

In the High Court of Judicature at Madras

Dated : 27.4.2017

Coram :

The Honourable Mr.Justice T.MATHIVANAN

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.9563 of 2017 & WMP.No.10508 of 2017

S.Gowrishankar

...Petitioner

Vs

- 1.The State of Tamil Nadu, rep.by
its Secretary to Government,
Housing & Urban Development
Department, Fort.St.George,
Chennai-9.
- 2.The Commissioner, Corporation
of Chennai, Ripon Buildings,
Chennai-3.
- 3.The Executive Engineer,
Enforcement Region Central,
Corporation of Chennai,
II Cross Street (East),
Shenoy Nagar, Chennai-30.
- 4.The Member Secretary, Chennai
Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai-8.

5.Seetha Subramanian

...Respondents

PETITION under Article 226 of The Constitution of India praying for the
issuance of a Writ of Certiorarified Mandamus to call for the records relating
to the impugned orders made in Z.O.VIII.C.No.23199/2016 dated

07.12.2016 and Notice No.ZONE-8/TPENF/704/2017 dated 10.4.2017 passed by the 3rd respondent and to quash the same and consequently to direct the respondents 2 and 3 to defer their action till the disposal of the Revision Petition dated 26.6.2016 pending on the file of the 1st respondent.

For Petitioner :	Mr.N.Manoharan
For Respondent-1 :	Ms.Vasudha Thiagarajan, AGP
For Respondents 2 & 3 :	Mr.R.Arunmozhi
For Respondent-4 :	Mr.C.Johnson

ORDER

(Order of the Court was made by T.MATHIVANAN,J)

In view of the limited nature of relief to be granted in this writ petition, this writ petition is taken up for final disposal without ordering notice to the fifth respondent.

2. Invoking Article 226 of The Constitution of India, the petitioner has filed this writ petition seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders made in Z.O.VIII.C.No.23199/2016 dated 07.12.2016 and Notice No.ZONE-8/TPENF/704/2017 dated 10.4.2017 passed by the third respondent and to quash the same and consequently to direct the respondents 2 and 3 to defer their action till the disposal of the Revision Petition dated 26.6.2016 pending on the file of the first respondent.

3. On a perusal of the affidavit filed in support of this petition, it is revealed that the petitioner had entered into a lease agreement dated

21.3.2016 with the fifth respondent herein and one Mr.K.S.P.Kasi represented by his power agent one Mr.K.Subramanian in respect of the property measuring 3,600 sq.ft bearing plot No.969 comprised in S.No.127 (Part), Villivakkam Village for the purpose of running a badminton court. According to the petitioner, he had agreed to pay a monthly rent of Rs.15,000/- subject to a condition to increase 5% of the rent every year for a period of five years. The petitioner also paid a sum of Rs.3 lakhs towards security deposit to the lessor.

4. It has been further stated in the affidavit that the petitioner had made improvements in the said property for the purpose of using it as a badminton court and created a temporary structure with tin sheets to cover the indoor area. According to the petitioner, on the health point of view, nobody had raised any objection for establishing the badminton court in plot No.969 and he had invested around Rs.50 lakhs and also conducted the opening ceremony in a grand manner on 06.6.2016. Pursuant to that, many clients had come and registered their names either for themselves or for their children. Accordingly, the subject matter of the property has been converted into a badminton court with the consent of all the residents.

5. When the matter stood thus, on 26.5.2016, the third respondent had served a stop work notice dated 25.5.2016 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, alleging that the third respondent had come to know about the unauthorized structure at the time of his inspection on 20.5.2016. When the petitioner had approached the third

respondent, he was informed that there was no legal impediment to run the badminton court and that the notice was issued only for the record purpose.

6. According to the petitioner, no inspection was conducted on 20.5.2016 as stated in the stop work notice dated 25.5.2016. However, within 10 days, the third respondent had issued the locking and sealing and demolition notice dated 08.6.2016, alleging that the petitioner had erected a temporary structure to an extent of 2,800 sq.meter and therefore, he was called upon to remove the unauthorized structure within 30 days from the date of receipt of the said notice. The third respondent had also threatened to lock and seal the structure in exercise of the power conferred under Section 56(2A) of the said Act.

7. It appears that against the notice issued by the third respondent dated 08.6.2016, earlier, the petitioner had filed a writ petition in W.P.No. 23199 of 2016 and this petition was disposed of on 05.7.2016 with the following directions :

"The grievance of the petitioner is that he was informed by the Authorities that no approval is necessary for a temporary construction and hence, he did not apply for the same.

Admittedly, the writ petitioner has preferred a revision petition under Section 80(A) of the said Act on 26.6.2016 and also filed application seeking planning permission. Therefore, the respondent - Authorities are directed to hear the petitioner as well as the fifth respondent by issuing notice to them and thereafter pass necessary orders on

merits and in accordance with law within a period of two months from the date of receipt of a copy of this order. Till then, status quo shall be maintained. The writ petition is disposed of. "

8. The petitioner has also stated that after receipt of the order made in the said writ petition, the third respondent had sent a communication dated 23.9.2016 directing the petitioner to appear before him on 30.9.2016. The petitioner had also appeared on 30.9.2016. While so, the petitioner was asked to produce the documents along with a statement in writing on or before 07.10.2016. Therefore, on 06.10.2016, the petitioner had sent a representation to the third respondent informing about the pendency of the revision petition dated 26.6.2016 before the first respondent and an application dated 27.6.2016 for planning permission before the fourth respondent. However, the third respondent had simply rejected his representation by informing him that action would be taken in due course to remove the unauthorized structure as per proceedings dated 07.12.2016. The rejection of representation by the third respondent had made the petitioner to come before this Court.

9. It appears that a revision petition dated 26.6.2016 is pending before the first respondent.

10. The learned counsel for the petitioner submits that originally, the revision petition was wrongly addressed to the third respondent and now, after realizing the mistake, the revision petition dated 21.4.2017 was sent to

the first respondent.

11. Though several larger reliefs have been sought for by the petitioner, the learned counsel for the petitioner has restricted his claim to direct the first respondent to consider the revision petition filed by the petitioner dated 21.4.2017 and dispose of the same as expeditiously as possible.

12. Having considered the submissions of the learned counsel on either side and in view of the pendency of the revision petition before the first respondent, without expressing any opinion on the merits, we dispose the writ petition with a direction to the first respondent to consider the review petition dated 21.4.2017 filed under Section 80(A) of the said Act and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. We also make it clear that until orders are passed by the first respondent, both parties are directed to maintain status quo as on date. No costs. Consequently, the above WMP is closed.

27.4.2017

RS

T.MATHIVANAN,J
AND
S.M.SUBRAMANIAM,J

RS

Internet : Yes

To

- 1.The Secretary to Government of Tamil Nadu, Housing & Urban Development Department, Fort.St.George, Chennai-9.
- 2.The Commissioner, Corporation of Chennai, Ripon Buildings, Chennai-3.
- 3.The Executive Engineer, Enforcement Region Central, Corporation of Chennai, II Cross Street (East), Shenoy Nagar, Chennai-30.
- 4.The Member Secretary, Chennai Metropolitan Development Authority, No.1, Gandhi Irwin Road, Egmore, Chennai-8.

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