

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.19907 of 2014
and M.P.No.1 of 2014

K.Gopal

... Petitioner

-Vs-

1. The Commissioner of Corporation,
Corporation of Chennai, Chennai=3.
2. Joint Engineer,
Division No.173, Zone XIII,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai-20.
3. Asst. Executive Engineer,
Division No.173, Zone XIII,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai-20.
4. Executive Engineer,
Division No.173, Zone XIII,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai-20.

5. G.Kuppan

6. G.Gajendran

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records pertaining to the proceedings of respondents 2 to 4 in Letter No.27/DN 173/2014 dated 11.07.2014 (impugned order) issued under form to Sec.57 of the Town and Country Planning Act, 1971 and quash the same.

For Petitioner : Mr.S.Venkatesh
For Respondents : Mr.K.Soundarajan for RR 1 to 4
: Mr.David Tygaraj for RR 5 & 6

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner has filed the present petition seeking to assail the lock and seal notice dated 11.07.2014.

2.The matter has had a chequered history as there is a civil dispute pending between two set of parties who are claiming rights in respect of the same property. C.S.Nos.250 of 2011 and 493 of 2011 are the two counter suits seeking different reliefs. The endeavour of private respondents 5 and 6 to obtain interim orders in those suits has not been successful till the appellate stage, but the suits are pending trial.

3.It is undisputed that the petitioner herein started construction without obtaining sanction. The proceedings held in an earlier writ petition filed by the private respondents being W.P.No.13436 of 2012 resulted in an order of the Division Bench dated 30.01.2014 calling upon the Chennai City Municipal Corporation to cause an inspection to be made of the unauthorised construction. It appears that inspection is alleged to have been carried out on 11.07.2016, the same date on which the lock and seal notice was issued, though there are no separate records of such inspection. On being asked to produce records, the Corporation further states that the planning permission applied for by the petitioner was rejected in 2013 itself and the petitioner has taken back the documents, a position now sought to be disputed by the petitioner.

4.We are of the view that it is necessary to untangle this endless exercise which seems to be on, on a simple issue whether the petitioner is entitled to sanction of a plan which may save the existing construction of basement and ground floor or whether the property has to be restored to its original position by removal of such construction.

5.On hearing the learned counsel for parties, we issue the following directions:

- i. The petitioner may apply to the second respondent for sanction of plan within fifteen (15) days from today.

ii.The Corporation will take a decision on the plan submitted within a maximum period of two (2) months thereafter.

iii.In case, the plan is approved, the petitioner would be entitled to go ahead with the construction, but such construction would be subject to the final result of the suits filed by the two parties.

iv.If the plan is rejected, the petitioner would be entitled to seek such remedy as may be available in law against the same, but ultimately if the petitioner is not able to succeed, the petitioner will restore the property to its original position, failing which the Corporation can carry out the exercise at the cost of the petitioner.

v. The window for the petitioner to do the needful would be one (1) month in such eventuality of the decision on this issue, failing which the Corporation would take action within one (1) month thereafter.

6.Writ petition, accordingly, stands disposed of. No costs. Consequently, M.P.No.1 of 2014 stands closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra

To

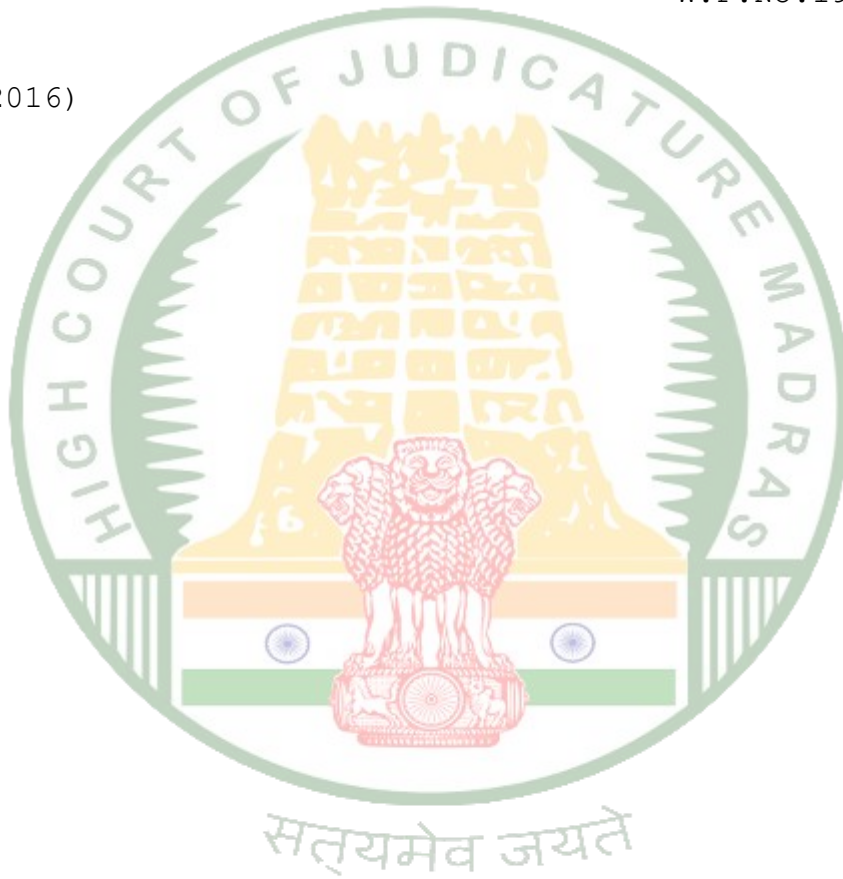
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+1cc to Mr.S.Venkatesh, Advocate, S.R.No.57834
+2cc's to Mr.David Tygaraj, Advocate, S.R.No.57888
+1cc to Mr.K.Soundarajan, Advocate, S.R.No.58110

W.P.No.19907 of 2014

SSI (CO)
CA(18/10/2016)



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