

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.10.2016

CORAM

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

W.P. NO. 28311 OF 2016
and
W.M.P. NO. 24413 OF 2016

M.P.Aravinda

... Petitioner

- Vs -

1. The Commissioner
Corporation of Chennai
Chennai-600 003.

2. The Executive Engineer
Zone 9 Corporation of Chennai
Near Nungambakkam Stadium
Lake Area Chennai-600 034.

3. P.Karl Marx

... Respondents

Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 and 2 to dispose the petitioner's representation dated 18.01.2016 and 06.06.2016 and to take necessary action against the unauthorized construction of two floors of the buildings premises bearing door No.15 Gulam Abbas Ali Khan, 9th Street, Thousand Lights, Chennai-600 006, belonging to the 3rd respondent.

For Petitioner : Mr.M.P.Aravinda
Party in person

For Respondents : Mr.A.Nagarajan for RR-1 & 2
No Appearance for R-3

ORDER

(DELIVERED BY HULUVADI G.RAMESH, J.)

Heard the petitioner, who appeared in person and the learned Standing Counsel appearing for respondents 1 and 2.

2. The writ petition has been filed seeking issuance of a writ of mandamus directing respondents 1 and 2 to dispose of the

petitioner's representation dated 18.01.2016 and 06.06.2016 and to take necessary action against the unauthorized construction of two floors of the buildings premises bearing door No.15, Gulam Abbas Ali Khan 9th Street, Thousand Lights, Chennai-600 006, belonging to the 3rd respondent.

3. The case of the petitioner, as is evident from the affidavit filed as also the oral submissions, is that she is aggrieved over the unauthorized construction put up by the 3rd respondent, who is none else but her brother, on the property, which he got by way of family partition in the year 1996. It is the contention of the petitioner that the 3rd respondent has put up illegal construction over the property allotted to his share and has let out the same for running a mess and lodge without adhering to necessities and safety measures as contemplated under the relevant statutes. Further, the constructions being illegal, there is evasion of payment of statutory levies such as property tax, etc., which causes a loss to the exchequer. Therefore, the petitioner sent her representations to the authorities and since no action has not been taken on the same till date, the petitioner has come before this Court with the present writ petition.

4. This Court (Huluvadi G.Ramesh, J. & M.V. Muralidaran, J.), while dealing with the removal of encroachments, in A.Kumar - Vs - The Commissioner, Greater Corporation of Chennai (Judgment Dated 13.06.2016), held as under:

"17. In view of the act of the petitioner in making repeated representations, the Corporation could not remove the encroachment as directed by this Court. Therefore, the Corporation had to face contempt proceedings in Contempt Petition No.1391 of 2015, which was closed after recording the submission of the Corporation that they would remove the same within a period of two weeks. Again, since the the encroachment could not be removed due to the attempts made by the petitioner and other encroachers, the Corporation faced another contempt proceedings in Contempt Petition No.13 of 2016. In that matter, the Corporation sought one week time to comply with the order and the same was granted on depositing a sum of Rs.20,000/- within a week.

18. In Ahmedabad Municipal Corporation - Vs - Nawab Khan Gulab Khan (1997 (11) SCC 123), the Supreme Court after referring to the earlier decisions, has observed thus:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the

facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

19. In view of the decision cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner and others were given notice and their objections were also heard and considered, in accordance with law. Therefore, this writ petition is disposed of, with a direction to the Corporation to demolish the encroachment, in the presence of the petitioner on 13.7.2016 and also with a direction to the petitioner to pay a fine of Rs.1,000/- (Rupees one thousand only) to the credit of the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of one week from the date of receipt of a copy of this order. This order shall be treated as notice to the petitioner for demolishing the encroachment made in the land in question. There shall be no order as to costs. Consequently, WMP No.16456 of 2016 is closed."

In the light of the above proposition of law laid down by this Court, it is trite that any violations by way of encroachments have to be dealt with an iron hand, including demolition, that too at the earliest point of time so that the ease of movement of pedestrians would stand facilitated.

5. In the case on hand, a perusal of the report submitted by the Corporation, more particularly, para-4 of the report reveals that based on the complaint of the petitioner, site inspection was conducted by the Assistant Executive Engineer, Unit-24, Zone-IX and Assistant Engineer, Division-111, Unit-24, Greater Chennai Corporation and consequent upon the inspection, notice has been issued on the 3rd respondent under Sections 56 and 57 r/w Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, calling upon the 3rd respondent to submit the approved plan and other relevant documents pertaining to the construction put up by him.

6. Such being the admitted position of fact, as evident from the report filed by the respondent-Corporation, as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971, the next course of action to be taken by the respondent authorities, on the appearance of the 3rd respondent and

submission of documents, is to grant an opportunity of hearing to the respective parties and to pass orders in accordance with law based on the documents that may be filed by either side as also the documents called for by the authorities. In such view of the matter, this Court feels that it would be suffice to direct the respondent Corporation to dispose of the matter after hearing the parties within a particular time frame.

7. However, before parting with this case, it would be useful to refer to the direction of this Court, in W.P.38432 of 2015, etc., wherein, by order dated 7.9.2016, this Court has observed that vary many encroachments are found throughout the city of Chennai, which requires to be dealt with sternly, but for the ineffective steps taken by the authorities concerned, such encroachments would not have continued. It is high time that dynamic action needs to be taken by the authorities concerned so as to avoid public lands being usurped by unscrupulous elements. This Court, in the abovesaid writ petition, has given certain guidelines for the authorities to follow in respect of any encroachments being brought to its notice. The relevant portion of the order, for better clarity is extracted hereunder:-

"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."

8. In the abovesaid backdrop, it is not out of place to point out that there is a demarcated difference between encroachment vis-a-vis unauthorised construction. It cannot be said that all unauthorised constructions are encroachments. While usurpation of public lands would fall within the ambit of encroachments, but so far as those of private lands are concerned, removal of the unauthorised occupant, however, involves a different process. While public encroachments can be removed in accordance with law by the authorities after issuance of notice and hearing the persons concerned, in respect of private lands, it is for the aggrieved persons to approach the civil court to have their grievance redressed.

9. Time and again it has come to the notice of this Court

that several constructions have been put up illegally in violation of the building rules and without there being any approved plan. Though such illegal constructions cause inconvenience/hindrance to the adjacent land owners, but the said constructions cannot be termed as encroachment. Any construction put up without proper planning permission would fall within the ambit of illegal construction. Further any construction put up without earmarking the necessary setback space as mandated by the relevant Act and the rules would also fall within the domain of violation of the statutory provisions. Even in such scenario, it is for the aggrieved person to approach the appropriate forum to have his grievance redressed, in case his rights stood violated.

10. Any construction, which is to be termed illegal, is determined by the floor area ratio (for short 'FAR'), which is the principal bulk regulation controlling the size of buildings and regulates the bulk of built space. FAR is the ratio of total building floor area to the area of the plot. Town Planning Schemes mandate different FAR values for different areas. Higher the FAR value, more will be floor area within the same plot, and higher the pressure on land for infrastructure. Carrying capacity and development priorities assigned by the plan to each locality are the major factors which decide FAR that can be permitted in an area. FAR values mainly determine the density or intensity of development of an area. Hence different FAR values are prescribed for different locations in development plans. In brief, the permissible FAR values are decided in relation to different inter-related aspects such as adequacy of water supply, sewerage system, solid waste disposal, road capacity, land availability, harmony with surrounding developments and other facilities, amenities and services. In other words, FAR is a very crucial regulation, which decides the intensity of development in an area, vis-a-vis, the basic amenities provided in the said area and, therefore, highest care is required in fixing its maximum allowable limit in different areas.

11. All the regulations and rules are formulated by the Government keeping in mind the FAR pertaining to the area so that the ecological balance of the area stands maintained. In the present day world, global warming being one of the major ecological factors and the need of the hour being maintenance of a green environment, construction of illegal structures without any proper approval and following the mandatory regulations require to be dealt with sternly. It is high time that rules and regulations for regulating the illegal constructions need to be made so that action can be taken against unscrupulous elements, who flout the rules in an attempt to enrich their pockets.

12. It is informed that rules are yet to be framed by the Government as contemplated under Section 113-C of the Town and

Country Planning Act. Though the Committee constituted to suggest measures with regard to illegal constructions has submitted its recommendations, rules are yet to be framed, which only acts as a deterrent in curbing violations, as without such rules, wielding authority for removal of the illegal structures would not be possible. In the absence of rules, no action can be taken on any application filed for regularisation, more so after order passed by the Supreme Court relating to illegal constructions.

13. In the above circumstances, it is high time that the Government take earnest efforts to frame the rules so that a greener environment, devoid of illegal structures, the dream of the future generations, could be achieved. The ball is now in the Government's dominion, after the recommendations of the Committee, for framing of rules, which can regulate the illegal structures throughout the entire State.

14. While framing the rules, which is the need of the hour, and which is to be done on priority basis, this Court feels that the Government should also keep in mind the efforts of the common man in getting his dream come true by raising a structure, being one of his basic necessity. However, it should not lose sight of the fact that while the hard earned money of the common man has gone into the coffers in putting up the structure and also the manpower and other raw materials that have gone into the raising of the structure, it should be well within the parameters laid down under the relevant Acts and the Rules, for maintenance of a green environment and a safety filled surroundings.

15. It is no doubt true that regularisations were granted earlier to 2000 in regard to constructions which were illegally put up without necessary planning approval. However, after 2000, such of the buildings, which have been illegally put up have been razed down either by the authorities or by way of judicial orders. However, no straight-jacket formula could be adopted while dealing with such illegal constructions, as everything depends on the facts and circumstances of the particular case.

16. As observed above, FAR values mainly determine the density or intensity of development of an area. Therefore, any construction that is put up is supposed to be in consonance with the FAR values of the particular area and any deviation from the same has to be dealt with in accordance with law. However, this Court, in the interests of justice as also the intensity of the constructions that have been put up, feels it appropriate to observe that while framing the necessary rules under Section 113-C of the Town and Country Planning Act, based on the recommendations of the Committee, it would be prudent if the Government keeps in mind the constructions already put up

illegally, but which falls within the acceptable limits of FAR values prescribed for the said locality, for the purpose of regularisation, if it so thinks fit, but with such imposition of penalty for such regularisation, which would act as a deterrent for erring individuals who take the environment for a ride by resorting to illegal methods. The imposition of penalty for such regularisation should be to such an extent that the person thinking of violating the rules and putting up illegal construction would think not twice, but thrice before embarking upon any illegal construction activity. Further, this Court also observes that if the Government proposes to make a provision for regularisation, as observed above, Government shall keep in mind not to make any provision for regularisation beyond the FAR values for any illegal construction over and above the FAR values. Further, imposition of heavy penalty, would also act as a trigger in the society, where breeding of illegal constructions is the order of the day. Further, imposition of penalty should act as a cannon ball and be commensurate with the propensity of the illegality perpetuated. Such stricter regularisation rules will deter the individuals from resorting to illegal constructions and this would help in curbing the breeding of illegal constructions. The Government may also further think of imposing higher slabs of statutory tax on the regularised portions of any illegal constructions, which would act as a catalyst in neutralising the illegal activity and making it come to a standstill, as regularisation alone is not the solution, but putting an end to the illegal construction menace is of vital importance. The Government may take into considerations the observations made as above so that the individuals may desist from putting up any illegal constructions.

17. It is no doubt true that individuals have a right to approach this Court, praying for removal of encroachments only when the encroacher has encroached upon a public property or when the illegal construction sought to be demolished infringes upon their easmentary rights, viz., air, water, etc. In the absence of any easmentary rights having been infringed upon, no person has a locus to approach this Court claiming encroachment, more so when the matter pertains to illegal construction and does not involve any usurpation of public lands. However, every individual has an inherent right to bring it to the notice of the officials any encroachment of public lands/illegal construction and the authorities are bound to take action on the same immediately.

18. In the light of the discussion made above, insofar as matters relating to illegal constructions that do not fall within the ambit of encroachment, this Court feels that to put an end to such illegal construction activities, before giving sewerage connection, water connection, electricity connection, etc., the authorities concerned are bound to insist upon the land owner for production of planning approval and any deviation

from the said procedure would entail responsibility being fixed upon the said official warranting action.

19. This Court, without expressing any opinion on the issue, other than stressing on the need of the hour, deems it fit to impose upon the Government to frame the rules as contemplated under Section 113-C of the Town and Country Planning Act, keeping in mind the observations made by the Court above. This Court also further stresses that the authorities concerned shall ensure production of proper planning permission before providing the basic amenities to the said construction activity deviation from which should be viewed seriously by the Government.

20. Accordingly, with the above observation and direction, this writ petition is disposed of directing the respondent Corporation to grant an opportunity of personal hearing to the parties concerned and based on the documents that may be placed before it, pass orders in accordance with law within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk / GLN

To

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

2. The Executive Engineer
Zone 9, Corporation of Chennai
Near Nungambakkam Stadium
Lake Area,
Chennai-600 034.

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.57139

+1cc to Mr.P.Karl Marx, Advocate, S.R.No.57136

+2cc's to Mr.M.P.Aravinda, Party in Person,

S.R.No.56852 (15.12.2016)

W.P.NO.28311 OF 2016

KJI (CO)

CA (25/11/2016)

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