

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI  
and

THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.P. No.31052 of 2015 and 301 of 2016  
and

M.P.Nos.1 and 2 of 2015 and W.M.P.No.192 of 2016

M.Priya ... Petitioner in  
W.P.No.31052 of 2015

L.G.Ravi .. Petitioner in  
W.P.No.301 of 2016

Vs.

- 1.Government of Tamil Nadu,  
rep by its Secretary to Government,  
Housing and Urban Development Department,  
Secretariat, Chennai-9.
- 2.Chennai Metropolitan Development Authority,  
rep by its Member Secretary,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai-8.
- 3.V.Nalini
- 4.V.Ramanakumar
- 5.The Commissioner,  
Corporation of Chennai,  
Rippon Buildings, Chennai.  
(R-5 impleaded suomotu vide order  
dated 14.12.2015)

.. Respondents in  
W.P.No.31052 of 2015

- 1.The Secretary to Government,  
Housing and Urban Development (UD-V) Department,  
Government of Tamil Nadu,  
Secretariat, Chennai-600 009.
- 2.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thazhamuthu Natarajan Maligai,  
No.1, Gandhi Irwin Road, Egmore,  
Chennai-600 008.

3.The Commissioner,  
Corporation of Chennai,  
Ripon Building,  
EVR Periyar Salai, Park Town,  
Chennai-600 003.

4.V.Nalini

5.V.Ramanakumar

.. Respondents in  
W.P.No.301 of 2016

W.P.No.31052 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in G.O.(3D)No.24, dated 24.4.2015 and quash the same insofar as directions to demolish the one dwelling unit at Ground floor of Plot No.71, Dr.Gurunathan Sreet, Panneer Nagar Extension, Mogappair, Chennai-37.

W.P.No.301 of 2016 is filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus, directing the third respondent to initiate action against the 4<sup>th</sup> and 5<sup>th</sup> respondents for not complying with the orders of the first respondent passed in G.O.(3D)No.24 dated 24.4.2015 under Sections 80-A and 79 of the Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the third respondent to re-seal the premises bearing Plot Nos.67 and 71, Dr.Gurunathan Street, Panneer Nagar, Mogappair, Chennai-37 belonging to 4<sup>th</sup> and 5<sup>th</sup> respondents.

For Petitioner : Mr.D.S.Rajasekaran  
in W.P.No.31052 of 2015

Mr.S.D.Venkateswaran  
in W.P.No.301 of 2016

For Respondents : Mr.P.S.Sivashanmugasundaram, Spl.G.P.  
for R1 in both W.Ps.

Mr.K.Rajashrinivas  
for R-2 in WP.31052/2015

Mr.N.Sampath for R-2 in WP.301 of 2016

Mr.P.H.Arvind Pandian,  
Addl.Advocate General  
assisted by Mr.R.Arunmozhi for R-5  
in W.P.No.31052 of 2015 and  
for R-3 in W.P.No.301 of 2016

Mr.R.S.Raveendran for RR3 and 4  
in W.P.No.31052 of 2015  
for RR4 and 5 in W.P.No.301 of 2016

COMMON ORDER

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

As both writ petitions involve common facts regarding unauthorised structure constructed in the premises at Plot Nos.67 and 71, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai-600 037, these petitions are heard together and disposed of by this common order.

2 W.P.No.31052 of 2015 : The instant petition is filed by the petitioner seeking to quash G.O.(3D) No.24, Housing and Urban Development Department dated 24<sup>th</sup> April, 2015 insofar as issuing directions to demolish the one dwelling unit at ground floor of Plot No.71, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai-37, while disposing of the appeal preferred under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 (for short "T&CP Act") against the locking and sealing and demolition notice dated 21<sup>st</sup> April, 2014 and also de-occupation notice dated 19<sup>th</sup> May, 2014 in respect of the property bearing Plot Nos.67 and 71 in Dr.Gurunathan Street.

3 W.P.No.301 of 2016 : The instant petition is filed seeking direction to the third respondent Corporation of Chennai to initiate action against fourth and fifth respondents for not complying with G.O.(3D)No.24 dated 24<sup>th</sup> April, 2015 and consequently to direct the third respondent to re-seal the premises, in question.

4 Indisputably, several deviations were made unauthorisedly in the premises at Plot Nos.67 and 71, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai. Proper notices under the provisions of Sections 56 and 57 of the T&CP Act, firstly for locking and sealing and demolition on 21<sup>st</sup> April, 2014 and thereafter, for de-occupation on 19<sup>th</sup> May, 2014 were issued. In the locking and sealing notice, the following deviations were noticed :

Plot No.67

| Sl. No. | Description                                                            | As per approved plan   | As on site                                            | Deviation / Violation                                                                                                                                  |
|---------|------------------------------------------------------------------------|------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Size of the Building Length at Stilt/GF (pt) and 2 <sup>nd</sup> Floor | 13.72 m<br>13.72 m     | 15.00 m<br>15.50 m                                    | Excess by 1.28 m<br>Excess by 1.78 m                                                                                                                   |
| 2(a)    | Setbacks Front Setback                                                 | 3.05 m                 | 2.50 m                                                | Less by 0.55 m                                                                                                                                         |
| (b)     | Side setback (South ) @ 1 <sup>st</sup> & 2 <sup>nd</sup> floor        | 1.52 m                 | 0.60 m                                                | Less by 0.92 m                                                                                                                                         |
| (c)     | Side setback (North) @ 1 <sup>st</sup> & 2 <sup>nd</sup> Floor         | 1.52 m                 | 0.75 m                                                | Less by 0.77 m                                                                                                                                         |
| (d)     | Rear setback                                                           | 1.52 m                 | 0.80 m                                                | Less by 0.72 m                                                                                                                                         |
| 3       | No. of floors                                                          | Stilt + 2 floors       | Stilt/GF (pt) + 2 floors + 3 <sup>rd</sup> floor (pt) | Stilt floor is converted as GF (pt) & 3 <sup>rd</sup> floor (pt) unauthorized 1 <sup>st</sup> & 2 <sup>nd</sup> floor is deviated to the approved plan |
| 4       | No. of Dwelling units                                                  | 4 dwelling units       | 5 dwelling units                                      | Excess by 1 dwelling units                                                                                                                             |
| 5       | FSI                                                                    | 1.30<br>(290.89 sq.m.) | 1.90<br>(423.60 sq.m.)                                | Excess by 0.60<br>(132.71 sq.m.)                                                                                                                       |

Plot No.67

| Sl. No. | Description                                             | As per approved plan | As on site | Deviation / Violation |
|---------|---------------------------------------------------------|----------------------|------------|-----------------------|
| 1       | Side set back (South)                                   | 1.52 m               | 0.50 m     | Less by 1.02 m        |
| (i)     | Side set back (North)                                   | 1.52 m               | 0.75 m     | Less by 0.77 m        |
| (ii)    | Rear set back @ 1 <sup>st</sup> & 2 <sup>nd</sup> Floor | 1.52 m               | 0.85 m     | Less by 0.67 m        |



| Sl. No. | Description              | As per approved plan | As on site                                               | Deviation / Violation                                                                                                                                |
|---------|--------------------------|----------------------|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2       | No. of floors            | Stilt + 2 floors     | Stilt (pt)/GF pt + 2 floors + 3 <sup>rd</sup> floor (pt) | Stilt (pt) converted as GF (pt) & 3 <sup>rd</sup> floor (pt) unauthorized. 1 <sup>st</sup> & 2 <sup>nd</sup> Floor is deviated to the approved plan. |
| 3       | Number of Dwelling units | 4 dwelling units     | 5 dwelling units                                         | Excess by 1 dwelling units                                                                                                                           |
| 4       | FSI                      | 1.39 (311.88 sq.m.)  | 1.93 (430.71)                                            | Excess by 0.54 (118.83 m <sup>2</sup> )                                                                                                              |

5 The petitioner and also the respondents 4 and 5 in W.P.No.301 of 2016 placed their case before the appellate authority. The appellate authority vide order dated 24<sup>th</sup> April, 2015 passed the following order as stated in the appendix :

"In exercise of powers conferred under section 113 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) the Governor of Tamil Nadu hereby exempt the residential building with 5 dwelling units (1 room with toilet at 3<sup>rd</sup> floor) at Plot No.67 & 71, Dr.Gurunathan Street, Panneer Nagar Extensions, Mogappair, Chennai-37 in respect of setback space under Development Regulations 25 Table (1) (G) and Floor Space Index under Development Regulations 25 Table (1)(E) by collecting Premium Floor Space Index charges applicable for the excess Floor Space Index area under Development Regulations 36 of Second Master Plan for Chennai Metropolitan Area 2026 subject to the condition that the unauthorised construction (1 room with toilet at 3<sup>rd</sup> Floor and one dwelling unit at Ground floor) made in both plots should be demolished within 6 months."

6 In spite of the clear direction, as aforesaid, no step was taken by the Chennai Corporation as well as by the CMDA to ensure that the unauthorised construction is demolished within six months from the date of passing of the order, i.e., on 24<sup>th</sup> April, 2015. The writ petitioner in W.P.No.301 of 2016

has filed the instant petition only on 4<sup>th</sup> January, 2016 after this court took notice of the writ petition in W.P.No.31052 of 2015.

7 The Regional Deputy Commissioner (Central), Corporation of Chennai has filed a report dated 19<sup>th</sup> February, 2016, stating as under :

"12.I respectfully submit that the owner/developer has rectified and demolished the unauthorized construction of residential building portion one dwelling unit at Ground floor and 1 room with toilet at 3<sup>rd</sup> floor in Plot No.67, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai-37 on 10.06.2015. Further the owner / developer has applied a fresh planning permission application at Corporation of Chennai vide PPA/WDCN07/06034/2015 dated 29.09.2015, which is under consideration. Since, we sought some clarification regarding deviation exemption from the Secretary to Government, Housing Urban Development Department.

13.I respectfully submit that since, the Owner/Developer of Plot No.71, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai-37, has not complied as per G.O.(3D) No.24, Housing Urban Development (UD-V) Department dated 24.04.2015, as the owner/Developer has not applied a fresh Planning permission Application at Corporation of Chennai. Hence, Corporation of Chennai is bound to follow the G.O and reseal the four dwelling unit in first and second floor of Plot No.71, Dr.Gurunathan Street, Panneer Nagar Extension, Mogappair, Chennai-37."

8 Further, the Regional Deputy Commissioner (Central), Corporation of Chennai has submitted a compliance report, dated 14<sup>th</sup> March, 2016, stating that the unauthorised construction in plot No.71 has been fully demolished on 11<sup>th</sup> March, 2016. As aforesated, unauthorised portion in the residential building in plot No.67 has already been reported to have been demolished earlier.

9 In view of the foregoing, nothing survives for further adjudication. Both writ petitions are disposed of. No

costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,  
Housing and Urban Development (UD-V) Department,  
Government of Tamil Nadu,  
Secretariat, Chennai-600 009.
- 2.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thazhamuthu Natarajan Maligai,  
No.1, Gandhi Irwin Road, Egmore,  
Chennai-600 008.
- 3.The Commissioner,  
Corporation of Chennai,  
Ripon Building,  
EVR Periyar Salai, Park Town,  
Chennai-600 003.

+1 cc to Mr.K.Raja Srinivas, Advocate, sr.16518  
+1 cc to Mr.N.Sampath, Advocate, sr.16293  
+1 cc to Mr.N.Srinivasulu, Advocate, sr.16495  
+2 ccs to Government Pleader, sr.16687 & 16689

W.P.No.31052 of 2015  
and W.P.No.301 of 2016

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