

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.No.20801/2017 & WMP.No.21648/2017

K.M.Kannappan

...

Petitioner

VS

1.The Principal Secretary to Government
Housing and Urban Development Department
Secretariat, Chennai 600 009.

2.The Commissioner
Corporation of Chennai,
Rippon Buildings, Chenna 600 003.

3.The Assistant Commissioner
Zonal Officer-IX, Greater Chennai Corporation
No.1, Lake Area, 4th Cross Street

4.The Executive Engineer
TP Enforcement-Region Central
Corporation of Chennai, 2nd Cross Street
[East], Pulla Avenue, Shenoy Nagar
Chennai 600 030.

5.The Tahsildar
Egmore, Nungambakkam Taluk, Chennai.

6.M.Ashraf

...

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to conduct the demovo enquiry by giving adequate opportunity to the petitioner to participate in the enquiry with regard to gross violation of the planning permissible at No.7/4, Gulam Abbas Alikhan 1st Lane, Thousand Lights, Chennai 600006 made by the 6th respondent to furnish a copy of the order passed by the 1st respondent on the revision petition filed by the 6th respondent consequently directing the respondents to initiate actions against the wrong doers under the Development Control Rules or according to the appropriate laws available.

For Petitioner : Mr.K.Shahul Hameed
 For R1 & R5 : Mr.A.N.Thambidurai, Spl.GP
 For RR2 to 4 : Mr.V.C.Selvasekaran
 For R6 : Mr.T.Velumani

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal.

2 The petitioner claims that he is the owner and in occupation of the property bearing Door No.6, New No.3, Gulam Abbas Ali Khan 1st Lane, Thousand Lights, Chennai-6 and it was purchased by him through a registered Sale Deed bearing Doc.No.241/1977 dated 19.01.1977 registered on the file of the office of the Sub Registrar, T.Nagar and he would further claim that he is in uninterrupted possession and enjoyment of the said property. It is the specific case of the petitioner that a

common pathway is made available on the Eastern side of the said property in order to have free access and he is in full enjoyment of the said pathway right from the date of purchase of the property. However, the 6th respondent made a rival claim and started putting up a construction on the pathway and as a consequence, the free access to the petitioner's property has been denied and in this regard, the petitioner has submitted numerous representations and when action was taken, the 6th respondent has filed a special revision u/s.80-A of the Town and Country Planning Act, 1971, before the 1st respondent and since it was not given disposal, the 6th respondent filed WP.No.28046/2016 before this Court, praying for early disposal of the said revision/appeal and this Court, vide order dated 11.08.2016, has disposed of the said writ petition, by directing the said official to dispose of the appeal/revision within a period of three months from the date of receipt of a copy of that order after affording an opportunity to the petitioner therein/6th respondent herein and till a decision is taken, directed the respondents therein not to take any coercive steps against him.

3 The learned counsel for the petitioner would submit that in compliance of the said order, the special revision / appeal filed by the 6th

respondent has been given a disposal vide order dated 23.02.2017, in and by which, the 6th respondent was granted time to carry out the modification to the building in question subject to furnishing of an undertaking to the Greater Chennai Corporation to the effect that during the period of modification, the premises shall not be use for occupational purposes. It is the submission of the learned counsel for the petitioner that though the said period got expired during August 2017 itself, the 6th respondent is yet to carry out the modification and therefore, it is open to the officials of the Corporation of Chennai to go for demolition of the offending construction and prays for appropriate orders.

4 The writ petition was entertained on 07.08.2017 and taking into consideration the submissions made by the learned counsel for the 6th respondent and also noting the fact that the time limit to carry out the modification got expired on August 2017, this Court granted a further time to the learned counsel for the 6th respondent to get further instructions as to the latest position.

5 When the matter is listed today, the learned counsel for the 6th respondent would submit that the review application has been filed to

review the order of the 1st respondent dated 23.02.2017 and once again, prays for time to get further instructions.

6 The learned standing counsel appearing for the respondents 2 to 4 would submit that since the time limit granted by the 1st respondent has expired, they are at liberty to proceed further in accordance with law with regard to the offending construction put up by the 6th respondent.

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

8 The 6th respondent was shown indulgence by the 1st respondent by granting six months time to carry out the modification and though the said period expired during August 2017, it appears that the modification is yet to be done / to be fully complied with. It is the submission of the learned counsel for the 6th respondent that the 6th respondent has filed a review petition to review the order of the 1st respondent dated 23.02.2017 in and by which, the 6th respondent was granted six months time to carry out the modification. It is relevant to extract section 81 of the Town and Country Planning Act, 1971:-

“81. Review.- (1) *The appellant or the applicant for revision or the respondent may apply for the review of any order passed under sections 76 to 78 and 80, on the basis of the discovery of new and important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made, or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason:*

Provided *that no application for review shall be presented more than once in respect of the same order.*

(2) *Every application for review shall be presented within such time and in such manner as may be prescribed.*

(3) *The decision or order passed on the application for review shall be final.*

(4) *The authority competent to pass orders on the application for review may pass such interlocutory orders pending the decision on the application for review as it may deem fit.*

(5) *The authority referred to in sub-section (4) may award costs in proceedings under this section to be paid either out of the Fund Account or by such party to the application for review as it may deem fit.”*

9 In the light of the above facts and circumstances, no purpose would be served / achieved by keeping the writ petition pending.

10 In the result, the writ petition is disposed of and it is open to the respondents 3 and 4 to proceed further in accordance with law, with regard to the offending/deviated construction put up by the 6th respondent and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is also open to the 6th respondent to pursue the review application filed u/s.81 of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent. No costs. Consequently, the connected miscellaneous petition is closed.

(M.S.N.J.,) (N.S.S.J.,)
22.11.2017

Internet : Yes

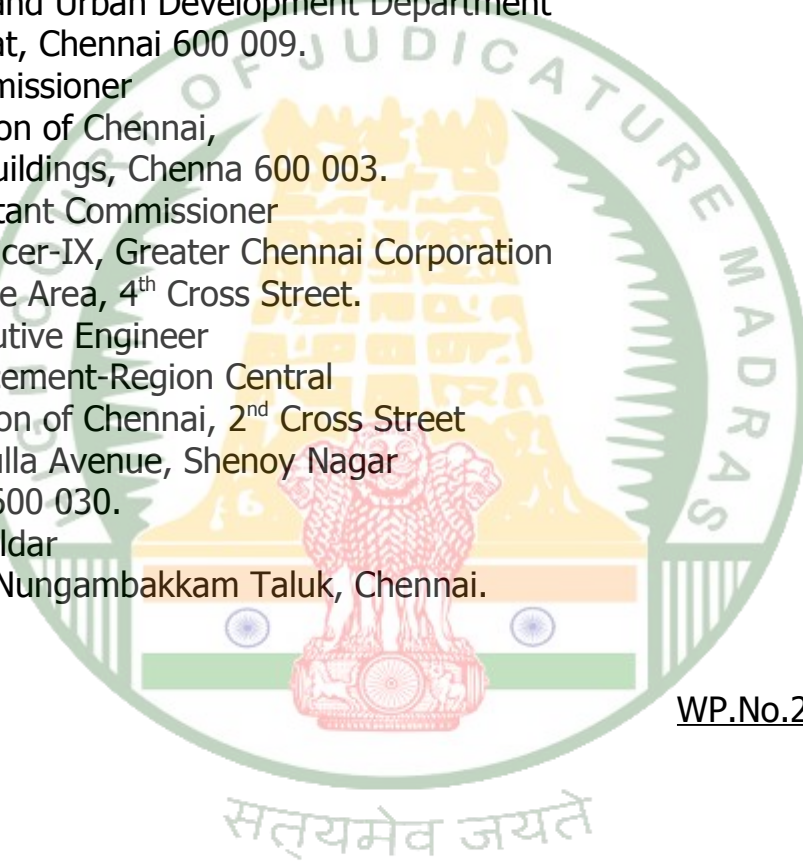
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M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,
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To

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