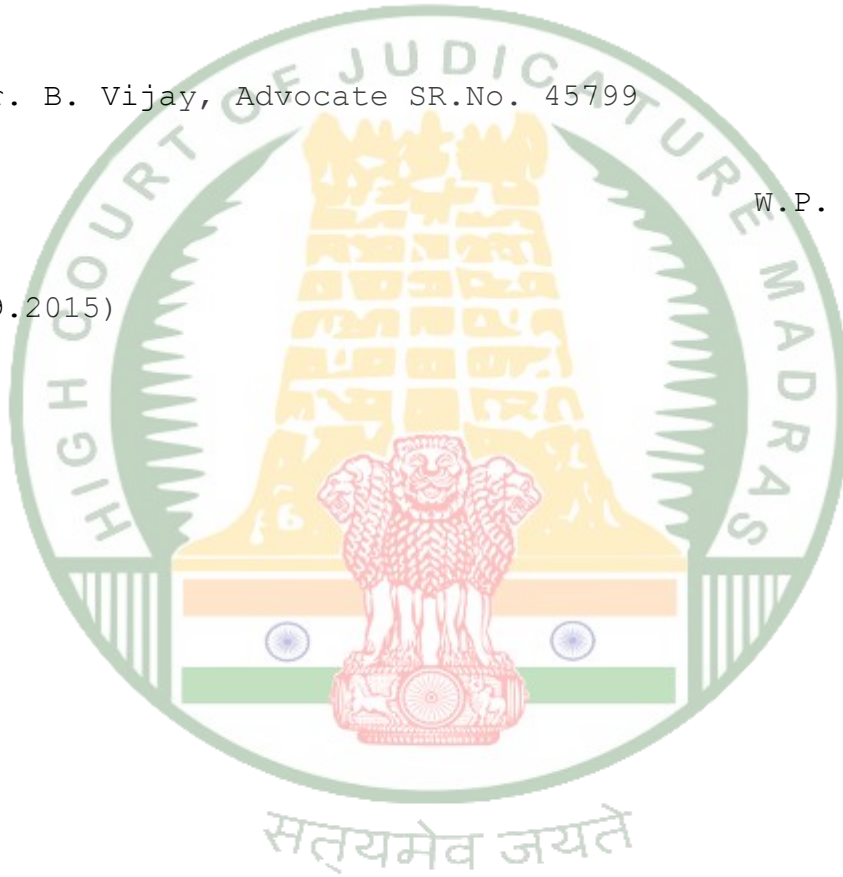
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai.8.

3. The Commissioner,
Thiruverkedu Municipality,
Sivan Koil Street,
Thiruverkadu, Chennai.77.

1 CC to Mr. B. Vijay, Advocate SR.No. 45799

W.P. No.26816 of 2015

PPA (CO)
PSI (18.09.2015)



WEB COPY