

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.9947 of 2017
and WMP.No.10940 and 10941 of 2017

L.Ameer

.. Petitioner

vs.

1. The Member Secretary,
Chennai Metropolitan Development
Authority [CMDA],
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

2. The Commissioner of Corporation,
Greater Chennai Corporation,
Ripon Building, Chennai-600 003.

3. The Executive Engineer,
Zone -XII (Alandur),
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai-600 016.

4. T.Abbas

.. 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 entire records pertaining to the impugned Notice No.01/2016 dated 20.03.2017 issued by the third respondent under Sections 56 and 57 read with Section 85 of the Town and Country Planning Act, 1971, requiring demolition of the construction put up unauthorisedly without planning permission required under Section 49 of the said Act and quash the same and for Mandamus directing the respondents to verify whether the building was built up on or before 29.5.1999 and pass appropriate order on the regularization application dated 14.12.2016 as directed by this Court in W.P.No.2010/2010 on 14.11.2016.

For Petitioner : Mr.P.Thiagarajan

For Respondents: Mr.C.Johnson for R1

Mr.V.C.Selvasekaran for R2 and R3

O R D E R

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

The petitioner makes a challenge to the impugned notice dated 20.03.2017 issued by the third respondent requiring demolition of the unauthorized construction and further verification as to whether the superstructure was put up on or before 29.05.1999 and also to pass orders on the regularization application dated 14.12.2016, as directed by this Court dated 14.11.2016 made in W.P.No.2010 of 2010.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver that he originally owned an extent of 20928 sq.ft. of land in T.S.No.122/4, comprised in S.No.20/1, Block No.1, Ward No.E, situated at No.136, New No.107, Thiruvalluvar Nagar, Adambakkam Village, Alandur Taluk, Kancheepuram District and a settlement joint patta in TA.PA/1/CE/Saidapet dated 09.09.1993 was also issued by the Settlement Officer, Tiruvannamalai to the petitioner herein. The petitioner would further aver that he along with five daughters and two sons had executed Settlement Deed having lands admeasuring an extent of 19833 Sq.Ft. in favour of a Society called Shabab II - Ediz-Zahabi on 22.12.1997 and the sale deed was registered in the name of the Secretary of the Society, namely T.Abbas. It is further stated by the petitioner that on such purchase, the Society had put up superstructure consisting of four dwelling units in the year 1997, in the above said survey numbers and certain clarifications was also sought for with regard to the planning permission and in the interregnum, the construction was completed and however, the superstructure was assessed to statutory levies and an application was also filed seeking for regularization of unauthorized construction.

3. The petitioner would further aver that in the light of unauthorized construction put up without any planning permission, the first respondent/Chennai Metropolitan Development Authority [CMDA] had issued a notice dated 11.09.1998 to set right the offending construction and a reply was also submitted to the CMDA as well as the local body, namely Alandur Municipality on 10.10.1998 stating pendency of the regularization application and however, the first respondent once again issued a notice dated 01.12.1998 under Section 56 read with 85 of the Tamil Nadu Town and Country Planning Act, 1971 [in short "TCP Act"] seeking demolition of unauthorised construction and pending adjudication, the Tamil Nadu Government had framed rules, namely Tamil Nadu Municipal Corporation (Regularization of Unauthorized and Deviated Development and Construction of Building) Rules, 2002 and also Assessment and Collection of Regularization Fees (Chennai Metropolitan Area) Rules, 1999.

4. The petitioner would also aver that electricity connection was also given to the premises and challenge was

made to the demolition notice by filing W.P.No.2010 of 2010 and in the said petition, it was contended that the construction was completed much prior to 28.02.1999 and in the light of the regularization rules referred to supra, the application submitted by T.Abbas for regularization of unauthorized construction ought to have been considered positively and this Court, disposed of the said writ petition, vide order dated 14.11.2016, directing the authority to consider and dispose of the application for regularization within a stipulated time. The petitioner has also submitted the application along with documents for regularization of unauthorized construction and some clarifications were sought for and all the required documents were also furnished and pending consideration of the application, the impugned notice dated 20.03.2017 came to be passed directing Mr.T.Abbas to restore the building to its condition before the said construction took place within 30 days from the date of receipt of the notice, failing which action will be taken under Sections 56 and 57 of the TCP Act to lock and seal the premises and challenging the same, the petitioner came forward with this writ petition.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that Mr.T.Abbas, owner of the premises, through his Power Agent has submitted the application dated 14.12.2016, praying for regularization of unauthorized construction by enclosing relevant documents and certain particulars were sought for and it was furnished to the third respondent on 03.02.2017 and in the interregnum, dispute arose between the petitioner and Mr.T.Abbas and the petitioner has also filed a Suit in O.S.No.63 of 2017 on the file of the Sub-Court, Tambaram against Mr.T.Abbas and his Society, praying for relief of Specific Performance of the agreement of sale dated 10.02.2012 and other consequential reliefs and the said Suit is still pending. The learned counsel appearing for the petitioner has also drawn the attention of this court to Section 2(29) of the TCP Act and would submit that as per the said Section "owner" includes the person for the time being receiving or entitled to receive, whether on his own account or as agent.....the rent or profits of the property in connection with which the word is used" and further drawn the attention of this Court to Section 2(28) of the TCP Act which defines occupier and admittedly, the petitioner is in occupation of the premises and therefore, he is entitled to pursue the application submitted by Mr.T.Abbas for regularization of unauthorized construction and would further add that in the event of locking and sealing of premises, the petitioner would be put to grave hardship and irreparable loss and prays for appropriate orders.

6. Per contra, Mr.V.C.Selvasekaran, learned Standing Counsel appearing for the respondents 2 and 3 would submit

that in compliance of the order passed in W.P.No.2010 of 2010, the third respondent has considered the application submitted by Mr.T.Abbas for regularization in detail and despite reminders, the Power Agent did not produce the original copies of the documents and also conducted personal enquiry and during personal enquiry, Mr.T.Abbas stated that he has not appointed any Power Agent in respect of the above said property and in the light of the fact that the Power Agent has not produced any document to prove that he is the Power Agent, rejected the application for regularization of unauthorized construction, submitted by Mr.T.Abbas, vide proceedings dated 17.03.2017 in Z.O.XII/Dn.162/C.No.000634/2017 and it is open to Mr.T.Abbas to pursue his remedy by challenging the proceedings dated 17.03.2017 and prays for dismissal of the writ petition. The said proceedings of the third respondent dated 17.03.2017 is taken on file and recorded.

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

8. The petitioner, in effect, would like to pursue the application submitted by Mr.T.Abbas and in the considered opinion of this Court, he cannot do so for the reason that it is for the owner alone to do so. The learned counsel appearing for the petitioner made a valiant attempt by submitting that since the petitioner is the occupier of the premises in question, he is also entitled to pursue the said application and also in the light of the civil proceedings between him and Mr.T.Abbas, he is entitled to pursue the application submitted by Mr.T.Abbas. However, this Court is of the view that the said submission lacks merit for the reason that the petitioner, being the occupier, he is entitled to pursue his remedy in respect of action taken under Sections 56 and 57 of the TCP Act against the said proceedings in accordance with law.

9. The fact remains that the application submitted for regularization was also rejected by the third respondent, vide proceedings/communication dated 17.03.2017 and as such, it is for the fourth respondent, namely Mr.T.Abbas to work out his remedy by challenging the said proceedings before the competent forum.

10. It is also brought to the knowledge of this Court that the petitioner made a challenge to the Lock and Seal Notice and it is always open to him to pursue his remedy under law and also in respect of de-occupation notice issued by the third respondent. This Court is of the considered view that the points urged by the learned counsel appearing for the petitioner lacks merit and substance.

11. In the result, this Writ Petition is dismissed with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

jvm

To

1. The Member Secretary,
Chennai Metropolitan Development
Authority [CMDA],
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

2. The Commissioner of Corporation,
Greater Chennai Corporation,
Ripon Building, Chennai-600 003.

3. The Executive Engineer,
Zone -XII (Alandur),
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai-600 016.

+1 CC to Mr.C. Johnson, Advocate sr 46380

+1 CC to Mr.P. Thiagarajan, Advocate sr 47315

सत्यमेव जयते W.P.No.9947 of 2017

SP (25/07/2017)

WEB COPY