

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM :

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

Writ Petition No.34484 of 2016
and

W.M.P No.29713 of 2016

Lily Therasa

...Petitioner

Vs.

1.The General Officer
Commander-in-Chief
Southern Command
Pune - 411 001.

2.The Military Brigadier
Station Commander-in-Chief
Station Head Quarters
Fort St. George
Chennai - 600 009.

3. The Chief Executive Officer
Cantonment Board
St. Thomas Mount
Chennai - 600 016.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in his Notice No. STM/Works/1/1612 dated 23.05.2016 and quash the same and direct the 3rd respondent to forward the petitioner's appeal dated 18.04.2016 to the appropriate authority and to forbear the 3rd respondent not to proceed further in respect of Notice No. STM/Works/8/1132 dated 16.03.2016 issued under sub section (1) of Section 248 of the Cantonment Act 2006 till the disposal of appeal filed under Section 340 of the Cantonment Act, 2006 pending before the 3rd respondent herein and pass further orders.

For Petitioner : Mr. P. Lakshmi Devi
For Respondents : Mr.C. Mohan
for M/s. King & Patridge for R3

ORDER

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

With the consent of both the parties, the writ petition is taken up for final disposal, at the stage of admission itself.

2. This Writ Petition is filed praying to issue a Writ Certiorarified Mandamus, quash the notice of the 3rd respondent in STM/Works/1/1612 dated 23.05.2016 and direct the 3rd respondent to forward the petitioner's appeal dated 18.04.2016 to the appropriate authority and to forbear the 3rd respondent not to proceed further in respect of Notice No. STM/Works/8/1132 dated 16.03.2016 issued under sub section (1) of Section 248 of the Cantonment Act 2006 till the disposal of appeal filed under Section 340 of the Cantonment Act, 2006 pending before the 3rd respondent herein and pass further orders.

3. It is the case of the petitioner that the petitioner's husband was assigned with a house plot by the Special Tahsildar, Saidapet by order dated 22.04.1986 and they are living in the house for more than 40 years. Even after her husband's demise, the petitioner continue to live there, with her children. Whiles, she received a notice dated 17.06.2015, from the 3rd respondent, issued under Section 235 r/w. Section 247 of the Cantonment Act, 2006. Though the petitioner submitted a representation on 03.07.2015, there was no reply. Subsequently, notice was served to the petitioner in W.P. No.2124 of 2016, filed by one Y.Akbar Ahamed and the same was closed on 07.03.2016. On 16.03.2016, another notice under Section 248(1) of the Cantonment Act, 2006, was served on the petitioner. Against the said notice, the petitioner filed an appeal, which is pending before the respondents. Pending, appeal filed under Section 340 of the Cantonment Act, 2006, the respondents have proceeded to demolish the building and hence the petitioner has come before this Court.

4. Heard Mr. P.Lakshmi Devi, learned counsel for the petitioner and Mr. C.Mohan, learned counsel for the third respondent, who accepts notice on behalf of the respondents.

5. It appears, with regard to the removal of unauthorised construction and enroachment, the Contonment Board have taken action, pursuant to which notice has been issued to the petitioner. The petitioner has also filed an appeal in this regard. However, as per the submissions of the learned counsel

for the respondents, instead of approaching the appropriate authority, the first respondent herein, she has approached the third respondent. The petitioner can also file an interim application before the first respondent for her immediate relief. At this juncture, learned counsel for the petitioner submitted that subsequently the petitioner has filed an appeal before the first respondent during April 2016 and the same is pending.

6. When such be the case, the petitioner shall file an interim Application seeking for interim orders and other appropriate reliefs before the first respondent within one month, from the date of receipt of a copy of this order. On such application, the first respondent shall consider the grievance of the petitioner and pass suitable interim orders, pending disposal of the appeal, in accordance with law. Till an order is passed by the first respondent, on any application filed by the petitioner, there shall be an order of status quo, as of today.

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

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1 The General Office, Commander in Chief
Southern Command Pune 411 001

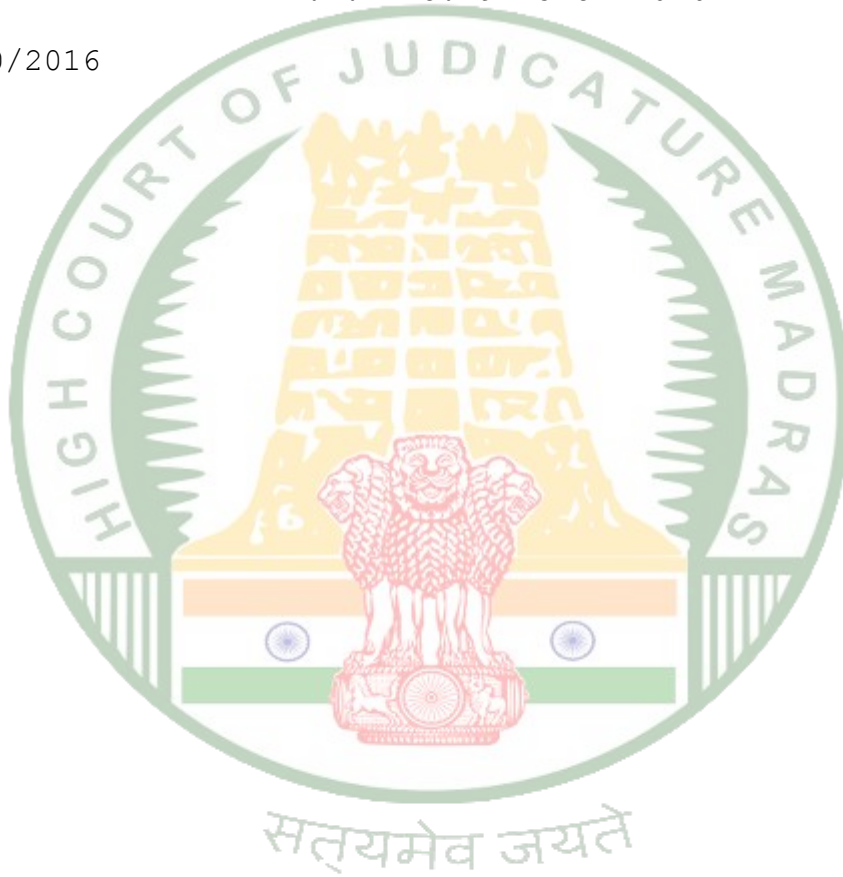
2 The Military Brigadier
Station Commander in Chief
Station Head Quarters
Fort St. George, Chennai 600 009

3 The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount,
Chennai 600 016

+1 CC to M/s. P. Lakshmi Devi, Advocate Sr.No.55776
+1 CC to M/s. King and Partridge, Advocate Sr.No.55936

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MD : 13/10/2016



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