

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE K.K. SASIDHARAN

W.P. No.2934 of 2016
and W.M.P. Nos.2447 and 2448 of 2016

1. S.S. Haja Mohideen
2. M.S. Nabisath Thahira
3. H. Zakir Hussain
4. H. Seyed Ariff
5. H. Ashiq
6. S.I. Halimath Fathima
7. A. Aminath Hatheeja ... Petitioners

Vs.

1. State of Tamil Nadu
represented by its Secretary to Government
Housing and Urban Development Department
Secretariat, Fort St. George, Chennai 600 009
2. Chennai Metropolitan Development Authority
represented by its Member Secretary
Thalamuthu Natarajar Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the order passed by the second respondent affixed over the building on 19.01.2016 and quash the same and to consequently direct the second respondent to forbear from taking any coercive action of again sealing, locking and demolition of the building bearing New Door No.154, Old Door No.59, Dr. Muthulakshmi Salai, Adyar, Chennai 600 020, built over Plot No.612-W, comprised in T.S. No.18, Part, Block No.16, Kalikunram Village, Chennai District, measuring 3430 sq. ft. or thereabouts, pending disposal of appeal dated 13.08.2015.

For petitioners : Mr. S. Haja Mohideen Gisthi
For R1 : Mr. P.S. Sivashanmugasundaram
Special Government Pleader
For R2 : Mr. N. Sampath
Standing Counsel

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the first respondent. Mr. N. Sampath, learned Standing Counsel, accepts notice for the second respondent. With consent, the writ petition is taken up for final disposal, at the admission stage itself.

2. The instant writ petition is filed calling in question the legality and validity of the notice dated 19 January 2016 issued by the second respondent, viz., Chennai Metropolitan Development Authority, under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 (for short "the Act"), whereby and whereunder, it is informed inter alia that basement, ground floor, second floor, third floor (part) and fourth floor (part) of the building in question is locked and sealed and that neither the owner nor the developer/occupier has any right to use the said portions of the building, in any manner whatsoever.

3. The petitioners, feeling aggrieved by the locking, sealing and demolition notice dated 06 August 2015 issued by the second respondent, assailed the same before the Government by filing an application under Section 80-A of the Act. Pending the said application, they preferred a writ petition being W.P. No.26826 of 2015, seeking a writ of mandamus forbearing the second respondent from in any way interfering with their premises, particularly, by way of locking, sealing and demolition, pending final determination of their aforestated application. It was pointed out in the course of arguments that the petitioners had preferred an application, as aforestated, which requires disposal within a period of 90 days. On consideration of all aspects of the matter, this Bench passed the following order:

"7. In view of the foregoing, status quo, in respect of the property in question, as obtained today, shall be maintained for a period of two weeks from today and the petitioner is also restrained from making any further construction on the property in question, in the meantime."

4. Now, it is stated that the interim application filed along with the main application could not be disposed of by the first respondent within the time prescribed by this Court. In the meantime, the impugned notice dated 19 January 2016 under Sections 56 and 57 of the Act, has been issued.

5. The petitioners question the validity of the impugned notice on the ground that during pendency of the application before the first respondent, no such notice could have been issued.

6. Indisputably, no interim order was granted by the authority considering the application under Section 80-A(3) of the Act. It is further stated that in the meantime, some new developments have taken place and also the authority has heard the arguments of all the parties.

7. In such view of the matter, we are not inclined to interfere with the impugned notice, at this stage. However, we direct the first respondent to consider the petitioners' application, examining all the facts and take a decision at the earliest, preferably, within a period of seven working days, from the date of receipt of a copy of this order.

The writ petition stands disposed of with the above observation and direction. Costs made easy. Connected W.M.Ps. are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

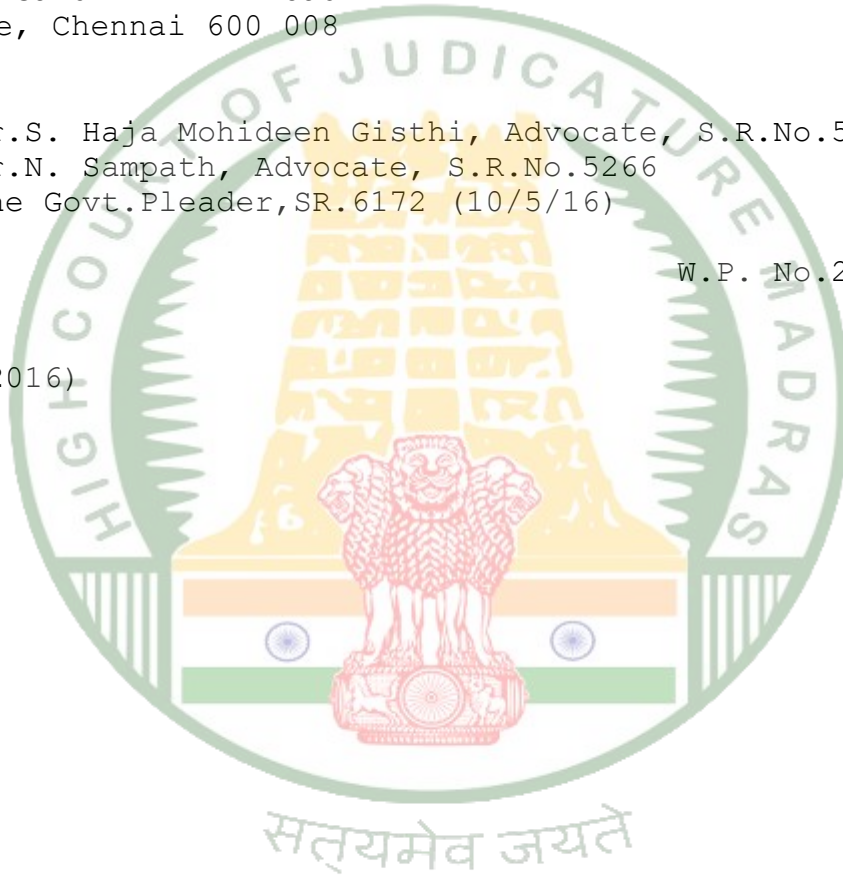
To

1. The Secretary to Government
Housing and Urban Development Department
State of Tamil Nadu
Secretariat, Fort St. George, Chennai 600 009
2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajar Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008

+1cc to Mr.S. Haja Mohideen Gisthi, Advocate, S.R.No.5208
+1cc to Mr.N. Sampath, Advocate, S.R.No.5266
+1cc to the Govt.Pleader, SR.6172 (10/5/16)

W.P. No.2934 of 2016

SVI (CO)
CA(28/01/2016)



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