

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM

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

Writ Petition No.25126 of 2016
and
WMP.No.21520 of 2016

P.C.Shyam Sundar

...Petitioner
Vs.

1.Government of Tamil Nadu,
rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai- 600 009.

2.Greater Chennai Corporation,
rep. by its Regional Deputy Commissioner (North)
No.61, Basin Bridge Road,
Chennai- 600 021.

3.Corporation of Chennai,
rep. by its Executive Engineer,
Zone V, Division 59,
No.61, Basin Bridge Road,
Chennai- 600 021.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in their letter No.11659/UD-VI(I)/2016-1 dated 08.07.2016 relating to rejection of petitioner's application under Section 80(A) against the decision of Locking and Sealing and Demolition by the respondents 2 and 3 relating to the building at No.97(143) Rasappa Street, Edapalayam, Chennai-3 and quash the same and consequently, forbearing the respondents 2 and 3 from in any way interfering with the aforesaid building particularly by way of Locking, Sealing and Demotion of the same.

For Petitioner : Mr.D.S.Rajasekaran
For R1 : Mrs. A.Sri Jayanthi, Spl.Govt.Pleader
For R2 & R3 : Mr.V.C.Selvasekaran

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Mrs.A.Srijayanthi, learned Special Government Pleader accepts notice on behalf of the first respondent and Mr.V.C.Selvasekaran, learned counsel accepts notice on behalf of respondents 2 and 3. With the consent of both the parties, the writ petition is taken up for final disposal at the stage of admission itself.

2. The petitioner has filed this writ petition, questioning the order dated 08.07.2016 passed by the first respondent, whereby and whereunder, the application filed by the petitioner under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971, (hereinafter shortly referred to as 'Act') against the Locking and Sealing and Demolition Notice & De-occupation notice dated 29.04.2016 issued by the third respondent in respect of the building at No.97(143) Rasappa Street, Edapalayam, Chennai-3, was rejected. The petitioner has also sought for a direction, forbearing respondents 2 and 3 from in any way interfering with the building in question, particularly, by way of Locking, Sealing and Demolition of the same.

3. The case of the petitioner is that he is the owner of the property at Door No.97(143), Rasappa Street, Edapalayam, Chennai-3. After obtaining necessary planning permission from the Corporation of Chennai, vide order dated 15.04.2013, he constructed the building. However, the third respondent issued a Locking & Sealing and Demolition Notice and De-occupation notice dated 29.04.2016, which was served on the petitioner only on 06.06.2016. Aggrieved over the same, he preferred an application under Section 80(A) of the Act before the first respondent. Pending the same, the petitioner filed W.P.No.21211/2016, which was disposed of, by order dated 22.06.2016, by directing the first respondent to dispose of the petitioner's Section 80A application within two months and also directing the parties to maintain status quo till such time. Pending receipt of the said order copy by both the parties, the first respondent hurriedly passed an order dated 08.07.2016, rejecting the application filed by the petitioner under Section 80A of the Act. Hence, the present writ petition came to be filed.

4. Learned counsel for the petitioner submits that the construction was put up, as per the approved planning permit. However, without application of mind, the decision has been taken for locking & sealing and demolition by rejecting the application filed by the petitioner under Section 80-A of the Act. Learned counsel further submits that before passing the impugned order by the first respondent, no opportunity of hearing was given to the petitioner, as such, the same is in violation of the principles of natural justice.

5. Heard Mrs.A.Srijayanthi, learned Special Government Pleader for the first respondent and Mr.V.C.Selvasekaran, learned counsel, appearing for respondents 2 and 3. According to them, the building has been constructed in violation of the approved plan and hence, the impugned order has been passed by the first respondent as per law.

6. We have considered the submissions made on either side and perused the documents placed before this Court.

7. The facts made available herein would reveal that the petitioner was served with a Locking & Sealing and Demolition Notice and De-occupation Notice dated 29.04.2016, in respect of the building at No.97(143), Rasappa Street, Edapalayam, Chennai-3. Challenging the same, he preferred a statutory application under Section 80-A of the Tamil Nadu Town and Country Planning Act before the first respondent. Apprehending the Locking, Sealing and Demolition of the building in question by respondents 2 and 3, the petitioner filed a writ petition in WP.No.21211/2016. By order dated 22.06.2016, the said writ petition was disposed of by directing the first respondent to dispose of the application filed by the petitioner within two months. Till such time, the respondents were directed to maintain the status quo. However, the first respondent, without hearing the petitioner, passed the impugned order, rejecting the petitioner's Section 80-A application. In our opinion, the order so passed by the first respondent is arbitrary, illegal and against the principles of natural justice. On this ground alone, the impugned order is liable to be set aside.

8. Accordingly, the writ petition is allowed. The impugned order dated 08.07.2016 passed by the first respondent is set aside and the matter is remitted back to the first respondent for passing fresh orders. The first respondent is directed to examine the building in question, as to whether the same was constructed as per the approved plan, by conducting inspection in the presence of the petitioner and pass necessary orders in accordance with law, within a period of two months from the date of receipt of a copy of this order. Until a decision be taken by the first respondent, the parties are directed to maintain the status quo as on date. The petitioner is at liberty to pursue appropriate remedy before the Chennai Metropolitan Development Authority as per law. On such approach, the CMDA is directed to consider the same and take a decision in accordance with law, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai- 600 009.

2.Regional Deputy Commissioner (North)
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Chennai- 600 021.

3.Executive Engineer,
Corporation of Chennai,
Zone V, Division 59,
No.61, Basin Bridge Road,
Chennai- 600 021.

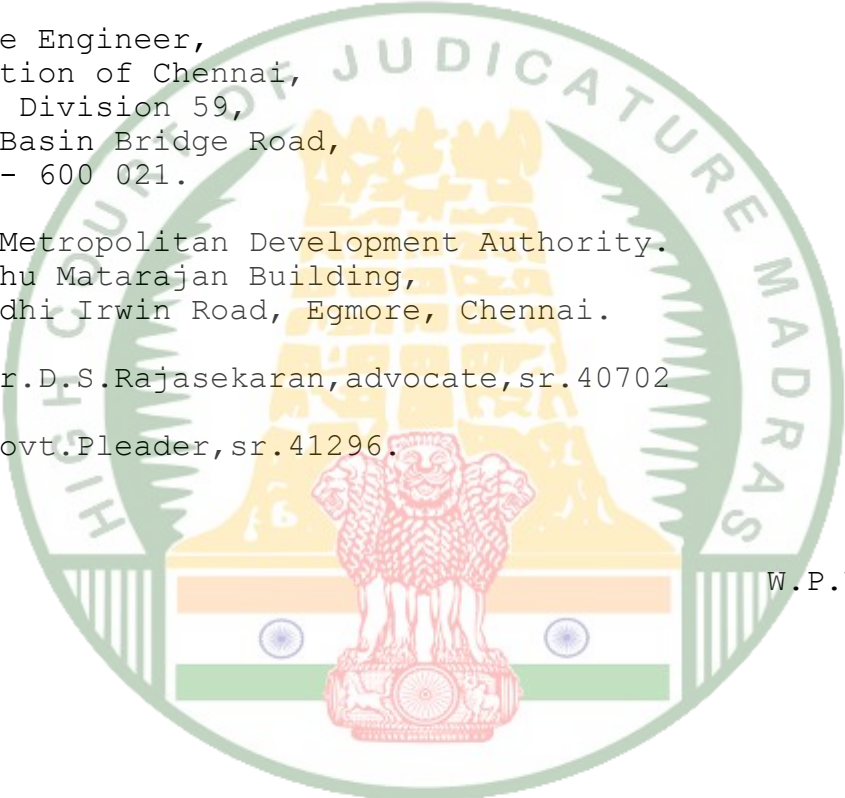
4.Chennai Metropolitan Development Authority.
Thalamuthu Matarajan Building,
No.1 Gandhi Irwin Road, Egmore, Chennai.

+1 cc to mr.D.S.Rajasekaran,advocate,sr.40702

+1 cc to Govt.Pleader,sr.41296.

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W.P.No.25126 of 2016

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is the Indian national flag (saffron, white, and green horizontal stripes) with the Ashoka Chakra in the center. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular border around the central image. At the bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed in Devanagari script.

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