

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.38432 of 2015, 28511 of 2015, 37822 of 2015,
23766 of 2013 and 33481 of 2013
and

M.P.Nos.1 of 2015, 1 and 2 of 2015, 1 of 2015 and 1 of 2013

WP.No.38432 of 2015:

1.J.Julie Sangetta

2.J.Mukesh Arockiaraj

... Petitioners

vs.

1.Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.The Executive Engineer,
TP (Enforcement Cell)
Regional Joint Commissioner Office (South)
Adyar, Chennai - 600 020.

4.Executive Engineer,
Zone - XII,
Corporation of Chennai,
Alandur, Chennai - 600 016.

5.Zonal Officer,
Zone - XII, Corporation of Chennai,
Alandur, Chennai - 600 016.

6.The Assistant Executive Engineer,
Unit - 35,
Corporation of Chennai,
Alandur, Chennai - 600 016.

7.The Assistant Engineer/Junior Engineer,
Division 160, Zone - XII
Corporation of Chennai,
Alandur, Chennai - 600 016.

8.A.J.Yuvaraj Reddy

... Respondents

WP.Nos.28511 of 2015, 37822 of 2015, 23766 of 2013 and 33481 of 2013:

Subba Reddy Charities rep.
by Managing Trustee
A.J.Yuvaraj Reddy

... Petitioner in all the writ
petitions

vs.

1.Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

2.Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.Zonal Officer,
Zone XII, Corporation of Chennai
Alandur, Chennai - 600 016.

4.Executive Engineer,
Zone - XII, Corporation of Chennai,
Alandur, Chennai - 600 016.

5.Joseph

6.V.Kandavelu

7.Correspondent,
Tamil Nadu ITI
89/50 MKN Road,
Alandur, Chennai - 600 016.

8.A.Sankarnarayan

9.ATP Venkatachalapathy

... Respondents
in WP.No.28511/2015

1.Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

2.Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.Zonal Officer,
Zone XII, Corporation of Chennai
Alandur, Chennai - 600 016.

4.Special Tahsildar,
Alandur District, Chennai - 600 016.

5.Inspector of Factories,
D.M.S. Building,
Teynampet, Chennai - 600 018.

6.Sanitary Officer,
Zone 12, Corporation of Chennai,
Alandur, Chennai - 600 016.

7.Joseph

8.A.Sankarnarayan

9.ATP Venkatachalapathy

... Respondents
in WP.No.37822/2015

1.Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2.Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.Zonal Officer,
Zone 12, Alandur, Chennai - 600 016.

4.Tahsildar,
No.1, 27th Road,
Nanganallur, Chennai - 600 061.

5.Divisional Engineer,
T.N.E.B., M.K.N. Road,
Alandur, Chennai - 600 016.

6.Managing Director,
Corporate office, AXIS Bank Ltd.
Bombay Dyeing Mills Compound,
Pandurang Budhakar Marg,
Worli, Mumbai-400 025.

7.Branch Head,
AXIS Bank,
No.60, MKN Road,
Alandur, Chennai - 600 016.

8.Saleema
9.Nagoor Mohideen

10.M/s.AKM Mart
No.59, K.N.Road,
Alandur, Chennai - 600 016.

11.S.R.Metals,
No.2, Plot 59,
MKN Road, Alandur,
Chennai - 600 016.

12.Sankarnarayan Trustee,
4, Thadikara swamy Koil Street,
Alandur, Chennai -60016.

13.ATP Venkatachalapathy,
Trustee,
9/5, Thadikaraswamy Koil Street,
Alandur, Chennai - 600 16.

.... Respondents
in WP.No.23766/2013

1.Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2.Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.Assistant Commissioner / Zonal Officer,
Zone XIII, Dr.Muthulakshmi Road,
Adyar, Chennai - 600 020.

4.Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 600 078.

5.Managing Director,
Indian Overseas Bank,
Mount Road, Chennai - 600 002.

6.Chief Manager,
Indian Overseas Bank,
Nandanam Branch,
Chennai - 600 035.
7.Narasimha Sarangan
8.Vasantharangarajan
9.Parthiban
10.Ramalingam
11.Sankaranarayanan
12.ATP Venkatachalapathy,
9/5, Thadikaraswamy Koil Street,
Alandur, Chennai - 600 16.

... Respondents
in WP.No.33481/2013

WP.No.38432 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the third, sixth and seventh respondents relating to the impugned notice No.623 of 2015 dated 19.10.2015 of lock and seal under Form No.II, Sections 56 & 57 r/w Section 85 of the Town and Country Planning Act, 1971 (as amended by Act 61 of 2008) and to quash the same pertaining to the premises No.89/50, MKN Road, Alandur, Chennai- 600 016.

WP.No.28511 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 2, 3 and 4 to take action as per CMDA notification No.ES 2/11440/2010 dated 20.02.2012 and 26.04.2012 and to demolish illegal construction Tamil Nadu ITI by seventh respondent in Door No.87/50, MKN Road, Alandur, Chennai-600 016 and to allow this writ petition with costs quantified to be paid to the petitioner trust as rendered in AIR Bom 145.

WP.No.37822 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for records in respect of order dated 24.03.2006 in Na.Ka.No.13291/2005/F2 in (i) B.A.No.265/93 and (2) B.L.No.154/93 issued by the Ex-Alandur Municipality (now zone 12 Alandur District) and to quash the same as illegal plan was sanctioned in 1993 ignoring legal notice issued on 30.06.1990 and to direct the first respondent to take action for demolishing choultry illegally by the Ex-Alandur Municipality officials by passing notification No.ES 2/22337/2006/22.2.2007 issued by the first respondent and no consideration was received for illegal sale, hence, there was no sale legally (as claimed by the present zone in letter dated 06.03.2012 as owner).

WP.No.23766 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the first respondent to take action against the respondents 2 to 5 for not following CMDA letter No.ES 2/11440/2012 dated 20.02.2012 to identify the persons authorized illegal construction including illegal power in petitioner's trust as decided in AIR 2001

BOM 145 in WP.No.3223 of 2000 dated 28.08.2000.

WP.No.33481 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the first respondent to prosecute the second respondent for not carrying over the instructions to demolish illegal constructions in trust property kept for charity and governed by High court Scheme Decree as per Notification of CMDA in No.ES 2/11440/2012 dated 26.04.2012 similar to the verdict rendered in W.P.No.3223/2000 in AIR 2001 BOM 145.

W.P.No.38432 of 2015

For Petitioner : Mr.David Tyagaraj
For R1 : Mr.K.Raja Shrinivas
For R2 to R7 : Mr.A.Nagarajan
For R8 : Party-in-person

W.P.No.28511 of 2015

For Petitioner : Party in person
For R1 : Mr.N.Sampath
For R2 to R4 : Mr.A.Nagarajan
For R5, R7 & R8 : Mr.David Tyagaraj
For R9 : No appearance

W.P.No.37822 of 2015

For Petitioner : Party in person
For R1 : Mr.K.Raja Srinivas
For R2, R3 and R6 : Mr.A.Nagarajan
For R4 & R5 : Mr.P.S.Sivashanmugasundaram
For R7 : Mr.David Tyagaraj
For R8 & R9 : Mr.K.Venkatakkrishnan

W.P.No.23766 of 2013

For Petitioner : Party in person
For R1 : Mr.K.Raja Srinivas
For R2 & R3 : Mr.A.Nagarajan
For R4 : Mr.P.S.Sivashanmugasundaram
For R7 : Mr.V.V.Sivakumar
For R8 : Mr.M.Muthappan
For R5, R9, R10, R12 & R13, R6,11 : No appearance

W.P.No.33481 of 2013

For Petitioner : Party in person
For R1 : Mr.K.Raja Srinivas
For R2 & R3 : Mr.A.Nagarajan

For R4 : Mr.P.S.Sivashanmugasundaram
For R7 : Mr.V.V.Sivakumar
For R5 & 6 : No Appearance

COMMON ORDER

(Order of the Court was made by S.VAIDYANATHAN, J.)

Challenging the locking and sealing notice dated 19.10.2015 issued by the Corporation of Chennai, in respect of the building at Door No.89/50, MKN Road, Alandur, Chennai, the petitioners have come forward with the writ petition in W.P.No.38432 of 2015.

2. The relief sought for in other writ petitions is to direct the authority concerned to take necessary action in respect of the unauthorised deviated construction at Door No.89/50, M.K.N Road, Alandur, Chennai, as per the instructions of the Chennai Metropolitan Development Authority in his letter Nos.ES2/11440/2010 dated 20.02.2012 and 26.04.2012.

3. The case of the petitioners in WP.No.38432 of 2015 is that their father K.Joseph was the absolute owner of the property situated at No.89/50, M.K.N. Road, Alandur, Chennai- 600 016, which was conveyed to him by one Subba Reddy Charities represented by its Managing Trustee through O.P.Nos.6, 7 and 8 of 1990, pursuant to a compromise entered into between the parties before the District Munsif Court, Poonamallee dated 02.03.1990. Thereafter, the eighth respondent in W.P.No.38432 of 2015, who is representing the petitioner in other four writ petitions, had filed a suit in O.S.No.686 of 1991 before the District Munsif Court, Poonamallee, against the petitioners' father, seeking to declare the said property as null and void. Subsequently, in view of a compromise entered into between the parties, the said suit was decreed in favour of the petitioners' father. It is the further case of the petitioners that after obtaining prior permission in Approval No.154/93 dated 27.05.1993, their father constructed the ground floor in the property in question. Thereafter, he constructed the first floor and made an application dated 28.06.2002 to the authority concerned, seeking regularization of the same, to which, he received no reply. In the year 2005, he put up a temporary structure with tin sheet at second floor. Thereafter, he settled the property in favour of the petitioners. While so, the Corporation authorities has issued a notice dated 19.10.2015 to the petitioners' father, stating that the first and second floors constructed in the property in question are unauthorized constructions and calling upon him to restore the building to its original condition, failing which, appropriate action would be taken as per law. Challenging the same, W.P.No.38432 of 2015 came to be filed.

4. We have heard all the parties and also perused the materials placed before us.

5. The facts made available herein would reveal that the petitioners in W.P.No.38432 of 2015 are the children of one K.Joseph/ one of the respondents in W.P.Nos.28511 and 37822 of 2015 filed by Subba Reddy Charities rep. by its Managing Trustee. The subject matter of the property in all the writ petitions is situated at No.89/50, M.K.N. Road, Alandur, Chennai-600 016. The petitioners in W.P.No.38432 of 2015 are the owners of the said property and they have been residing in the building constructed therein.

6. Admittedly, there are deviations in the construction of first and second floors of the property in question, for which, notice was issued to the original owner K.Joseph. The construction of the second floor, according to the petitioners in W.P.No.38432 of 2015, is only a temporary structure, whereas according to the learned standing counsel for the first respondent, is a permanent structure and is an unauthorised construction, for which, notice has been issued, as per law. At this juncture, it is sought to be argued by the learned counsel for the petitioners in WP.No.38432 of 2015 that no notice was served on the real owners of the property in question, as such, the locking & sealing and demolition of the building, if any, is in violation of the principles of natural justice.

7. The petitioner cannot on technical grounds contend that the owner has not received the notice and the present petitioner is a lawful owner. Whoever is the owner of the property, there should be a plan to construct the building. The building plan is given only based on the size of the land and not based on the owner of the land. Owners may change, but there should be sanction plan for construction of the building.

8. In the case on hand, admittedly, there is a violation. The petitioner is trying to seek the help of this Court and expects this Court to support the cause based on technical grounds, thereby, he can continue to occupy the illegal construction.

9. Therefore, the authority concerned is directed to issue a fresh notice to the real owners indicating the alleged violation in respect of the construction of the building in the property in question and directing them to remove/demolish the unauthorised construction, within a period of 15 days from the date of receipt of such notice. In the event of failure of the real owners to remove/demolish the unauthorised construction, the authority concerned is entitled to do the same, at the cost of the real owners. Accordingly, W.P.No.38432/2015 is disposed of.

10. Insofar as the prayer made in W.P.Nos.28511/2015, 37822/2015, 23766/2013 and 33481/2013 are concerned, it is submitted by the learned counsel for the respondents that in view of the order passed in W.P.No.38432 of 2015, the relief sought therein has become infructuous and nothing survives for adjudication. Therefore, all the Writ Petitions are closed. However, if the petitioner Trust is still

aggrieved, it is open to them to file a fresh Writ Petition to redress their grievance. No costs. Consequently, connected Miscellaneous Petitions are closed.

11. Before parting with, this Court observes that in Chennai, there are lot of violations with regard to construction and also, there are land encroachments which has got to be curbed with iron hands and there is no reason why the authorities are ineffective in taking steps and even if steps are taken, it moves in a snail's pace. We are of the view that the authorities must take dynamic action to decimate the violated buildings without standing on any technicalities.

12. Whenever it is brought to notice that there is land encroachment on the roads or in any other place or violation of construction, it is open to the authorities concerned to call for the following details from the violator by issuing appropriate notice:

- (a) Registered Deed based on which the property has devolved upon the person
- (b) Extent of square feet mentioned in the Schedule property
- (c) Width of the road
- (d) Actual constructed area
- (e) Approved plan
- (f) Whether set back space has been provided as per the Plan/Rules

13. It is the bounden duty of the person, who receives the notice to furnish all the details called for, failing which, it has to be presumed that there are violations and it is open to the authorities to act as per law. Wherever there are encroachments on road, road width has got to be restored. If there is no Building Plan, deviations if any, have got to be removed by the petitioner. If not, the authorities are entitled to remove the same in accordance with law, recovering the demolition costs from the petitioner.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rk/aeb

To:

1. Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.
2. The Commissioner,
Corporation of Chennai,
Chennai - 600 003.
3. The Executive Engineer,
TP (Enforcement Cell)
Regional Joint Commissioner Office (South)
Adyar, Chennai - 600 020.
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Zone - XII, Corporation of Chennai,
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6. The Assistant Executive Engineer,
Unit - 35, Corporation of Chennai,
Alandur, Chennai - 600 016.
7. The Assistant Engineer/Junior Engineer,
Division 160, Zone - XII
Corporation of Chennai,
Alandur, Chennai - 600 016.
8. Correspondent,
Tamil Nadu ITI
89/50 MKN Road,
Alandur, Chennai - 600 016.
9. Special Tahsildar,
Alandur District, Chennai - 600 016.
10. Inspector of Factories,
D.M.S. Building,
Teynampet, Chennai - 600 018.
11. Sanitary Officer,
Zone 12, Corporation of Chennai,
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12. Tahsildar, No.1, 27th Road,
Nanganallur, Chennai - 600 061.

13.Divisional Engineer,
T.N.E.B., M.K.N. Road,
Alandur, Chennai - 600 016.

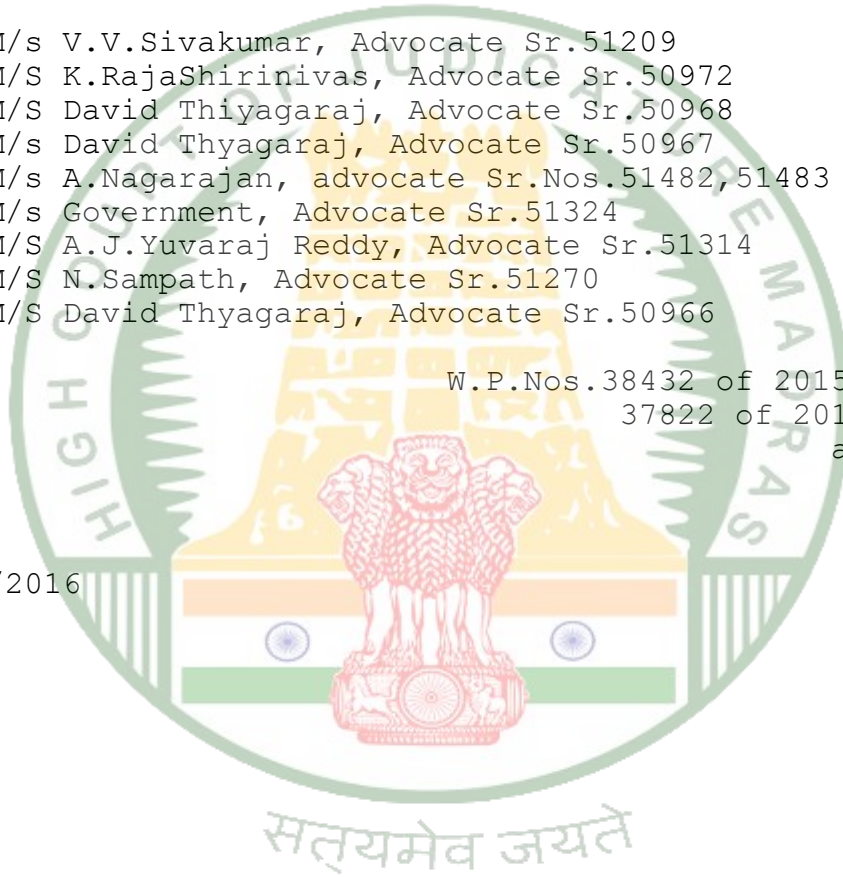
14.Assistant Commissioner / Zonal Officer,
Zone XIII, Dr.Muthulakshmi Road,
Adyar, Chennai - 600 020.

15.Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 600 078.

+1 cc to M/s V.V.Sivakumar, Advocate Sr.51209
+2 cc to M/S K.RajaShirinivas, Advocate Sr.50972
+2 cc to M/S David Thiyagaraj, Advocate Sr.50968
+2 cc to M/s David Thyagaraj, Advocate Sr.50967
+3 cc to M/s A.Nagarajan, advocate Sr.Nos.51482,51483 & 51484
+1 cc to M/s Government, Advocate Sr.51324
+1 cc to M/S A.J.Yuvaraj Reddy, Advocate Sr.51314
+1 cc to M/S N.Sampath, Advocate Sr.51270
+2 cc to M/S David Thyagaraj, Advocate Sr.50966

W.P.Nos.38432 of 2015, 28511 of 2015,
37822 of 2015, 23766 of 2013
and 33481 of 2013

SR(CO)
RVR 22/10/2016



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