

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE Dr. JUSTICE P.DEVADASS

W.P.No.96 of 2016 and Contempt Petition No.3313 of 2014
and
W.M.P.No.44 of 2016

W.P.No.96 of 2016 :

The Management of Vijayapuri
Kammavar Kalyana Mandapam,
rep by its Vice Chairman
Mr.L.Chandrasekar,
S/o.Mr.Linga Naidu,
Door No.15 & 23, School Road,
K.S.Nagar, Kolathur,
Chennai-600 099. ... Petitioner

Vs.

- 1.The Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008.
- 3.The Commissioner,
Corporation of Chennai
Ripon Building, Chennai-600 008.
- 4.The Regional Deputy Commissioner (Central),
Town Planning Enforcement Region-Central,
Corporation of Chennai, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.
- 5.The Superintending Engineer,
Town Planning Enforcement Region-Central,
Corporation of Chennai, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.

6.The Executive Engineer,
Town Planning Enforcement Region-Central,
Corporation of Chennai, Pulla Avenue,
Shenoy Nagar, Chennai-600 030. .. Respondents

Contempt Petition No.3313 of 2014 :

1.M.V.Challappan
2.R.Dhanalakshmi
3.R.Mahaveer Chand
4.P.Nalini .. Petitioners

Vs.

1.Mohan Pyare,
The Principal Secretary,
Urban Development Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.A.Karthik,
The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Chennai-600 008.

3.Vikram Kapur,
The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 008.

4.K.Narayanaswamy,
The Management of
Vijayapuri Kammavar Kalyana Mandapam,
Plot Nos.15 and 23, K.S.Nagar, Kolathur,
Chennai-600 099. .. Respondents

W.P.No.96 of 2016 is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the 6th respondent in Notice No.Region Central/TPENF/E2/7579/2015 dated 11.12.2015 and quash the same.

Contempt Petition No.3313 of 2014 is preferred under Section 11 of the Contempt of Courts Act to punish the respondents for willfully disobeying the order of this court dated 4.2.2014

passed in W.P.No.6722 of 2004 and to direct them to ensure compliance of the said order.

For Petitioner : Mr.AR.L.Sundaresan, SC
for Mr.M.Stalin in W.P.No.96 of 2016

Mr.E.Omprakash
for Ramalingam & Associates
in Cont.Petition No.3313 of 2014

For Respondent : Mr.N.Sakthivel, GA for R-1
in W.P. Mr.K.Raja Srinivas for R-2
Mr.P.H.Arvind Pandian,
Additional Advocate General,
assisted by
Mr.V.C.Selvasekaran for RR3 to 6

For Respondents : Mr.N.Sakthivel, GA for R-1
in Cont.Petition Mr.K.Raja Srinivas for R-2
Mr.P.H.Arvind Pandian,
Additional Advocate General
assisted by Mr.V.C.Selvasekaran for R3
Mr.AR.L.Sundaresan, SC
for M/s.AL.Gandhimathi for R-4

COMMON ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

A dispute arose in respect of the legality of the construction of a Kalyana Mandapam in the premises at Plot Nos.15 and 23, K.S.Nagar, Kolathur, in W.P.No.6722 of 2004. A Division Bench of this Court, by order dated 3rd February, 2014, directed the authorities as under :

"11.The Commissioner, Corporation of Chennai, is directed to take immediate follow up enforcement action, pursuant to the demolition order passed by CMDA dated 3 October 2002 and the order dated 21 March 2013, rejecting the application for regularization.

12.The action taken report should be filed positively by 4 February 2014. Thiru.R.Arul, Assistant Executive Engineer, is directed to appear in person tomorrow (i.e. 4 February 2014) along with the report."

2 On 4th February, 2014, considering the submissions of all parties, the said writ petition was disposed of with the

following directions :

"9.We give liberty to the 5th respondent to submit a reply to the notice dated 03.02.2014 on or before 02.03.2014. The Commissioner, Chennai Corporation, is directed to consider the reply and pass appropriate orders on merits and as per law. Such exercise shall be completed within a period of 15 days from the date of receipt of reply. In case, the 5th respondent fails to submit the reply within the prescribed period, it is open to the Corporation to take appropriate follow up action in accordance with the provisions of Tamil Nadu Town and Country Planning Act, 1971."

3 Thereafter, a writ petition, being W.P.No.27055 of 2014, was preferred by the 5th respondent in W.P.No.6722 of 2004 (hereinafter referred to as "petitioner herein"), seeking to quash the de-occupation notice dated 23rd September, 2014. The Division Bench of this Court dismissed the writ petition by order dated 13th October, 2014, in view of the subsequent notice dated 9th October, 2014 issued by the Superintending Engineer, Town Planning Enforcement, Corporation of Chennai, calling upon the petitioner herein for the hearing and to pass a fresh final order.

4 In the meantime, the instant contempt petition, being Contempt Petition No.3313 of 2014, has been preferred by the petitioners in W.P.No.6722 of 2004 stating that the authorities have not taken steps pursuant to the order dated 4th February, 2014.

5 Subsequently, the Regional Deputy Commissioner (Central), by proceedings dated 22nd December, 2014, held that the enforcement action initiated by the office was just and proper and further enforcement action on the premises in question shall be continued as per the Town and Country Planning Act.

6 The said proceedings, dated 22nd December 2014 was assailed in another writ petition, being W.P.No.10853 of 2015. A Division Bench of this Court, by order dated 22nd April, 2015, allowed the writ petition by setting aside the order dated 22nd December 2014 passed by the Regional Deputy Commissioner (Central). By the said order, one more opportunity was granted to the authorities to reconsider the representations of the petitioner herein and to take consequential action

7 The petitioner herein preferred one more writ petition, being W.P.No.15372 of 2015, seeking for a direction to de-seal the premises in question pursuant to the order passed by this

court on 22nd April, 2015. A Division Bench of this court, by order dated 11th June, 2015, dismissed the writ petition, in view of submission made by the learned counsel for the authorities that an order has been passed on 9th June, 2015 on the representation dated 29th May, 2015 made by the petitioner herein.

8 Subsequently, an application under Section 80-A of the Town and Country Planning Act, 1971 was preferred by the petitioner herein before the State Government on 3rd September, 2015, seeking to remove lock and seal of the Kalyana Mandapam, which was disposed of by the Government by proceedings dated 28th September, 2015 as under :

"2.The Government have examined the matter in consultation with Chennai Metropolitan Development Authority / Corporation of Chennai and perused the connected original records. After careful consideration, the Government have decided to accept the request of the appellant to de-seal the premises. Accordingly, Corporation of Chennai / Chennai Metropolitan Development Authority may take appropriate action to de-seal the building under reference for 6 months so as to enable the appellant Vijayapuri Kammavar Trust represented by its Vice Chairman Mr.L.Chandrasekar to carryout corrective measures so as to bring the building in conformity with the Development Regulations with the condition that the building shall not be put to use / occupied during de-sealing period."

9 During the pendency of the contempt petition, the authorities have issued a fresh notice dated 11th December, 2015 under Sections 56, 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, which is the subject matter of the present writ petition, being W.P.No.96 of 2016.

10 In the case on hand, the petitioner herein was afforded opportunities time and again. Thus, the plea of the learned Senior Counsel appearing for the petitioner herein that the petitioner herein is entitled to take recourse to statutory remedy, is not available. The petitioner herein was afforded several opportunities, as aforesaid, to put forward its case. The authorities have come to the categorical conclusion that there is a deviation and unauthorized construction, which requires to be removed to bring the place / premises in accordance with the approval / permission, if any.

11 Considering the aforesaid submissions, we are of the firm view that three months time will be sufficient to remove the unauthorized construction to bring the building, in

question, in conformity with the plan approval and development regulations. It is made clear that the petitioner herein will not be entitled to any notice hereafter and further statutory remedy will also be not available when this Court has exercised its extraordinary constitutional jurisdiction to examine the dispute.

12 The very purpose of issuance of notice is to bring the deviations to the knowledge of the violator to take corrective measures. In the case on hand, the petitioner herein was afforded several opportunities on earlier occasions. Thus, no further notice is required to be given to the petitioner herein before taking consequential decision after completion of three months from the date of de-sealing the premises. The Corporation is directed to de-seal the premises tomorrow for carrying out the corrective measures.

13 In view of the foregoing, the writ petition is dismissed. The contempt petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008.
- 3.The Commissioner,
Corporation of Chennai
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Town Planning Enforcement Region-Central,
Corporation of Chennai, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.

Copy to:

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

2.The Section Officer,
Contempt Section,
Original Side,
High Court,
Madras.

+1cc to Mr.K.Rajasrinivas, Advocate, S.R.No.1207

+1cc to the Government Pleader, S.R.No.1229

+2cc to Mr.Ramalingam & Associates, Advocate, S.R.No.1111

+1cc to Mr.Stalin, Advocate sr.741

सत्यमेव जयते W.P.No.96 of 2016 and
Cont.Petition No.3313 of 2014

mg (CO)
srg (22/01/2016)

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