

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.07.2016	Pronounced on 30.08.2016
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DATED: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18134 of 2016

and

WMP.Nos.15903 to 15905, 19967 and 20559 of 2016

1.V.S.Krishna

2.V.Ratna Kumari

(both are represented by their
Power of Attorney Holder
K.Prabhakar Naidu)

...Petitioners

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai.

3.The Regional Joint Commissioner,
Corporation of Chennai,
Adyar, Chennai - 600 020.

4.The Zonal Officer,
Zone XV, Division No.198,
Corporation of Chennai,
No.120, Rajiv Gandhi Salai (OMR),
Sholinganallur, Chennai - 600 119.

5.J.Amsaveni

6.A.Sangeetha

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the impugned order in Letter No.7160/UD-VII(2)/2016-3, dated 5.5.2016, passed by the first respondent and quash the same.

For Petitioners: Mr.T.Karunakaran

For Respondents: Mr.P.S.Sivashanmugasundaram(for R1)
Special Government Pleader

Mr.P.Arunmozhi (R2 to R4)
Standing Counsel

Mr.V.Jeevagiridharan (for R5)

Mr.M.Sundar (for R6)
for Mr.K.Ashok Kumar

O R D E R

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition is filed seeking a writ of Certiorari to call for the entire records relating to the impugned order in Letter No.7160/UD-VII(2)/2016-3, dated 5.5.2016, passed by the first respondent and quash the same.

2.The facts in a nutshell are as under:

The writ petitioners are represented by their Power of Attorney. The petitioners claim to be the owners of the entire land situate in Plot No.27 in Survey No.2/1B3A Part 1 (New Survey No.2/40), East Coast Road, Panaiyur, Sholinganallur, Chennai - 600 119 and they are in possession and enjoyment of the land.

3.It is alleged that even though by judgment and decree dated 31.10.2011 passed in O.S.No.89 of 2014 by the Additional District Munsif Court, Alandur, the fifth respondent was restrained by an order of permanent injunction from interfering with the peaceful possession of the property of the petitioners, the fifth respondent, along with her agents, trespassed into the said lands on 17.11.2011. Aggrieved by the said act of the fifth respondent, the petitioners lodged a complaint with the police and since no action was taken by the Police, the fifth respondent in cahoots with the sixth respondent has put up unauthorized shops on the trespassed land.

4.The petitioners, through their Power of Attorney, filed W.P.No.28448 of 2015 seeking a direction to the Corporation of Chennai to demolish the above said unauthorized construction put

up by respondents 5 and 6 herein, within a prescribed time. In the said writ petition, a Division Bench of this Court, by order dated 10.09.2015, directed the Corporation of Chennai to enquire and take appropriate action for removal of the unauthorized structures, as per the provisions of law.

5.Pursuant to the said order passed by the Division Bench of this Court, it is stated that the fourth respondent issued a notice dated 04.11.2015 to the fifth respondent requesting her to produce a copy of the approved plan for putting up the construction in the said land and also observed that, if such construction is put up without any plan approval, the building should be restored to its original condition.

6.Thereafter, the fourth respondent by notice dated 11.01.2016 directed the fifth respondent to restore the building to its condition before the said construction and observed that, failing such restoration, action will be initiated to lock and seal the premises and to demolish the superstructure put up in the said land.

7.Consequent to the above, on 22.02.2016, the fourth respondent issued de-occupation notice to the fifth respondent, directing her to de-occupy the said premises within 10 days from the date of receipt of such notice.

8.It is plea of the petitioner that only after passing of the above said proceedings, the fifth respondent filed an application before the Corporation of Chennai, which was of course addressed to the CMDA, seeking planning permission and that was rejected by the Corporation of Chennai on 07.03.2016 observing that the sanctioning power for regularization of the construction is vested with CMDA only.

9.Complaining that the official respondents did not take any action thereafter, the petitioners filed Contempt Petition No.982 of 2016. A Division Bench of this Court, by order dated 01.04.2016, observed that it is a case of clear contempt and granted two weeks time to the learned Standing Counsel appearing for Corporation of Chennai to file a status and compliance reports.

10.In pursuance of the said direction, the Corporation of Chennai locked and sealed two shops, out of four shops, on 13.04.2016 and filed compliance report in the above said contempt petition. The Division Bench, by order dated 29.04.2016, taking note of the said fact, directed the Corporation of Chennai to clarify the position by way of filing affidavit and report the action taken.

11.It is the case of the petitioners that the fifth respondent filed appeal / revision petition before the first respondent on 25.01.2016, 11.04.2016 and 18.04.2016 calling into question the lock and seal notice dated 11.01.2016. In the said appeal, the first respondent, by order dated 05.05.2016, held that the constructions are very small compared to the total extent of the site and are liable for regularization. The first respondent directed the fifth respondent herein to apply to the Corporation for regularization of the buildings and further directed the Corporation to dispose of the application seeking regularization within one month. The first respondent also directed that the premises be desealed during the said period, of course with an observation that in the event, the regularization plan of the fifth respondent is rejected, the premises can be put back to lock and seal.

12.Assailing the said order passed by the first respondent, the present writ petition is filed for the relief stated supra.

13.Mr.T.Karunakaran, learned counsel for the petitioners contended that the principle of audi alteram partem was given a complete go-by in the facts and circumstances of this case, as the petitioner was not given an opportunity of hearing before passing the impugned order.

14.He further pleaded that inasmuch as the first respondent failed to consider the notices dated 04.11.2015, 11.01.2016, 22.02.2016 and 05.04.2016 issued by the Corporation of Chennai, which clearly show that the shops were constructed without approved plan, the order dated 05.05.2016 passed by the first respondent is liable to be set aside.

15.It is the plea of the learned counsel for the petitioners that when the contempt petition filed by the petitioners is pending before this Court for want of affidavit seeking clarification from the Corporation of Chennai, the first respondent, without considering the said fact, ordered de-sealing of the locked premises and therefore, the same is untenable.

16.He pleaded that the fifth respondent misrepresented before the first respondent that she had obtained an order from this Court in W.P.No.13096 of 2016 for consideration of her appeal under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971, when no such direction was issued by this Court and the said writ petition was dismissed on 07.04.2016.

17.Yet another plea raised by him was that the first respondent, without considering the fact that the fifth respondent has no title over the land, has directed the fifth respondent herein to apply to the Corporation for regularization

of the buildings and further directed the Corporation to dispose of the such application, which is against the settled canons of law.

18.Lastly, he contended that as the application of the fifth respondent seeking regularization was rejected by the Corporation on 07.03.2016, the direction given by the first respondent to apply for regularization is without proper application of mind and therefore, the said order is liable to be set aside.

19.Mr.V.Jeevagiridharan, learned counsel for the fifth respondent, contended that there are civil disputes with regard to the subject property between the writ petitioners and the fifth respondent, as has been observed in the Division Bench order dated 10.09.2015 passed in W.P.No.28448 of 2015 and in this regard S.A.No.432 of 2013 and other civil proceedings are pending before this Court and therefore, the present writ petition is liable to be dismissed in limine, as the same have been filed to exert pressure on the fifth respondent.

20.He pleaded that the fifth respondent is in possession of the entire property, having purchased the same under a registered sale deed bearing Document No.3017 of 2003 on the file of the Sub Registrar, Neelankarai and she is, in fact, paying all the statutory dues. He further pleaded that the fifth respondent has put up temporary sheds in the schedule property with hollow blocks walls and tin sheet roof and leased the same to the sixth respondent in the year 2006 and therefore, the petitioners have no locus standi to file this writ petition.

21.He pleaded that by the impugned order, the first respondent had only given an opportunity to the fifth respondent to approach the authorities to work out a remedy available under the statute and directed the Corporation to consider such application and the said order does not cause any prejudice or hardship to anyone, much less the writ petitioners herein.

22.Referring to the order dated 07.04.2016 passed by the Division Bench of this Court in W.P.No.13096 of 2015, wherein the fifth respondent challenged the de-occupation notice, he pleaded that the Division Bench observed that it is for the fifth respondent to seek interim relief by filing an application in line with Section 80-A(3) of the Tamil Nadu Town and Country Planning Act, 1971, and therefore, the contention of the learned counsel for the petitioners that the fifth respondent has misrepresented the first respondent is unfounded and baseless.

23.Mr.M.Sundar for Mr.K.Ashok Kumar, learned counsel for the sixth respondent, reiterated the submissions made by the learned counsel for the fifth respondent.

24.Mr.P.Arunmozhi, learned Standing Counsel appearing for the Corporation of Chennai recapitulated the stand taken by the fourth respondent in the proceedings in W.P.No.28448 of 2015 and Contempt Petition No.982 of 2016, referred supra.

25.Heard the learned counsel on either side, perused the documents filed and gave our anxious consideration to the issue involved in this writ petition.

26.Before advertng to the merits of the case, it would be apposite to note that when the matter was taken up for admission, Division Bench of this Court, by order dated 19.05.2016, directed the parties to maintain status quo and the relevant portion of the said order reads as under:

"3.Mr.P.Sanjay Gandhi, learned Additional Government Pleader takes notice for the first respondent and seeks time to get instructions. Mr.P.Arunkumar, learned Standing Counsel takes notice for respondents 2 to 4. Notice to the respondents 5 and 6 returnable by 02.06.2016. Private notice is also permitted. The respondents are directed to maintain status quo, as on today, in the meantime."

27.Aggrieved by such interim order passed by this Court, the fifth and sixth respondents filed W.M.P.Nos.19967 and 20559 of 2016 respectively, seeking to vacate the interim order of status quo granted on 19.05.2016.

28.Let us now consider the contentions of either side in the light of the facts, which we have culled out from the documents filed in this writ petition.

29.Apropos of the ownership of the land, there is a civil dispute pending between the petitioners and the fifth respondent. According to the petitioners, a decree of permanent injunction is in their favour. If that be so, it is always open to them to get the decree executed before the Competent Court. The records further show that as on date Second Appeal No.432 of 2014 filed by the fifth respondent calling into question the decree of permanent injunction is pending on the file of this Court. It is trite law that a writ remedy is not available for resolution of a property or a title dispute. Therefore, we do not propose to express any opinion as to the ownership of the land, which is the subject matter of this writ petition, and propose to deal with only the validity of the notice dated 05.05.2016.

30.Coming to the earlier round of litigation initiated at the instance of the petitioners, it is seen that the petitioners

have filed W.P.No.28448 of 2015 seeking a direction to the Corporation of Chennai to demolish the unauthorized construction at Plot No.27 in Survey No.2/1B3A Part 1 (New Survey No.2/40), East Coast Road, Panaiyur, Sholinganallur, Chennai - 600 119. The said writ petition was disposed of holding as under:

"4. Insofar as the alleged illegal construction made by respondents 4 and 5, it is for the authorities to examine the same and take consequential action. However, the question, which still remains, is as to whether the authorities can enter into the property belonging to the petitioners, which is in dispute. This will not stand in the way of the authorities in taking appropriate action as provided under the provisions of law."

31. In the above said order, the Division Bench has only observed that it is for the authorities concerned to take appropriate action as provided under the provisions of law. It is the case of the petitioners that based on the above said Division Bench order, the Corporation of Chennai has issued notice on 11.01.2016 directing the fifth respondent to restore the building to its condition before the said construction and in default to initiate action to lock and seal the premises and to demolish the superstructure put up in the said land; and another notice on 22.02.2016 regarding de-occupation notice to the fifth respondent, directing her to de-occupy the said premises within 10 days from the date of receipt of such notice.

32. It is borne out from the records that the petitioners filed contempt petition, alleging inaction by the Corporation of Chennai, pursuant to the notices issued supra. Concededly, as on date, Contempt Petition No.982 of 2016 is pending on the file of this Court awaiting the status report of the Corporation of Chennai.

33. When things stood thus, the impugned proceedings have been passed by the first respondent. In fact, the first respondent, by order dated 05.05.2016, disposed of the appeal holding that the constructions are very small compared to the total extent of the site and are liable for regularization. The first respondent directed the fifth respondent herein to apply to the Corporation for regularization of the buildings and further directed the Corporation to dispose of the regularization application within one month. The premises was ordered to be desealed during the said period, of course with an observation that in the event, the regularization plan of the fifth respondent is rejected, the premises can be put back to lock and seal.

34.A perusal of the typed set of papers filed by the fifth respondent shows that consequent to the issuance of lock and seal notice dated 11.01.2016 by the Corporation of Chennai, the fifth respondent has filed an application under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the Government on 25.01.2016 and the same was pending consideration. The said factum is also recorded in the order passed a Division Bench of this Court on 07.04.2016 in W.P.No.13096 of 2016 filed by the fifth respondent. The Division Bench, in the said order, further observed that the fifth respondent herein can seek interim relief before the competent authority by filing interlocutory application. In fact, in the impugned order dated 05.05.2016, the first respondent has referred to the order passed in W.P.No.13096 of 2016, W.P.No.28448 of 2015 and the Contempt Petition. Therefore, it does not lie in the mouth of the petitioners to plead that the first respondent was obvious of the notices issued by the Corporation of Chennai.

35.A bare reading of the impugned proceedings dated 05.05.2016 reveals that the first respondent after giving personal hearing to the fifth respondent and considering the facts and circumstances, observed that the constructions are very small compared to the total extent of the site and are liable for regularization. The fifth respondent was directed to apply to the Greater Chennai Corporation for regularization of his buildings and the Corporation was directed to dispose of such application. The first respondent ordered to de-seal the premises pending consideration of the application seeking regularization. However, the first respondent emphatically held that the Corporation is at liberty to put the premises back to lock and seal if the regularization plan of the applicant is rejected.

36.The said order passed by the first respondent is only a direction to the fifth respondent to apply for regularization and a further direction to the Corporation to consider the same. In fact, the first respondent made it crystal clear that the premises may be put back to lock and seal if the regularization plan of the fifth respondent is rejected. No positive direction has been given by the first respondent to consider the regularization plan of the fifth respondent favourably. Therefore, in our considered opinion, the petitioners in no way can be prejudiced by the said order passed by the first respondent and cannot claim violation of the principles of natural justice. It is well settled proposition of law that mere breach of rules of natural justice is not suffice. Such breach of rules of natural justice must also entail avoidable prejudice to the party seeking such relief. In the case on hand, except pleading violation of the principles of audi alteram partem, the petitioners did not show the prejudice caused to them by the order passed by the first respondent. We,

therefore, find no just reason warranting interference by this Court.

37.For the forgoing reasons, this writ petition is dismissed. No costs. Consequently, W.M.P.Nos.15903 to 15905, 19967 and 20559 of 2016 are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai.

3.The Regional Joint Commissioner,
Corporation of Chennai,
Adyar, Chennai - 600 020.

4.The Zonal Officer,
Zone XV, Division No.198,
Corporation of Chennai,
No.120, Rajiv Gandhi Salai (OMR),
Sholinganallur, Chennai - 600 119.

+3 cc's to M/s.T.Karunakaran, advocate,sr.48888

+4 cc's to M/s.V.Jeevagiridharan,advocate,sr.49066 & 49062

+4 cc's to M/s.K.Ashokkumar,advocate,sr.49068, 69

+1 cc to M/s.R.Arunmozhi, advocate,sr.49041

+1 cc to Govt.Pleader,sr.49290.

ctk(co)
krd 7/9

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and
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19967 and 20559 of 2016