

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.5356 of 2017

M/s.MEC International Private Ltd.,
Rep.by its Senior Manager - Commercial,
Old No.37, New No.6, Arcot Road, Vadapalani,
Chennai - 600 025. ... Petitioner

..vs..

1.Greater Chennai Corporation,
Rep.by its Assistant Executive Engineer - Unit 29,
Zonal Office - 10, Kodambakkam,
Chennai - 600 024.

2.Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

3.Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

... Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Mandamus or any other appropriate writ or order or direction, directing the 1st respondent corporation to forbear from executing lock & seal and demolition notices in respect of entire buildings & superstructures located on schedule lands described in Schedule A & B, situated at Old No.37, New No.06, Arcot Road, Vadapalani, Chennai - 600026, pending disposal of appeal before the 2nd Respondent Hon'ble Secretary to the Government of Tamil Nadu, Housing & Urban Development Department, filed on 07.02.2017.

For Petitioner : Mr.A.L.Somayaji
Senior Counsel
for Mr.K.V.Bhashyam Chari

For Respondent 1: Mr.V.C.Selvasekaran
For Respondent 2: Mr.R.Vijayakumar
Additional Government Pleader
For Respondent 3: Mr.K.Raja Srinivas

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner- a Limited Company has come forward with this writ petition stating that pendency of the Special Revision before the Second Respondent under Section 80-A of Tamil Nadu Town and Country Planning Act, 1971, precipitative action has been taken.

2. The learned Senior Manager- Commercial of the Petitioner Company, in the affidavit filed in support of this petition would aver among other things that the lands comprised in Survey Nos.186 & 187 to an extent of 8 acres situated in Old No.37, New No.36, Arcot Road, Vadapalani, Chennai 600 026 was taken on lease by the predecessors of the Managing Director of the Petitioner Company during the year 1960 from Ms.S.M.S.Bucary Walkf-Al-Aulad Estate (private walkf). The lease was renewed periodically. It is also stated by the petitioner that the predecessors of the petitioner's company have put up buildings/superstructures on schedule lands and let out to various tenants for being used as warehouses / godowns, which continues till date. Hence, the petitioner company is the sole and absolute owner of the entire buildings and superstructures on the schedule lands. The first respondent had issued a notice to the petitioner's company dated 09.09.2016, calling upon them to produce the plan approval and the first respondent has also issued similar notices to all the tenants of the Petitioner Company.

3. The petitioner submitted an interim reply on 12.09.2016 stating that they are the owners of the entire superstructures situated in the land in question, followed by a detailed reply dated 22.09.2016, stating that the predecessors of Petitioner Company's Managing Director have already taken prior approval before constructing the building and superstructures on schedule land and the petitioner's company has been paying the taxes periodically. It is further stated that the Registered Office of the Petitioner's company was shifted from Chennai to Karoli Village, Gandhi Nagar, Gujarat on 06.02.2015 and the old records

were kept in the Registered Office, Chennai and on account of the cyclone during November 2015, which continued till December 2015, old records of the Company were washed away and therefore, they are unable to produce the approved building plan. However, the first respondent has proceeded further and issued a notice calling upon the approval plan dated 18.01.2017 and even prior to that taken steps to lock and seal the premises. Therefore, the petitioner has filed a Writ Petition in W.P.No.38680 of 2016, praying for issuance of Mandamus to direct the respondent Corporation to refrain from executing lock and seal and demolition notices in respect of entire buildings and superstructures situated in the land in question, till the disposal of the petitioner's appeal by the Secretary to Government of Tamil Nadu, Housing and Urban Development Department filed on 21.10.2016. The Division Bench of this Court has taken note of the submission that the relevant records were lost during the flood and therefore it is the duty of the Corporation to locate the same from the records and tally with the construction period put up and if some unauthorized construction was found, granted liberty to the Corporation to issue lock and seal notice. Despite such positive direction being issued by this Court, the respondent corporation once again insisted the petitioner to produce the Sanction Plan. Challenging such proceedings, the petitioner has filed also an appeal under Section 80-A of Tamil Nadu Town and Country Planning Act, 1971.

4. Mr.A.L.Somayaji, learned Senior Counsel, assisted by Mr.KV.Bhasyam Chari, learned counsel appearing for the petitioner would submit that in the light of the observations made in the order dated 11.04.2016 in W.P.No.38680 of 2016, it is not open to the Corporation of Chennai to insist the petitioner to produce the Sanction Plan. Challenging the said notice, a Special Revision under Section 80-A of Tamil Nadu Town and Country Planning Act, 1971 had already been filed before the Second respondent and it is suffice to consider the same in accordance with law, within the stipulated time and till such time, further proceedings have to be deferred.

5. Per contra, Mr.V.C.Selvasekaran, learned standing counsel appearing for the first respondent, Mr.R.Vijayakumar, learned Additional Government Pleader and Mr.K.Raja Shrinivas, learned standing counsel appearing for the third respondent would submit that the perusal of the available records would reveal that no records in connection with the Sanction Plan granted to the petitioner is available and therefore, the entire construction put up by the petitioner is treated as unauthorized and it is in violation of the provisions of Tamil Nadu Town and Country Planning Act 1971. Therefore, the petitioner was once again called upon to produce the approved Plan in respect of the premises within 30 days, failing which further action would be

taken. Despite receipt and acknowledgment of the notice dated 18.01.2017, the petitioner's company did not choose to produce the sanctioned plan and therefore prays for dismissal of this petition.

6.This Court has considered the rivals submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. The primordial contention made by the learned senior counsel appearing for the petitioner is that in the light of the order dated 07.11.2016 made in W.P.No.38680 of 2016, it is not open to the first respondent to insist the petitioner to produce the Sanction / Approval. It is relevant to extract paragraph Nos.5 and 6 of the said order:

"5.Now turning to the merits of the controversy, once it is stated that the petitioner is not in possession of the sanction plan, it is the bounden duty of the Corporation to have located from the records what was the sanctioned plan and tallied the construction with the same. If some unauthorized construction was found, then notice for locking and sealing and demolition could have been issued in respect of that portion, since the petitioner does not have any records.

6.We are, thus, of the view that the notice dated 14.10.2016 and the appeal filed thereafter is a futile exercise and set aside the notice and the appeal is thus disposed of as infructuous. The respondent Corporation is called upon to verify from its own records the position of the construction and thereafter issue notice and proceed in accordance with law."

8.The Assistant Executive Engineer, Unit 29, Corporation of Chennai, Zonal Office, Kodambakkam, Chennai 600 024 in compliance of the said order, had verified the records and vide communication dated 18.01.2017, has stated that as per the record there is no sanctioned / approved plan available, which was also confirmed by the CMDA. It also appears that the said Official inspected the site and recorded that no sanctioned/ approval plan was available and also confirmed the said fact with the third respondent also.

9. It is also brought to the knowledge of this Court that the Petitioner's company said to have lodged a police complaint with regard to the loss of records and the Jurisdictional Police namely K.K.Nagar Police Station, Chennai has Registered the said complaint in C.S.R.No.127 of 2015 dated 28.03.2016. It also appears that the fate of the said complaint is also not made known to the Court.

10. It is the categorical submission of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the second respondent that since the notice dated 18.01.2017, issued by Corporation of Chennai, merely called upon the petitioner to produce the Approval Sanction Plan, a Special Revision filed under Section 80-A, is not maintainable.

11. Be that as it may, it is the categorical stand of the petitioner that they have filed the revision by invoking the said provision before the first respondent and the first respondent shall consider the maintainability of the said Revision as a preliminary issue and depending upon the result of the same, shall proceed further and pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till such time, the respondents shall defer further proceedings in respect of the notice dated 18.01.2017 calling for production of approved plan.

12.The writ petition stands disposed of with the above direction. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

arr/rna
To

- 1.Greater Chennai Corporation,
Rep.by its Assistant Executive Engineer - Unit 29,
Zonal Office - 10, Kodambakkam,
Chennai - 600 024.
- 2.Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.
- 3.Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

+lcc to Mr.K.V.Bhasyam Chari, Advocate sr.51205
+lcc to Mr.K.Rajasrinivas, Advocate sr.51280

Writ Petition No.5356 of 2017

ss (17/8/2017)