

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.8676 of 2017
and W.M.P.No.9509 of 2017

R.Arumugam ... Petitioner

-vs-

1.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003.

2.Executive Engineer
Zone-XVIII, Greater Chennai
Corporation, Adayar,
Chennai 600 020.

3.Assistant Executive Engineer,
Unit-40, Greater Chennai
Corporation, Adayar,
Chennai 600 020.

4.Assistant Engineer,
Division No.173, Greater Chennai
Corporation, Adayar,
Chennai 600 020.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the entire records relating to the impugned notice dated 28.02.2017 made in notice No.140/2015 of the 2nd respondent and quash the same.

For Petitioner : Mr.V.Sivalinkam

For Respondents : Mr.V.C.Selvasekaran
Standing Counsel for Corporation.

O R D E R

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

This writ petition has been filed, calling in question a de-occupation notice issued under Sub-Section 2(A) of Section 56 and Section 57 read with Section 85 of the Town and Country Planning Act, 1971 (hereinafter referred to as 'the said Act' for the sake of brevity).

2.It is the case of the writ petitioner that the entire extent of land is only 390 sq.ft. (40 sq. meters) and therefore, does not need plan sanction or approval.

3.With the above complaint, the writ petitioner filed an earlier writ petition in this Court being W.P.No.22013 of 2015. That writ petition came to be disposed of by a Division Bench of this Court by an order dated 22.07.2015. The relevant part of the order is paragraph 5 and we deem it necessary to usefully extract the same infra. It reads as follows:

'5.We have examined the notice and also the earlier notices sent by the authority. We are of the considered view that the notices are just and proper and in accordance with law and as such, no interference is warranted. The petitioner is given thirty days time to produce the sanctioned plan. Accordingly, the petitioner is at liberty to produce the sanctioned plan and also to make the representation, putting forward his case, explaining that there is no unauthorized construction, if so advised, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents are at liberty to take consequential action, as per law, within a period of two weeks.'

4.Purusant to the above said order of the Division Bench of this Court, the writ petitioner has sent a representation dated 31.08.2015 to respondents 1 and 2.

5.Mr.V.C.Selvasekaran, learned Standing Counsel for Chennai Corporation, accepts notice on behalf of all the four respondents in the writ petition.

6.Learned standing counsel for the Corporation would submit that in cases of this nature, the person concerned should apply for an exemption, whereas, in the instant case, the writ petitioner has chosen to send a representation.

7.It is now submitted by the learned standing counsel for the Corporation that the representation dated 31.08.2015 (at page 5 of the typed set of papers) sent to respondents 1 and 2 will be treated as an application for exemption and that a decision on whether or not to grant exemption will be taken by the second respondent before us, namely, The Executive Engineer, Zone XVIII.

8.Though obvious, we make it clear that the decision regarding exemption shall be taken, after causing an inspection to be made. If the petitioner is entitled to exemption of the same, his request shall be acceded to. If not so, it is open to the respondents to proceed against the writ petitioner's construction in accordance with law. This exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

9.With the above directions, this writ petition is disposed of. No costs. Consequently, W.M.P.No.9509 of 2017 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sra
To

1.The Commissioner,
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+lcc to Mr.V.Sivalinkam, Advocate Sr.21766

W.P.No.8676 of 2017

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srg 24/04/2017



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