

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.19476 of 2016
and WMP.No.16888 of 2016

K.Alagar Perumal

...Petitioner

vs.

1.Government of Tamil Nadu

Rep. By its Secretary to Government
Housing & Urban Development Department
Secretariat, Chennai-600 009

2.Naravarikuppam Town Panchayat

Rep. By its Executive Officer
Red hills, Chennai-600 052

3.Chennai Metropolitan Development Authority

Rep. By its Member Secretary
No.1, Gandhi Irwyn Road
Egmore, Chennai-600 008

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd and 3rd respondents to forbear from in anyway interfering with the premises at Survey No.86/2, Naravarikuppam Village, GNT Road, Red Hills, Chennai-600 052, particularly by way of demolition of the same, pending final determination of the petitioner's application dated 23.05.2016 under Section 49 of the Town and Country Planning Act by the 3rd respondent and pending final decision in petitioner's application dated 27.04.2016 filed under Section 80(A) of the said Act by the 1st respondent.

For Petitioner : Mr.D.S.Rajasekaran

For respondents : Mr.P.S.Sivashanmugasundaram,
Spl.G.P., for R1

Mr.Srinivasan for R2

Mr.C.Johnson for R3.

O R D E R
(Order of the Court was made by HULUVADI G. RAMESH, J.)

This Writ Petition is filed seeking to issue a direction to the 2nd and 3rd respondents not to demolish the premises at Survey No.86/2, Naravarikuppam Village, GNT Road, Red Hills, Chennai-600 052, pending final determination of the petitioner's application dated 23.05.2016 under Section 49 of the Town and Country Planning Act by the 3rd respondent and pending final decision in petitioner's application dated 27.04.2016 filed under Section 80(A) of the said Act by the 1st respondent.

2. Heard the learned counsel for the petitioner. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader is directed to take notice for the first respondent. Mr.S.Srinivasan, learned counsel takes notice for the 2nd respondent-Naravarikuppam Town Panchayat and Mr.C.Johnson, learned Standing counsel takes notice for the 3rd respondent-CMDA.

3. The case of the petitioner is as follows:-

The petitioner is an occupier of the Building in Survey No.86/2, Naravarikuppam Village, GNT Road, Red Hills, Chennai-600 052. On the allegation of minor deviation in the structure put up by the petitioner's vendor, the second respondent has passed an order of locking and sealing on 21.04.2016 and the said notice is said to have been received by the petitioner's father. However, according to the petitioner, he has not received any such notice. As against the same, the petitioner filed an application under Section 80(A) of the Town and Country Planning Act, 1971, along with stay application before the first respondent, but so far, no final order or an interim order has been passed in the said appeal. On the said grievance, the petitioner earlier filed W.P.No.18012 of 2016 before this court, wherein, this court, by order dated 19.05.2016, directed the 1st respondent to dispose of the interim application, which was pending before the Government. The said order of this court has also been communicated to the first respondent by the petitioner's counsel on 25.05.2015 and the petitioner also issued a notice for non-compliance of the order by his counsel's letter dated 03.06.2016. The petitioner, thereafter, to safeguard his interest has also filed application under Section 49 of the Town and Country Planning Act, 1971, before the 3rd respondent on 23.05.2016 along with a revised plan and all required documents and plans for regularising the existing building, but till date, no order has been passed on the said application. Since no order has been passed in any of the applications filed by the petitioner, he is constrained to move this court by way of the present Writ Petition.

4. One more Advocate Mr.B.Natarajan, intervened in the matter without seeking permission of this court and submitted that already the issue in question has been adjudicated before this court and he also went up to the Supreme Court and this is the third round of litigation and he further prayed this court to dismiss the present writ petition. He also submitted that on the subject matter, a contempt proceedings is also pending consideration before this court.

5. In our considered view, the above deportment of the counsel who made offhand submissions without impleading himself as a party before the proceedings on hand or without seeking permission of this court, is not at all appropriate, more particularly when no proper application has been filed by him to contest the matter.

6. In any event, it appears that the intervener is said to be a neighbour and has taken serious issue of the matter and out of anxiety, he intervened in the matter.

7. Be that as it may. The petitioner has filed appeal dated 27.04.2016 under Section 80(A) of the Act before the 1st respondent. Pending consideration of the said appeal, another application dated 23.05.2016 has also been filed by the petitioner under Section 49 of the Act and the same is also pending before the 3rd respondent. Hence, it is for the respondents 1 and 3 to pass necessary orders on the said appeals after looking into the facts of the case.

8. On the foregoing observation, we find that petitioner's two applications viz., application under Section 80(A) of the Act and application under Section 49 of the Act are pending. Therefore, we direct the first and third respondents to consider and dispose of the petitioner's applications in accordance with law after giving due opportunity to the petitioner within a period of 2 months from the date of receipt of a copy of this order.

9. The intervener is directed to file an application before this court seeking to implead himself in the pending proceedings before this court, if he is a necessary party. The intervener further stated that a contempt proceedings is also pending before this court and the same is listed on 13.06.2016.

10. It is also submitted before this court that the construction of first floor of the building in question is also under litigation. Hence, pending the two applications before the respondents 1 and 3 under section 80(A) and under Section 49 of the Act filed by the petitioner, in the interests of justice, there shall be an order of status quo. As we directed in the preceding paragraph, the first and third respondents shall

consider and dispose of the applications in accordance with law after giving due opportunity to the petitioner within a period of 2 months from the date of receipt of a copy of this order.

11. The Writ Petition is ordered on the above terms. No costs. Consequently, connected WMP is closed.

nvsri

-s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government
Housing & Urban Development Department
Secretariat, Chennai-600 009
 2. The Executive Officer
Naravarikuppam Town Panchayat
Red hills, Chennai-600 052
 3. The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwyn Road
Egmore, Chennai-600 008
- + 1 cc to Mr.G.Srivenkatesh, Advocat SR 31041
- + 1 cc to Mr.D.S.Rajasekaran, Advocate SR 30984
- + 1 cc to Govt.Pleader SR 31084

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