

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2016

CORAM

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

Writ Petition No.30993 of 2016
and WMP.No.26872 of 2016

R.C.Kalaimani

...Petitioner

Vs.

1.The Executive Officer
Walajabad Town Panchayat
Walajabad Taluk
Kanchipuram District

2.The Tahsildar
Taluk Office, Walajabad
Walajabad Taluk
Kanchipuram District

3.The District Collector
Kanchipuram District, Kanchipuram ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned notice of the first respondent in proceedings No.Na.Ka.No.144/2015/A1 dated 23.07.2016 for removal of construction works at the first floor of the premises at No.208B, Rajaveethi, Walajabad, by the petitioner, issued by the first respondent and quash the same.

For Petitioner : Ms.C.Kousalya Devi
for M.s,Kumarichelvam Bosco

For Respondents : Mrs.K.Dhananjeyan
Special Govt.Pleader

ORDER

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

The petitioner herein, who is stated to be running a chicken shop and also constructing the first floor at 208B,

Rajaveethi, Walajabad, was issued with a notice dated 23.07.2016 by the first respondent herein. In the said notice, it is stated that the construction has been carried out by the petitioner by encroaching the public road and hence, the same has to be removed immediately, failing which, the Corporation would demolish such construction and collect the necessary charges. Now, the petitioner is before this court seeking to quash the notice dated 23.07.2016, raising grounds that he is occupying the said land after allotment and by paying appropriate license fees and property tax.

2. Admittedly, in this case, there is no sanctioned plan produced by the petitioner as regards the construction carried out by him. Earlier, this court, by order dated 07.09.2016 in W.P.Nos.38432 of 2015 etc batch and by order dated 20.09.2016 in W.P.No.29985 of 2016, after referring to the decision of the Honourable Supreme Court in *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan* [(1997) 11 SCC 123], passed a direction to the Corporation to demolish the encroachment.

3. As specifically mentioned in the order dated 07.09.2016 in W.P.Nos.38432 of 2015 etc batch, if there is a violation in respect of construction, this court would not support the cause based on technical grounds. In this connection, the necessary portion of the above order is extracted as under:-

"7. 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.

.....

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. "

4. Further, in W.P.No.29985 of 2016, by order dated 29.09.2016, this court, held as under:-

" 21. And, this Court (Huluvadi G.Ramesh, J. & M.V. Muralidaran,J.), while dealing with the removal of encroachments, in the case of A.Kumar vs. The Commissioner, Greater Corporation of Chennai vide judgment dated 13.06.2016, has 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 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 v. 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.

22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the

building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation. "

5. In view of the decisions cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner has already been given notice, in accordance with law. Accordingly, the petitioner is given a month's time to remove the encroachment on his own, failing which, the Corporation can demolish the encroachment and collect the demolition charges. Since the petitioner is represented through counsel before this court, no further notice is required in this regard.

6. It is also brought to the attention of this court that ATM centres are also put up in the Government land and occupation has been unauthorisedly made and in this regard, agreements have been entered into between the the so-called owners of the land, who are land grabbers. Hence, the Corporation is directed to issue Notice to the Bank and thereafter, remove the ATM centres put up in the Government land. It is really shocking as to how the Bank officials have courage to enter into a lease/rental agreement with such land grabbers for opening ATM centres.

7. Registry is directed to mark a copy of this order to (i) the Reserve Bank of India, Chennai, (ii) the Inspector of Registration, Santhome, Chennai and (iii) the Commissioner of Police, Chennai, to assist the Corporation/CMDA officials to remove the ATM Centres installed in the unauthorised lands in the city of Chennai and Kancheepuram Districts.

The Writ Petition is disposed of with the above direction. No costs. Consequently, connected WMP is closed.

sd/-

Assistant Register

//True Copy //

Sub Assistant Register

nvsri/aeb

To

1.The Executive Officer
Walajabad Town Panchayat
Walajabad Taluk
Kanchipuram District

2.The Tahsildar
Taluk Office, Walajabad
Walajabad Taluk
Kanchipuram District

3.The District Collector
Kanchipuram District
Kanchipuram

4 the Manager, R.B.I., Chennai.

5 Inspector General of Registration, Santhome, Chennai

6 The Commissioner of Police, Chennai

7 The Commissioner, Corporation, Chennai-6.

+ 2 cc M.s,Kumarichelvam Bosco, Advocate sr.no.56793

+ 1 CC to The Government Pleader sr.no.54609

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and WMP.No.26872 of 2016

ALA[CO]
RRI 22/10/2016

सत्यमेव जयते

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