

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
and
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Petition No.37919 of 2015
and M.P.No.1 of 2015

Hussain Ansar

...Petitioner

vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Chennai Corporation,
Rippon Building,
Chennai - 600 003.
- 3.The Executive Engineer,
Zonal Office V,
Corporation of Chennai,
No.2, Audikesavalu Street,
Chindadripet, Chennai - 600 002.
- 4.The Assistant Executive Engineer,
Unit 14, (Zone - V)
Corporation of Chennai,
No.2, Audikesavalu Street,
Chindadripet, Chennai - 600 002.

5.S.Elumalai

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, to call for the records from the first respondent vide the impugned order dated 20.11.2015 in Letter No.21847/UD6(2)/2015-1 of the first respondent confirming the order dated 07.10.2015 in Letter No.23822/UD-VI(2)/2014-8 and quash the same and consequently forbearing the respondents 3 and 4 from demolishing the A.C.Sheet roof in the first floor of the property bearing Door No.13/25, Purasawakam High Road, Vepery, Chennai - 600 007.

For Petitioners: Mr.R.Syed Mustafa

For Respondents: Mr.N.Sakthivel
Government Advocate for R1
Mr.R.Arunmozhi for R2 to R4

O R D E R

(delivered by K.K. SASIDHARAN,J.)

This writ petition is directed against the orders dated 07.10.2015 and 20.11.2015 on the file of the first respondent, calling upon the petitioner to demolish the temporary construction, measuring 1700 sq.ft on the first floor of the building, within a period of three weeks, failing which, it was indicated that enforcement action would be taken in accordance with law.

2. Heard the learned counsel for the petitioner, the learned Government Advocate on behalf of the first respondent and the learned Standing Counsel for Chennai Corporation.

3. The petitioner is a tenant under the 5th respondent. The tenancy appears to have started as early as in the year 1930. There were proceedings between the petitioner and the landlord. The connected Civil Revision Petition is pending before this Court in C.R.P.No.1737 of 1998.

4. The Chennai Corporation pursuant to the complaint given by the 5th respondent passed an order directing the petitioner to demolish the unauthorised construction put up by him on the first floor of the building, pursuant to the order dated 22 December 2009 in W.P.No.11277 of 2009. The petitioner challenged the demolition notice issued by the Chennai Corporation in W.P.No.27461 of 2009. The writ petition was disposed of by this Court by order dated 27.03.2014 with a direction to the Chennai Corporation to conduct enquiry and pass a fresh order. The third respondent, thereafter, passed an order on 04.12.2014 directing the petitioner to demolish the unauthorised construction.

5. The petitioner filed a statutory appeal before the first respondent. Though the petitioner agreed to remove 938 sq.ft., the Corporation wanted him to remove the entire 1700 sq.ft. of unauthorised construction. The Appellate Authority upheld the decision taken by the Corporation.

6. It is the specific case of the petitioner that an area of 938 sq.ft., alone was constructed by him. The remaining 762 sq.ft was constructed by the landlord long back. The petitioner placed reliance on the order in R.C.O.P.No.464 of 2008.

7. We have perused the order passed by the XVI Court of Small Causes, Chennai, dated 22.06.2015 in R.C.O.P.No.464 of 2008.

8. The Rent Controller in his order dated 22 June 2015 has referred to the evidence adduced by the parties with respect to the construction made on the upstairs portion. The order contained an indication that the construction to the extent of 938 sq.ft., alone was put up by the petitioner. The remaining area of 762 sq.ft., was put up by the landlord and the same has been in existence ever since the date of lease.

9. The order passed by the Chennai Corporation and the related appellate order does not contain any indication that a genuine attempt was made to demarcate the area constructed by the petitioner and the landlord. The order simply directed the petitioner to demolish the entire super structure admeasuring 1700 sq.ft.

10. Since the order in R.C.O.P.No.464 of 2008 was passed by the Rent Controller subsequent to the decision taken by the Chennai Corporation and the Appellate Authority, the actual area of unauthorised construction was not specifically dealt with by the authorities. We are, therefore, of the view that the matter requires fresh consideration by the Chennai Corporation in the light of the order, dated 22.06.2015, made in R.C.O.P.No.464 of 2008.

11. In the result, the impugned orders dated 07.10.2015 and 20.11.2015 are set aside and the matter is remitted to the second respondent for fresh consideration.

12. The second respondent is directed to consider the matter afresh taking into account the evidence adduced before the Rent Controller and the order, dated 22.06.2015 in R.C.O.P.No.464 of 2008. It is needless to point out that opportunity of hearing should be given to the petitioner and the 5th respondent before taking a final decision in the matter.

The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Secretary to Government,
Housing and Urban Development Department,
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Chindadripet, Chennai - 600 002.

+1cc to R.S.yed Mustafa, Advocate Sr.64667

+1cc to R.Arunmozhi, Advocate sr.64618

+1cc to The Government Pleader sr.64901

W.P.No.37919 of 2015

vs[co]
srg 16/12/2015

सत्यमेव जयते

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