

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2015

CORAM

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Mr. JUSTICE M.VENUGOPAL

W.P.No.3879 of 2015

B.Jayachander

... Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development
Authority,
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 8.

2. The Commissioner,
Avadi Municipality,
Chennai - 54.

3. C.Prabakaran

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to take immediate steps to pull down the illegal construction and close down the unapproved swimming pool, restaurant and Bar at No.140, N.M.Salai, Avadi, Chennai - 54 as per the information furnished by the second respondent dated 25.03.2013 and 18.11.2014.

For Petitioner : Mr.K.Mohanamurali

For Respondents

: Mr.N.Sampath for R1
Mr.P.Srinivas for R2
Mr.M.S.Krishnan, Sr. Counsel
for Mr.R.Purushothaman for R3

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ORDER

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

The petitioner has come up with this writ petition seeking a direction to the authorities to take immediate steps to pull down the illegal construction and close down the unapproved swimming pool, restaurant and Bar at No.140, N.M.Salai, Avadi, Chennai - 54 as per the information furnished by the second respondent dated 25.03.2013 and 18.11.2014.

2. Pursuant to the notice, the first respondent has filed counter affidavit, stating as under:

"8. I further submit that this office has sent a letter dated 24.02.2009 to the applicant's representative, Thiru.C.Prabhakaran, requesting the clarifications/particulars such as

- (i) Difference in passage width in respect of approved plan and Reg. Plan submitted.
- (ii) Difference in site extent
- (iii) Copy of earlier approved plan attested by Licensed Surveyor
- (iv) Current address of the site under reference
- (v) Patta with FMB sketch showing the measurements
- (vi) Evidences for electricity service connection, water service connection deposit receipts, property tax assessment order and proof completion certificate etc., to prove that the building was completed before 28.02.1999.

9. I further submit that since the third respondent/applicant has not complied for the above letter, one more letter has been sent to the applicant on 21.04.2009, to submit the particulars within 15 days from the date of receipt of this office letter, failing which the regularisation application will be disposed of based on the available particulars.

10. I further submit that now Thiru.C.Prabhakaran in his letter dated 03.03.2015 furnished particulars such as Field Measurement Book (FMB) for the site, copy of patta, copy of plan approved by CMDA, hotel license, property tax, copy of FB card to prove the address for the site, Deputy

Tahsildar attested TSLR and FMB and five sets of revised plan.

11. I further submit that the above particulars were examined and found that there is no credible evidences have been furnished. Subsequently the site was inspected by the Deputy Planner and Assistant Planner of Reg.Division on 17.03.2015 and observed the following:

(i)Block 1 - Main Building consists of ground floor + 1st floor + 2nd floor + 3rd floor part with 22 rooms and Conference Hall (Lodge). The usage of the building in ground floor - Bar activity and 1st and 2nd floor is lodging, 3rd floor is being used for rest rooms for labourers which is partly RCC and party AC sheet room.

(ii)Block 2 - ground floor + 1st floor for lodge purpose with 7 rooms.

(iii)Another structure of ground floor with AC sheet roof being used as restaurant.

(iv)Swimming pool with dimension of 12 m x 18 m.

(v)Further another structure of G + 2 floors - commercial building which was constructed by subdividing the passage shown as access to the site under reference abutting New Military Road. The passage with a width of 52'.0" is reflected in the original approved plan by CMDA and Regularisation Plan submitted by the applicant earlier.

(vi)Another ground floor + 1st floor building is now added in the rear side within the site under reference by altering the boundary of the site under reference abutting to the existing road at the rear side. It is kept as vacant.

(vii)Apart from the above, 5 AC sheet roofed structures for car parking, dressing rooms and toilets, generator room, electricity board room and one RCC roofed shed for garage and also existing in the site under reference.

In this regard, it is informed that as per the original Regularisation Plan submitted by the applicant Tmt.C.Chockammal during the year 1999 the structures are ground floor + 1st floor commercial building and ground

floor building as residence and further AC sheet structure meant for generator room, electricity board room, garage and toilets were only shown in the regularisation plan. Except these structures no other structures were shown in the Regularisation plan at the time of applying for Regularisation.

Now the applicant has altered the site configuration entirely by adding additional construction of the buildings, unauthorisedly sub-dividing the passage and also by shifting the rear side boundary by adding the additional land. Further applicant also has not furnished the credible evidence to prove the building is in existence prior to 28.02.1999 as per the Hon'ble High Court order and also failed to establish the absolute ownership over the property.

3. According to the learned senior counsel appearing for the third respondent, the building is in order, strictly in accordance with the building approval. The earlier inspection done by the authority is not in accordance with the law laid down by the Supreme Court.

4. At this stage, we do not propose to go into the merits of the case, as disputed facts are involved. However, we deem it fit and appropriate to grant two weeks time to the third respondent to put forward his case before the authorities pursuant to the said notice issued earlier and thereafter, the first and second respondents are at liberty to take appropriate action including consequential action in accordance with law as expeditiously as possible.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi

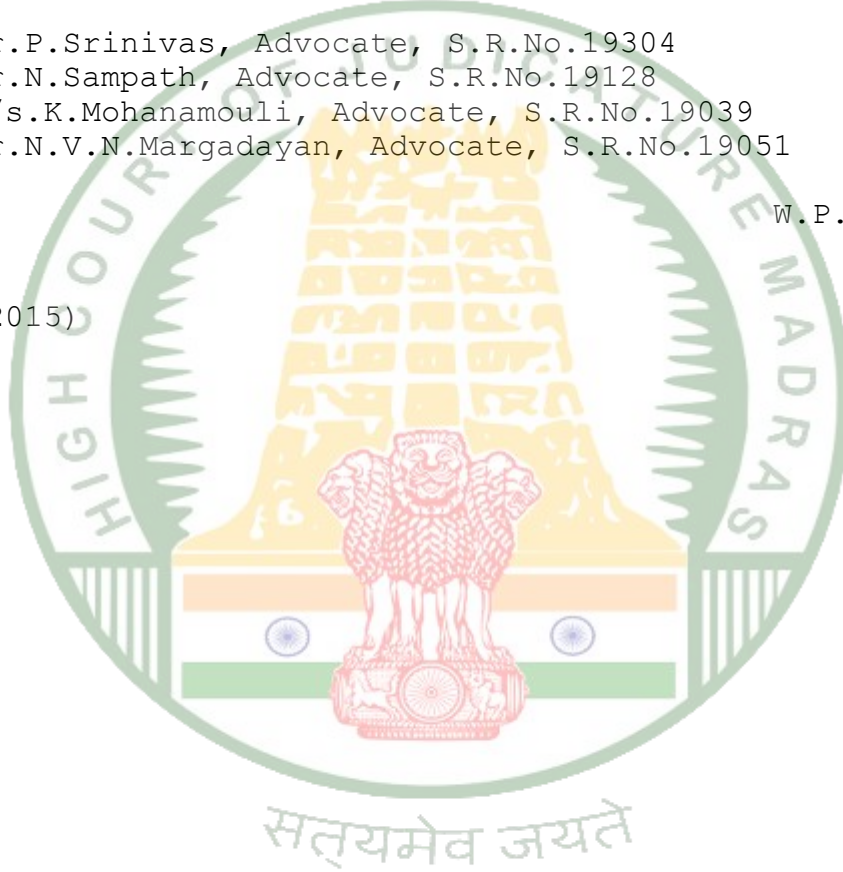
To

1. The Member Secretary,
Chennai Metropolitan Development
Authority,
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 8.
2. The Commissioner,
Avadi Municipality,
Chennai - 54.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.19304
+1cc to Mr.N.Sampath, Advocate, S.R.No.19128
+1cc to M/s.K.Mohanamouli, Advocate, S.R.No.19039
+1cc to Mr.N.V.N.Margadayan, Advocate, S.R.No.19051

W.P.No.3879 of 2015

SR(CO)
CA(10/04/2015)



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