

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM

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

Writ Petition No.32648 of 2016
and
W.M.P.No.28289 of 2016

M/s.Medway Medical Centre
Unit of United Alliance Health Care Private Ltd.
rep. by its Proprietor
Dr.Palaniappan ...Petitioner

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai- 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai- 600 003.
- 3.The Executive Engineer,
Greater Chennai Corporation, Zone -IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai- 600 034.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to forbear the third respondent herein from taking any action pursuant to the proceedings in Letter No. Zone IX DN-112/TPENF/002/2016 dated 22.08.2016 in respect of the petitioner's building at Door No.22, Trustpura, 4th Cross Street, Kodambakkam, Chennai-600 024 till the application of the petitioner under the special provisions of Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 is disposed of by the first respondent herein.

For Petitioner : Mr.AR.L.Sundaresan, SC
for Mr.I.Joseph

For R1 : Mr.P.S.Sivashanmugasundaram, SGP

For R2 & R3 : Mr.V.C.Selvasekaran

ORDER

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

Heard Mr.AR.L.Sundaresan, learned senior counsel representing the counsel for the petitioner and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for the first respondent and Mr.V.C.Selvasekaran, learned counsel for respondents 2 and 3. With the consent of both the parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. The prayer made in the writ petition is to issue a writ of Mandamus, forbearing the third respondent from taking any action pursuant to the proceedings in Notice No.Zone IX DN-112/TPENF/002/2016 dated 22.08.2016 in respect of the petitioner's building at Door No.22, Trustpuram, 4th Cross Street, Kodambakkam, Chennai-600 024 till the application of the petitioner under the special provisions of Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter shortly referred to as 'Act') is disposed of by the first respondent.

3. The case of the petitioner is that the petitioner is a tenant in respect of the premises consisting of land and building in ground + 3 floors situated at No.22, 4th Cross Street, Trustpuram, Kodambakkam, Chennai-600 024, pursuant to a lease deed dated 30.12.2011 entered into between the owner of the premises viz., A.S.Lakshmi and the petitioner herein. According to the petitioner, the said A.S.Lakshmi, after obtaining necessary permissions from the authorities concerned, has constructed the building in question. However, the officials have noticed additional construction and demanded regularisation fee, which was also duly paid on 20.09.1988 and the plan was also regularized for construction. Thereafter, the property has been assessed to tax as a commercial building, fire service licence was granted and electricity service connection was also provided to the premises in question. While so, the third respondent has issued a notice dated 30.07.2012, calling upon the owner/occupier to produce the sanctioned plan for the existing building. Accordingly, the petitioner submitted all the necessary documents. However, the third respondent has issued a Locking & Sealing and Demolition notice dated 22.08.2016 alleging that the existing building is an unauthorized building with commercial usage and calling upon the owner/occupier to remove the unauthorized construction, within 30 days from the date of receipt of the notice, failing which, due action would be taken by locking and sealing the building and carrying out the demolition of the building at the cost of the owner/occupier, as per law. Pursuant to the said notice, the

second respondent is threatening to take coercive action against the petitioner. Therefore, the petitioner has come forward with this writ petition for the above stated relief.

4. Learned senior counsel for the petitioner submitted that the building in question has been constructed as per the approved plan and there was no unauthorised construction as alleged by the respondents. However, learned senior counsel submitted that as against the impugned notice dated 22.08.2016, the petitioner has already filed an appeal under Section 80-A of the Act along with stay application before the first respondent and it would be suffice, if a direction is issued to dispose of the said appeal.

5. Per contra, learned Special Government Pleader for the first respondent submitted that after inspection, it was found that the building in question is an unauthorized construction and hence, locking & sealing and demolition notice has been issued to the owner/occupier, as per law.

6. Irrespective of the submissions made on either side, without advertng to the merits of the case, this Court directs the first respondent to consider the stay application filed by the petitioner under Section 80A(3) of the Act and pass necessary orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the first respondent is directed to dispose of the appeal filed by the petitioner under Section 80 (A) of the Act, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of three months therefrom. Till the disposal of the stay application filed by the petitioner, the respondents are directed not to take any coercive steps.

7. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai- 600 009.

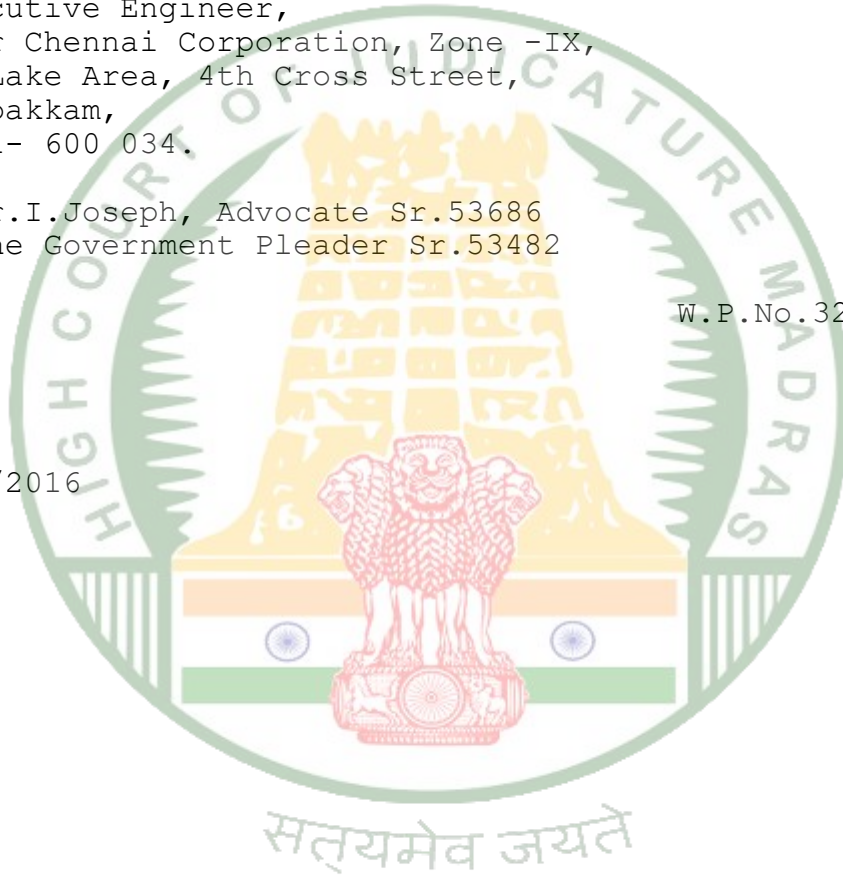
2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai- 600 003.

3.The Executive Engineer,
Greater Chennai Corporation, Zone -IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai- 600 034.

+1cc to Mr.I.Joseph, Advocate Sr.53686
+1cc to the Government Pleader Sr.53482

W.P.No.32648 of 2016

nr[col
srg 07/10/2016



WEB COPY