

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.7528 of 2017
WMP.No.8216 of 2017

S.Sukumar ... Petitioner
vs.

1. The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai-9.
2. The Commissioner,
Chennai Corporation,
Rippon Buildings,
Poonthamallee High Road,
Chennai.
3. The Regional Joint Commissioner/
Deputy Commissioner,
Corporation of Chennai,
Zone Central (IV to X Anna Nagar),
No.12B, Pulla Avenue, TVK Street,m
Shenoy Nagar, Chennai-30.
4. The Executive Engineer,
Zone-VII (Ambattur),
Greater Chennai Corporation,
Chennai-53.

5. M.Ashok Chand ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the impugned notice issued by the 4th respondent, vide W.D.C.No.T.P.PPA/WDCNO7/00582/2017 dated 27.02.2017 and quash the same and consequently direct the 2nd respondent to assign the revised planning permission application of the petitioner to

some other officer other than the 3rd and 4th respondents to independently process and pass orders in accordance with law in respect of the building situated in Door No.10, Justice Rathnavel Pandian Street, Golden George Nagar, Mogappair, Chennai-600 037.

For Petitioner : Mr.E.Vijay Anand

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader for R1

Mr.V.C.Selvasekaran for R2 to R4

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would state that he is the owner of the building situated in Door No.10, Justice Rathnavel Pandian Street, Golden George Nagar, Mogappair, Chennai-600 037 and he has entered into a Builder's Agreement with one Mr.A.Mohamad Raffee, Proprietor of Great Madras Builders, Chennai-600 050. In pursuant to the Builder's Agreement, he approached the Corporation of Chennai and got building plan approved, vide PPA No.359/2011/F3 dated 23.02.2012. According to the petitioner, construction is put up based on the approved building plan without any deviation. It is the case of the petitioner that the fifth respondent had dispute with regard to execution of the sale deed with the builder and therefore, he filed W.P.No.44087 of 2016 and it came to be disposed of on 22.12.2016, without hearing the petitioner, though he was arrayed as a party in the said writ petition and as per the said order, direction was given to the third respondent herein to cause an inspection of the property to verify whether there exists any unauthorized construction within a period of fifteen days and if it is so found, to take action in accordance with law.

3. The petitioner builder, after becoming aware of the order, moved a petition for recalling the said order and it is also the case of the petitioner that inspection was carried out without proper notice to him and it was pointed out that there is a small built-up area in the ground floor, which was not found in the original sanction plan and there is no violation / deviation found. The petitioner, by way of abundant caution, by invoking the provision under Section 56(3) of the Town and Country Planning Act, 1971 [in short "TCP Act"], had submitted a revised plan seeking for permission under Section 49 of the TCP

Act and it was taken on file on 31.01.2017 and it is pending. According to the petitioner, in the light of pendency of the application for revised plan approval, notice issued under Section 56 of the TCP Act shall not have any effect and however, without taking note of the pendency of the said application, Assistant Executive Engineer (T.P.), Zone-7 has issued the Lock and Seal Notice and De-occupation Notice and challenging the legality of the same, the petitioner has filed W.P.No.4506 of 2017 and the same is pending.

4. Mr.Vijay Anand, learned counsel appearing for the petitioner would submit that the petitioner is having the benefit of interim order of Status Quo in W.P.No.4056 of 2017 and in respect of the application for revised plan approval, the fourth respondent has sent a communication dated 03.02.2017 seeking certain clarifications and called upon the petitioner to reply to the same within seven days from the date of receipt of the communication; otherwise would lead to disposal of the above application on merits without further intimation. The learned counsel appearing for the petitioner would further submit that though the fourth respondent communication is dated 03.02.2017, it was dispatched to the petitioner only on 18.02.2017 and immediately he submitted his response dated 22.02.2017 pointing out among other things that the said communication has been sent only to get over the interim order passed in W.P.No.4506 of 2017 and therefore, prays for deferring the said decision.

5. It is the further submission of the learned counsel appearing for the petitioner that admittedly the communication dated 03.02.2017 was sent by the fourth respondent only on 18.02.2017 and despite the petitioner's reply/response dated 22.02.2017, the impugned order dated 27.02.2017 came to be passed on the ground that the petitioner has not complied with the communication dated 03.02.2017 and as a consequence, his application is rejected. The learned counsel appearing for the petitioner would further submit that on account of delay on the part of the fourth respondent in dispatching the communication dated 03.02.2017, the petitioner is unable to respond/reply properly and he may be granted time to respond to the communication dated 03.02.2017 along with relevant documents with a further direction to the fourth respondent to dispose of the same in accordance with law within a stipulated time frame.

6. Per contra, Mr.V.C.Selvasekaran, learned Standing Counsel appearing for the respondents 2 to 4/Corporation of Chennai would submit that in the Ground Floor as well as the Terrace Floor, deviation is to the extent of 21 sq.meters and so far as outer projection is concerned, floors put up together, deviation is to the extent of 36 sq.meters and since the petitioner did

not respond to the communication dated 03.02.2017, his application for revised plan approval has been rightly rejected and prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. A perusal of the typed set of documents would disclose that the communication of the fourth respondent dated 03.02.2017 was dispatched to the petitioner only on 18.02.2017 and on receipt of the same, the petitioner immediately sent his reply dated 22.02.2017 pointing out about the pendency of W.P.No.4506 of 2017 and within five days thereafter, the impugned communication has been sent. It is to be pointed out at this juncture that on account of the belated receipt of the communication of the fourth respondent dated 03.02.2017, the petitioner did not have sufficient time to respond to certain clarifications sought for with regard to revised plan approval and as such, he may be afforded one more opportunity to respond to the said communication of the fourth respondent dated 03.02.2017 with a further direction to the fourth respondent to pass orders in accordance with law.

9. In the result, this Writ Petition is partly allowed and the impugned notice issued by the fourth respondent vide W.D.C.NO.T.P.PPA/WDC07/00582/2017 dated 27.02.2017 is set aside. The petitioner is directed to reply/respond to the communication of the fourth respondent dated 03.02.2017 along with relevant documents within a period of two weeks from the date of receipt of a copy of this order and the fourth respondent, upon receipt of the same, is directed to consider the same on merits and pass orders in accordance with law within a period of four weeks thereafter and communicate the decision taken, to the petitioner as well as the fifth respondent. No costs. Consequently, connected miscellaneous petition is closed.

List on 09.10.2017 for "Reporting Compliance".

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Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

jvm

To

1. The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai-9.
2. The Commissioner,
Chennai Corporation,
Rippon Buildings,
Poonthamallee High Road, Chennai.
3. The Regional Joint Commissioner/ Deputy Commissioner,
Corporation of Chennai,
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No.12B, Pulla Avenue, TVK Street, m
Shenoy Nagar, Chennai-30.
4. The Executive Engineer,
Zone-VII (Ambattur),
Greater Chennai Corporation, Chennai-53.
5. The Section Officer,
Writ Section,
High Court, Madras.

+1cc to Mr.L.Vijay Anand, Advocate Sr. 62944

W.P.No.7528 of 2017
WMP.No.8216 of 2017

MSM(CO)
VR(18/09/2017)

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