

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8544 of 2017

K.Gopu @ Gopal

.. Petitioner

Vs.

- 1 The Commissioner Corporation
Chennai Corporation
Ribbon Building
Chennai - 600 003.
- 2 The Executive Engineer
Town Planning Section Work Department
Adayar Zone, No.115
Dr.Muthulakshmi Salai
Chennai - 600 020.
- 3 The Executive Engineer
Zone -XIII, Adayar Zone, No.115
Dr.Muthulakshmi Salai
Chennai - 600 020.
- 4 The Assistant Executive Engineer
Zone -XIII, Adayar Zone, No.115
Dr.Muthulakshmi Salai
Chennai - 600 020.
- 5 The Assistant Engineer
Zone -XIII, Adayar Zone, No.115
Dr.Muthulakshmi Salai
Chennai - 600 020.
- 6 G.Kuppan
- 7 G.Gajendran

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records on the file of respondents 4 and 5 in their proceedings Letter No.27/DN173/2014, dated Nil,

signed on 08.03.2017 and quash the same as illegal and unlawful and consequently direct the 1st respondent to dispose the appeal filed by the petitioner dated 02.03.2017 for granting planning permission to the petitioner's property bearing Door No. Old No.9, New No.10/6, Appavu Gramani 2nd Street, R.K. Mutt Road, Chennai-28.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.A.Nagarajan S.C.
for respondents 1 to 5

ORDER

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

This writ petition has been filed calling in question an order dated 8.3.2017 bearing reference Letter No.27/DN173/2014 made by the fifth respondent before us (hereinafter "impugned order" for brevity and clarity).

2. The impugned order has been passed under Section 57 of the Tamil Nadu Town and Country Planning Act, 1971, inter alia calling upon the petitioner to restore land to its original condition.

3. It is brought to our notice that the writ petitioner earlier approached this Court by way of a writ petition, being W.P.No.19907 of 2014, wherein vide order dated 6.10.2016, inter alia, the writ petitioner was permitted to approach the authorities concerned for getting planning permission for civil construction which is subject matter of this writ petition. Besides, it was also held in the earlier order of this Court that if the petitioner does not succeed in getting permission at the first instance, it would be open to the petitioner to seek remedy as may be available to him in law against the same and the issue of restoring the property to original condition will arise if the petitioner does not succeed in the appeal also.

4. The relevant sub-paragraph of the earlier order in this regard is sub-paragraph (iv) of paragraph (5) and we deem it appropriate to extract the same infra:

"5 (iv). If the plan is rejected, the petitioner would be entitled to seek such remedy as may be available in law against the same, but ultimately if the petitioner is not able to succeed, the petitioner will restore the property to its original position, failing which the Corporation can carry out the exercise at the cost of the petitioner."

5. In the instant case, the writ petitioner, on not being successful at the first instance, has preferred a statutory appeal under Section 234 of the Chennai City Corporation Act, 1919 (hereinafter "said Act" for clarity). The statutory Appellate Authority is the first respondent before us, i.e., the Commissioner of Corporation, Chennai. The statutory appeal under Section 234 of the said Act is dated 2.3.2017.

6. Pending such statutory appeal, the impugned order has been issued by the fifth respondent before us. Aggrieved, the writ petitioner has filed the instant writ petition calling in question the impugned order.

7. Mr.A.Nagarajan, learned Standing Counsel accepts notice on behalf of respondents 1 to 5 and admits that the aforementioned statutory appeal dated 2.3.2017 is pending before the first respondent, who is the statutory Appellate Authority.

8. Therefore, we have no hesitation in holding that the action of the fifth respondent in issuing the impugned notice militates against the above said paragraph 5(iv) of the order of this Court dated 6.10.2016 in W.P.No.19907 of 2014.

9. We, therefore, set aside the impugned order dated 8.3.2017 bearing reference Letter No.27/DN173/2014 passed by the fifth respondent. The respondent authorities will have to await the outcome of the appeal.

In the result, the writ petition is allowed. No costs. Consequently, W.M.P.No.9333 of 2017 is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To:

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+1cc to Mr.A. Nagarajan, Advocate, S.R.No.21359
+1cc to Mr.S. Venkatesh, Advocate, S.R.No.21417

SKS (CO)
EU 21.4.17

W.P.No.8544 of 2017

सत्यमेव जयते

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