

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-03-2015

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

WRIT PETITION No.7860 of 2015

E. Govindasamy

.. Petitioner

vs

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1 Gandhi Irvin Road, Egmore,
Chennai 600 008.
2. The Executive Engineer,
Zone 7, Corporation of C hennai,
Ambattur, Chennai.600 058.
3. A. Loganathan .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the first and second respondents to consider the petitioner's representation dated 03.11.2014 as against the unauthorised construction put up by the third respondent at No.7/1 Bharathiar Street, Strinivasa Nagar, Padi, Chennai 600 050.

For Petitioner : Mr. M. Vembadiyan
For Respondents : Mr.K. Raja Srinivas - R1
Mr. G. Anantharangan - R2

ORDER

(Order of the Court was made by M. VENUGOPAL, J.)

This writ petition is filed seeking to issue a Writ of Mandamus directing the first and second respondents to consider the petitioner's representation dated 03.11.2014 as against the unauthorised construction put up by the third respondent at No.7/1 Bharathiar Street, Strinivasa Nagar, Padi, Chennai 600 050.

2. According to the learned counsel for the petitioner, the petitioner was the tenant of the building in one portion of a shop situated at old Door No.70/1, Bharathi Street, Sreenivasa Nagar, Padi, Chennai, for the past 14 years on a monthly rent of Rs.1,200/-. Further, he was running a 'Lathe' shop producing small units of industrial bolts and nuts.

3. The stand of the petitioner is that the third respondent with a view to let out the shop to another person, started to give troubles through his rowdy elements with dire consequences. Therefore, he filed RCOP No. 1 of 2014 under Section 17 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 (for short 'the Act') before learned District Munsif, Ambattur, and during the pendency of the said proceedings, the third respondent threw him out from the shop with the help of Gundas and took the machinery and other amenities worth about Rs.5,00,000/-.

4. The prime grievance of the petitioner is that the third respondent took the law into his own hands and demolished the building without obtaining demolition order from the Corporation of Chennai and that too, when the proceedings were going on before the trial Court and started constructing the new building without obtaining planning permission from the local authority as prescribed under the Tamil Nadu Town and Country Planning Act, 1971 and therefore, he lodged a complaint before the Deputy Commissioner of Police, Ambattur, Chennai, on 03.11.2014 to restore the amenities under Section 17 of the Act 18 of 1960. Since, no action was taken by the Police, he made a representation to the respondents 1 and 2 on 03.11.2014 praying for appropriate action against the third respondent for not complying the guidelines under the Tamil Nadu Town and Country Planning Act, 1971.

5. It is to be borne in mind that to attract Section 17 of the Act 18 of 1960, the petitioner is to establish that he is the tenant. As a matter of fact, the right of a party 'tenant' can be decided according to the definition given under Section 2(8) of the Act 18 of 1960. It is to be remembered that the ingredients of Section 17 of the Act 18 of 1960 are only additional safeguards showered upon a tenant apart from the rights under General Law.

6. It is to be noted that a 'Writ of Mandamus' is a prerogative right and an order of a Mandamus is, as a general Rules, a matter for the discretion of Court. It is not granted as a right or as a matter of routine. After all, the aim of 'Mandamus' is to prevent disorder from a failure of justice and if there exists alternative remedy, then, 'Mandamus' may be refused, of course, based on facts of attendants circumstances of a given case, in the considered opinion of this Court.

7. It is to be mentioned that 'Notice' under Section 56 of the Tamil Nadu Town and Country Planning Act 1971 is not a empty ritualistic formality. It cannot be gainsaid that consideration should strictly comply with the Rules and Regulations. If the buildings are constructed in violation of Rules and Regulations, the competent authorities can take appropriate action to demolish the construction. No wonder, a misplaced sympathy ought not be shown to a builder or anyone, who has put up the unauthorised construction.

8. This Court, on a careful consideration of the petitioner's contentions and taking note of the fact that proceedings in RCOP No. 1 of 2000 seeking restoration of amenities is pending on the file of the District Munsif, Ambattur, is not inclined to issue a Writ of Mandamus because of the simple reason that the petitioner cannot institute parallel proceedings before this Court.

9. In the result, the writ petition is dismissed. No costs. However, it is made clear that the dismissal of the present writ petition by this Court will not fetter the petitioner to seek appropriate remedy (including the issue of alleged unauthorised construction purportedly made by the third respondent) before the competent forum in the manner known to law and in accordance with law.

ra

-s/d-

Assistant Registrar()

True Copy

Sub-Assistant Registrar

To

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Chennai Metropolitan Development Authority,
No.1 Gandhi Irvin Road, Egmore,
Chennai 600 008.

2. The Executive Engineer,
Zone 7, Corporation of C hennai,
Ambattur, Chennai.600 058.

+ 1 cc to Mr.K.RajaShrinivas Advocate SR 15751

+ 1 cc to Mr.G.Anantharangan, Advocate SR 15935

+ 1 cc to Mr.V.Dinesh Raja, Advocate SR 15748

nm(co)

prk 15/4

W.P.No.7860 of 2015