

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.9850 of 2016

J.D. Sekar
Proprietor/Licensee
Hotel Ganga
21/5, First Main Road
Jawahar Nagar
Chennai 600 082

... Petitioner

Vs.

1. The Commissioner
Corporation of Chennai
Ripon Buildings
No.1131, EVR Periyar Salai
Park Town
Chennai 600 003
2. The Executive Engineer
Town Planning Enforcement
Corporation of Chennai
Regional Office, Chennai
II Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai 600 030
3. V. Yoganandan
4. Radha Krishnan
5. Rani Selvaraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the second respondent in Notice No.REGIONCENTRAL/TPENF/1523/2016 dated 08.02.2016 and quash the same as illegal and unwarranted and the same is not issued by following the principles of natural justice and equity and also without any basis by following the statutory requirements and provisions under the Tamil Nadu Town and Country Planning Act, 1971 as amended by Act 61 of 2008 and consequently, direct the second respondent to consider the petitioner's representation

dated 09.02.2016 in accordance with law.

For petitioner : Mr. A.Kumar

For RR 1 & 2 : Mr. A. Nagarajan,
Standing Counsel

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. A. Nagarajan, learned Standing Counsel, accepts notice for respondents 1 and 2. Notice to the private respondents is dispensed with at this stage, inasmuch as no order prejudicial to their interest is passed in this writ petition.

2. This writ petition is filed calling in question, the justifiability of the locking, sealing and demolition notice dated 08 February 2016 and further, for a direction to the second respondent to consider the petitioner's representation dated 09 February 2016 in accordance with law.

3. After arguing the case at length, the learned counsel for the petitioner seeks permission of this Court to withdraw the writ petition. We are not inclined to accede to this request of the learned counsel for the petitioner. Thus, we proceed to pass orders on merits of the case.

4. The facts in brief are that earlier, the private respondents herein filed a writ petition being W.P. No.13306 of 2014 impleading the present petitioner as respondent no.2. The relief sought in the said writ petition was a writ of mandamus directing the Corporation of Chennai to take suitable action against the petitioner herein/second respondent therein, in view of alleged violation of Chennai City Municipal Corporation Act and other enactments in running his hotel, by considering their complaint dated 13 May 2013. A Division Bench of this Court, considering all aspects of the matter, by order dated 05 November 2014, passed the following order:

"5. In the light of the report submitted by the Assistant Executive Engineer, Zone VI, Corporation of Chennai dated 28.05.2014, without expressing anything on merits, the 1st respondent is directed to consider the representation/complaint given by the petitioner dated 13.5.2013 and pass orders on merits and in accordance with law, after hearing the petitioner as well as the 2nd respondent, within a period of four weeks from the date of receipt of a copy of this order."

Thus, by the aforestated order, the instant petitioner was given an opportunity of hearing.

5. Pursuant to the aforestated order passed by this Court, a notice was issued by Chennai Corporation on 18 December 2014, calling upon the petitioner to appear for personal hearing on 22 December 2014 at 2.00 p.m., giving full opportunity of hearing to the instant petitioner. Thereafter, it seems, there was no progress in the matter and even the Corporation authorities kept the entire dispute in cold storage.

6. Subsequently, one more writ petition was preferred by the fourth respondent herein in W.P. No.37847 of 2015, impleading the petitioner herein as the third respondent. The relief sought therein was a writ of mandamus directing the Corporation of Chennai to implement its order dated 03 July 2015 by removing the unauthorised construction in the hotel in question. The said writ petition was disposed of by a Division Bench of this Court vide order dated 27 November 2015 in the following terms:

"6. In the circumstances, we direct respondents 1 and 2 to take follow-up action in pursuance of the letter of the Assistant Commissioner, Zone-VI, Corporation of Chennai, dated 03.07.2015, after giving notice to the third respondent, observing all the requirements of law. We make it clear that this exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

Thus, one more opportunity, after a period of one year from the date of disposal of the first writ petition being W.P. No.13306 of 2014, was given to the petitioner herein.

7. Subsequently, the Corporation woke up from slumber and again issued a notice on 02 February 2016, calling for approved plan from the petitioner, which was reportedly received by the petitioner on 08 February 2016. The petitioner responded to the said notice by way of a representation on 09 February 2016, seeking four weeks time to secure original plan from the builder and produce the same before the authorities. Needless to state, the petitioner had almost more than two years time after the disposal of the first writ petition being W.P. No.13306 of 2014 to secure appropriate approval and produce the same before the authorities. The petitioner, after the aforestated orders were passed by this Court, kept quiet and asked for further four weeks time vide his representation dated 09 February 2016, which, in the considered opinion of this Court, he is not entitled to, as he has been granted sufficient opportunity to place his case.

8. Thus, in this writ petition, we are not inclined to accept the contention of the learned counsel for the petitioner that opportunity of hearing was not afforded to the petitioner, as is eloquent from the aforestated sequential events.

Resultantly, we dismiss this writ petition, directing the authorities to immediately take consequential action, inasmuch as 30 days time granted to the petitioner had come to an end on 07 March 2016 and submit a report to this Court within a period of one week. No costs. Connected Miscellaneous Petition is closed. The Registry is directed to list this matter under the caption "for compliance" on 24 March 2016.

Sd/-
Assistant Registrar(CO)
Dt:18.3.2016

This matter having been listed under the caption for Reporting Compliance on 29.3.2016 pursuant to the order of this court dated 17.3.2016 and made herein in the presence of the above said counsels on the either side the court made the following order:

This matter is listed today "for reporting compliance". Instead of filing the report of compliance, the learned standing counsel appearing for respondents 1 and 2 filed a copy of the notes supported by photographs, indicating compliance of the order.

The above factum is taken on record and no further order is necessary.

s/d-
Assistant Registrar(CO)
Dt.11.4.2016

True Copy

Sub-Assistant Registrar

To

1. The Commissioner
Corporation of Chennai
Ripon Buildings
No.1131, EVR Periyar Salai
Park Town
Chennai 600 003

2. The Executive Engineer
Town Planning Enforcement
Corporation of Chennai
Regional Office, Chennai
II Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai 600 030

+ 2 cc's to Mr.T.R.Sundaram, Advocate, S.R.No.17117

W.P. No.9850 of 2016

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prk11/4



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