

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.43679 of 2016
and
W.M.P.No.37491 of 2016

P.Mohanraj

... Petitioner

-Vs-

1. State of Tamilnadu,
rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai-9.
2. The Commissioner,
Corporation of Chennai,
Chennai-3.
3. The Executive Engineer,
Zone-6 Greater Corporation of Chennai,
Ayanavaram,
Chennai-600 023.
4. The Assistant Executive Engineer,
Zone-6 Greater Corporation of Chennai,
Ayanavaram,
Chennai-600 023.
5. The Assistant Engineer,
Division 70 Greater Corporation of Chennai,
Bharathi Road, Perambur,
Chennai-11.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus forbearing the 3 to 5 respondents from in any manner proceeding further in pursuant to the impugned Notice dated 30.11.2016 in Notice No.Zone-6/TPENF/029/2016 pending appeal dated 09.11.2016 before the first respondent.

For Petitioner : Mr.S.Prabakaran
Senior Counsel
for M/s.Pitty Parthasarathy

For Respondents : Mr.T.N.Rajagopalan
Special Government Pleader for R1

Mr.R.Arunmozhi for R2 to R5

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Notice, which is accepted by Mr.T.N.Rajagopalan, learned Special Government Pleader for respondent No.1 and Mr.R.Arunmozhi, learned counsel for respondent Nos.2 to 5.

2. At request of the learned counsel for parties, the writ petition is taken up for final disposal.

3. The petitioner is the owner of the property bearing No.43/38, Subramaniam Street, Paddy Field Road, Perambur, Chennai-11, in respect of which, he obtained approved sanctioned building plan dated 27.2.2014. It is stated that the construction of the building was commenced from the month of August 2014 and was completed some time in August, 2015 and the building is stated to be occupied.

4. On an inspection of the property on 14.10.2016, deviations were found on the ground, first and second floors. In view thereof, notices have been issued in respect of the property, including the impugned notice dated 30.11.2016 as the De-occupation notice.

5. The petitioner had filed an appeal on 09.11.2016 prior to the De-occupation notice, in view of the locking, sealing and demolition notice dated 14.10.2016 which is stated to be pending.

6. We asked the learned Senior Counsel for the petitioner whether it is a fact or not that the deviations exist, the learned Senior Counsel could not deny the existence of the deviations. His submission is that the deviations are capable of regularisation and if they are regularised, that portion may be saved and whatever is not capable of regularisation in law, the petitioner undertakes to this Court to remove it of his own.

7. We find that the so called revised plan has apparently been filed by the petitioner only in the appeal proceedings.

But as pointed out by the learned Special Government Pleader, to seek such a revised plan, the petitioner would have to approach the Planning Authority in terms of Section 56(3) read with Section 49 of the Tamil Nadu Town and Country Planning Act, 1971.

8. The aforesaid being the position, the following directions are issued:-

- (1) The petitioner will file an application before the Planning Authority within two weeks under Section 56(3) read with Section 49 of the Tamil Nadu Town and Country Planning Act, 1971.
- (2) The Planning Authority will thereafter examine the application and inform the petitioner within a period of one month thereafter whether any portion of the extra constructed area is capable of regularisation and if so, subject to what terms and conditions.
- (3) To the extent any area is not capable of regularisation, the petitioner is granted two months time from the date of communication of the order to remove that extra portion.
- (4) If the petitioner still does not remove the extra portion, in that eventuality, the respondents are free to proceed in terms of the impugned notice issued. But till then, they will stay their hands.

9. The writ petition, accordingly, stands disposed of. No costs. Consequently, W.M.P.No.37491 of 2016 is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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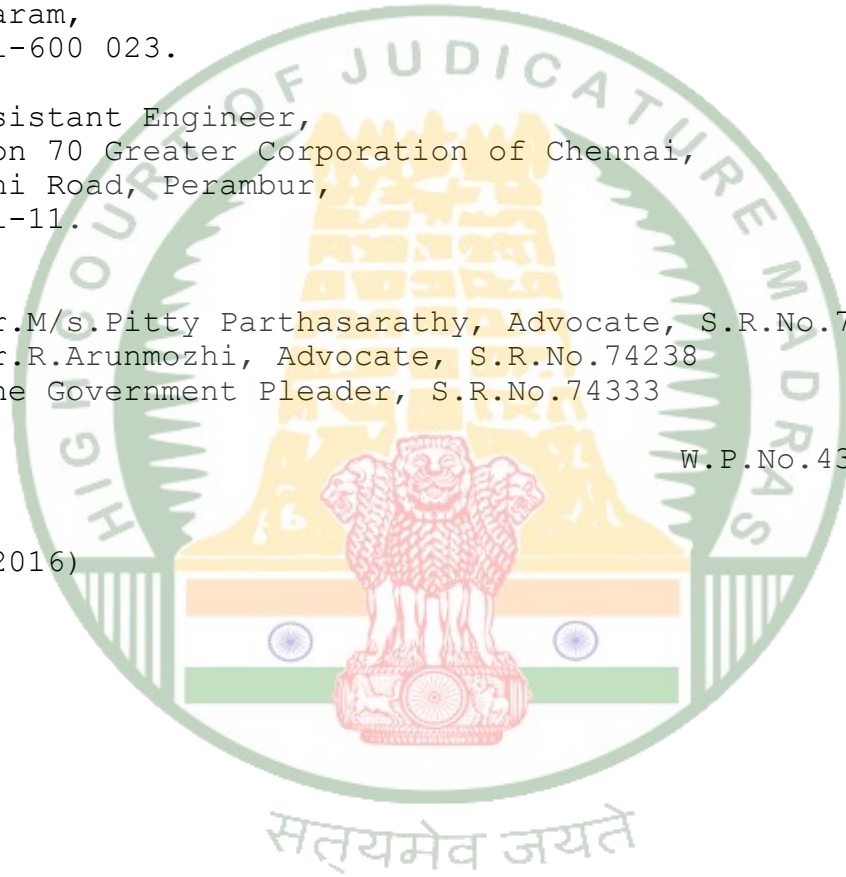
1. The Secretary,
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Division 70 Greater Corporation of Chennai,
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+1cc to Mr.M/s.Pitty Parthasarathy, Advocate, S.R.No.74633
+1cc to Mr.R.Arunmozhi, Advocate, S.R.No.74238
+1cc to the Government Pleader, S.R.No.74333

W.P.No.43679 of 2016

MG(CO)
CA(22/12/2016)



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