

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Cont.P.No.2809/2016 in WP.No.33062/2015

1.Vaibhav Daga
2.S.Balamurali

.. Petitioners

Versus

1.Mr.Nagamani
The Authorised Officer Plan/
Approval/Demolish, Zone-10
Corporation of Chennai

2.Mr.Jayaraman
The Assistant Engineer
Zone-10, Kodambakkam
Mambalam Sub Office
Chennai.

.. Respondents

Prayer:Contempt petition filed under section 11 of the Contempt of Courts Act, 1971, to punish the respondents in disobeying the orders dated 05.11.2015 of this Court in WP.No.33062/2015.

For Petitioners : Mr.Shaji Pual
For Respondents : Mr.P.V.Selvakumar

ORDER

Heard the learned counsel for the petitioner and Mr.P.V.Selvakumar, learned Standing counsel appearing for the respondents/contemnors.

2 This petition has been filed by the petitioners for the alleged willful disobedience of the

order and direction of this Court made in WP.No.33062/2015 dated 05.11.2015. Subsequent to the said order, a miscellaneous petition was filed by the 4th respondent in the writ petition, in WMP.No.6443/2016 to recall the order dated 05.11.2015 passed in the writ petition and the said miscellaneous petition was disposed of by the order dated 30.03.2016 and the operative portion of the order reads thus:-

"4. In terms of the above order, the Corporation took a clear stand that as per the inspection, dated 02.11.2015, the building has already been demolished, therefore, nothing requires to be done by the Corporation, as the demolition work has already been carried out. At that juncture, the writ petitioners, represented by the then counsel, Mr. J. Arockia Selvaraj, submitted that there is temporary structure in the corner of the building in question, which is yet to be removed. Taking note of the submission and recording the same in para No.4 of the order, this Court issue direction to the respondents 1 and 2, stating that, if there is any unauthorised construction, the same has to be removed. Thus, no positive direction was given to the Corporation of Chennai to demolish any portion of the property and as on date of disposal of the writ petition, the superstructure, which had to be demolished, as per the demolition plan, dated 24.08.2009, was already removed. The petitioner would state that the respondents 1 and 2 herein, viz, the writ petitioners, taking advantage of the order, demolished the flat, in which, the petitioner is residing with her family, including her unmarried daughter, and now, they have been pushed to the street. In this regard, several documents are placed to show that the petitioner is in possession of the

property. The learned counsel for the petitioner has also drawn the attention of this Court to the legal notice sent by Mrs.Nirmala Daga, wife of Harikishan Daga, the mother of the first writ petitioner and the first writ petitioner is represented through their Powe Agent, C.P.Senthilkumar, and in the said notice, they have accepted that the plot bearing No.G1 at the ground floor has been leased out by P.Ram Pramukh Reddy to the petitioner herein.

5. Therefore, it is submitted that the respondents 1 and 2 have misused and misinterpreted taking advantage of this order and demolished a portion of the petitioner's property, which is said to be in his possession. Therefore, the petitioner prays for restitution and restoring possession and permission to reconstruct the wall etc. Such relief could be considered by this Court, only if there was direction issued by this Court for demolition, and in excess of th direction, certain acts were performed by the officials of respondent / corporation. As pointed out earlier, there was no specific direction issued to the respondent / corporation to remove any portion of the constructed area, but it was only a direction to respondents 1 and 2/ Corporation to remove unauthorised construction, if any. Even assuming that there was any unauthorised construction, the Corporation could not have proceeded unilaterally, and they ought to have issued notice. However, this has not happened, and the notice has been affixed by writ petitioners/respondents 1 and 2 herein, enclosing the Court's order.

6. In the light of the above, the question of restoring possession to the petitioner of construction of the property, cannot be ordered in this petition and it is sufficient to clarify that it is open to the petitioner to initiate appropriate civil or criminal action against respondents 1 and 2 on the ground that the writ petitioners have misinterpreted orders

passed by this Court.

7.The learned counsel appearing for the respondents 1 and 2 submitted that the entire case is wrongly projected by the petitioner and demolition has been carried out only in respect of the property at Hanumar Koil Street, West Mambalam, Chennai, and they have not misinterpreted or misused the order passed by this Court.

8.In any event, it is for the parties to establish their case before the appropriate Forum as and when the petitioner herein initiates criminal or civil action.

9.With the above observations, this petition is dismissed."

3 In the light of the above direction which has merged with the order dated 05.11.2015, the question of initiating contempt proceedings against the Corporation of Chennai does not arise as the petitioners have not established any prima facie case of willful disobedience of the order and direction of this Court dated 05.11.2015.

4 Accordingly, the contempt petition is dismissed.

AP

SD/-
JOINT REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2017.

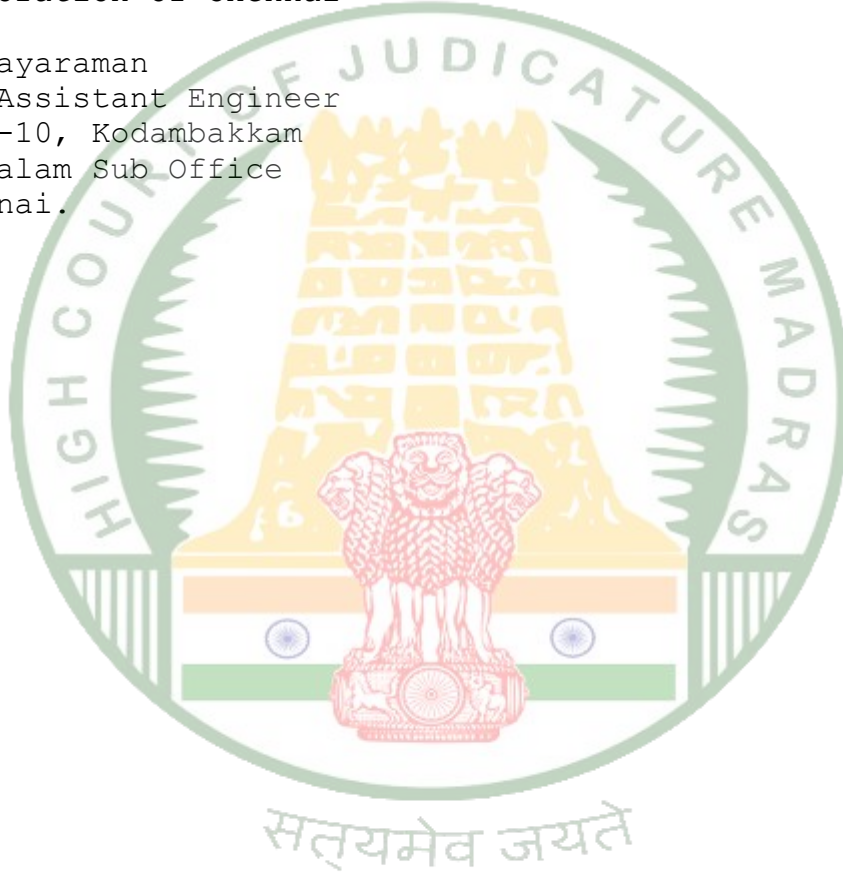
COURT OFFICER(O.S.)

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SM/CO/19/12/2016

To

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