

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P. DEVADASS

W.P. No. 40613 of 2015

Mohamed Nazer

Petitioner

vs.

1. The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore,
Chennai.8.
2. The Commissioner,
Corporation of Chennai,
Rippon Building,
EVR Salai, Chennai.3.
3. Mr. A. Mohamed Imam
(R3 suo motu impleaded as per
order dated 22.12.2015 in MP 1/2015).

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus to call for the records of the first respondent relating to the proceedings of the impugned De-occupation Notice in Form II under Section 56, 56 (2) (iii) and 2A of Town and Country Planning Act 1971 under Letter No.EC/C-

1/18008/2013, dated 18.12.2015 received on 19.12.2015 to the petitioner's building bearing Door No.150/62, Greams Road, Thousand Lights, Chennai-6 and quash the same and consequently forbear the first respondent from taking any enforcement coercive action of locking, sealing and demolishing the petitioner's building.

For petitioner : Mr. S. Xavier Felix
For respondents : Mr. K. Raja Srinivas - R1
Mr. A. Nagarajan - R2

ORDER

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

With the consent of the learned counsel for the petitioner and the learned counsel for the official respondents, the writ petition is taken up for final disposal.

2. Challenging the de-occupation notice dated 18 December, 2015 issued by the second respondent under Section 56 (2)(iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 (for short "the Act") and seeking to forbear the first respondent from taking any enforcement action of locking, sealing and demolishing the petitioner's building, the petitioner has filed the instant writ petition.

3. Noticing the unauthorised construction in respect of the premises at Door No.150/62, Greams Road, Thousand Lights, Chennai a locking, sealing and demolition notice was issued on 05 October 2015 to the petitioner herein. Feeling aggrieved, the petitioner has approached this Court in W.P. No. 33803 of 2015 seeking a writ of mandamus directing the Chennai Metropolitan Development Authority to consider and pass orders on his representations dated 05 October 2015 and 06 October 2015 and to direct the said authority to inspect the premises in question within a time frame by giving due notice to him. A Division Bench of this Court, wherein, one of us (Satish K. Agnihotri, J.) was a Member, considering all aspects of the matter, disposed of the said writ petition on 27 October, 2015 in the following terms:

"The learned standing counsel for the respondent fairly submits that since the petitioner has addressed representations to the respondent pursuant to the locking, sealing and demolition notice dated 05 October, 2015, the same will be considered on their own merits and in accordance with law and a proper reasoned order will be passed by the respondent before taking consequential action, if need be.

In view of the above submission of the learned Standing Counsel, it is ordered accordingly."

4. Thereafter, the instant de-occupation notice dated 18 December, 2015 was issued. The petitioner has chosen to question the said notice invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

5. Indisputably, statutory remedy under Section 80-A of the Act is available to the petitioner. There is no reason or extra-ordinary circumstance exists to invoke the jurisdiction of

this Court under Article 226 of the Constitution of India bypassing the effective alternative statutory remedy provided therein.

6. Accordingly, the writ petition is dismissed as not maintainable. No costs. Connected miscellaneous petition is also dismissed.

ra

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore,
Chennai.8.
2. The Commissioner,
Corporation of Chennai,
Rippon Building,
EVR Salai, Chennai.3.

+ 1 cc to M/s.S.Xavier Felix, Advocate SR 2512

+ 1 cc to Mr.K.Rajasrinivas, Advocate SR 2581

+ 1 cc to Mr.E.Moorthy, Advocate SR 40613

ak(co)
prk29/1

W.P. No.40613 of 2015

सत्यमेव जयते

WEB COPY