

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.22010 of 2017
W.M.P.No.23066 of 2017

S.Mohan Raj

...Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. By its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 9
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
3. Executive Engineer,
TP Enforcement,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai 600 030
4. Assistant Executive Engineer Enforcement,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

5. Assistant Executive Engineer,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

6. Assistant Engineer,
Corporation of Chennai,
Regional Office - Central,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030

Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari Mandamus to call for the records relating to proceedings of the sixth respondent bearing No.97/Ko.95/Ma.8/2017 dated 03.08.2017 by the sixth respondent and quash the same as illegal, arbitrary and contrary to scope of guidelines provided under G.O.Ms.No.110 and 111, Housing and Urban Development [UD4(3)] dated 22.06.2017 conferring right of regularization to the petitioner with the consequential direction to the first respondent to dispose of the Revision petition filed under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr. Haja Nazirudeen, Senior Counsel
Assisted by Mr. P. Haribabu

For Respondents : Mr. R. Vijayakumar
Additional Government Pleader for R1
Mr. A. Nagarajan for R2 to R6

ORDER

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

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

2 Mr. R. Vijaya Kumar, learned Additional Government Pleader accepts notice on behalf of 1st respondent and Mr. A. Nagarajan, learned standing counsel accepts notice on behalf of respondents 2 to 6.

3 The petitioner in the affidavit filed in support of this writ petition, would aver among other things that the land and building bearing Door No. 2(1) New Avadi Road, Villivakkam

(High Court Colony), Chennai 600 049 comprised in Old Survey No.237.1A5 (part) bearing present T.S.No.90, Block No.21, Perambalur Taluk, admeasuring to an extent of 2760 Sq.ft., was purchased through a registered Sale Deed bearing document No.236 dated 30.01.2003.

4. It is further averred by the petitioner that the superstructure exist on the said land, was constructed about 30 years back and the petitioner applied for demolition of old building and construction of new building and it was also approved vide order bearing No.D5/4054/2003 and the approval plan was received vide Plan approval No.D5/3672/2003 and building permit No.05/45054/2003.

5. The petitioner would state that after 14 years, he was issued with a notice dated 29.03.2016 by the 3rd respondent calling upon to produce the approval plan and it was followed by locking and seal and demolition notice dated 13.03.2017. The petitioner would further state that challenging the notice dated 13.03.2017, the petitioner filed a Revision petition under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the 1st respondent and the same is pending and despite the pendency of the same, he has been issued with de-occupation notice dated 24.07.2017.

6. The petitioner would further aver that after receipt of the de-occupation notice dated 24.07.2017, he submitted a representation dated 31.07.2017 to the respondents 3 , 5 and 6 praying for deferment of further proceedings till the disposal of the Special Revision Petition and without taking cognizance of the same, the 6th respondent has issued impugned notice dated 03.08.2017 informing about the further action and challenging the legality of the same the petitioner is constrained to approach this Court by filing this writ petition.

7. Mr.Haja Nazirudeen, learned Senior Counsel assisted by Mr.P.Haribabu, learned counsel appearing for the petitioner would submit that the unauthorized construction is having only a minor deviation and in the light of amendment under section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, coupled with G.O.Ms.Nos.110 and 111 of the 1st respondent Department dated 22.06.2017, the petitioner is entitled to apply for regularization and therefore prays for appropriate orders.

8. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent would submit that either in the revision or in the writ petition, the petitioner has not substantially stated about the extent of deviation and also would submit that the petitioner has not submitted any application for regularization in terms of the above said deviation. Admittedly, he has not filed any petition

for interim orders under section 80 A(iii) of the Tamil Nadu Town and Country Planning Act, 1971, and as such, prays for dismissal of the writ petition.

9. Mr.A.Nagarajan, learned standing counsel appearing for respondents 2 to 6 would submit that in the absence of interim orders pending disposal of the revision petition before the 1st respondent, it is open to the 6th respondent to proceed further and prays for dismissal of the suit.

10. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

11. As rightly pointed out by the learned standing counsel appearing for the respondents 2 to 6 that the 3rd respondent took a stand that petitioner neither in the writ petition nor in the said revision petition, has not stated about the deviation and however, it is useful to extract the nature of deviation pointed out by the 3rd respondent in the locking, sealing and demolition notice dated 14.03.2017.

Sl.No.	Description	As per plan	As per site	Deviation
1.	Basement	76.99m ²	165.50m ²	88.59m ²
2.	Ground Floor	99.45m ²	165.58m ²	66.13m ²
3.	First Floor	116.17m ²	165.58m ²	48.88m ²
4.	Second Floor as per plan		165.58m ²	165.58m ²
			Total	369.18m ²

12. It is the submission of the learned counsel for the petitioner that the premises in question is let out in favour of Bank and three other parties and in that event, if any further proceedings take place, they may also be put on notice and prays for some accommodation so as to enable the petitioner to move the 1st respondent for interim orders.

13. This Court in the light of the above facts and circumstances of this case and without going in to the merits of the claim projected by the petitioner neither in the revision petition nor in the writ petition, permits the petitioner to approach the 1st respondent by way of submitting an application seeking interim orders under Section 80-A[iii] of Tamil Nadu Town and Country Planning Act, 1971 and upon receipt of the same, the said official is at option, either to take up the petition for stay and give a disposal within a period of two weeks from the date of receipt of a copy of this order or the main revision itself and give a disposal within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till the

filing of the petition for stay within the time stipulated, the 6th respondent shall defer further proceedings in terms of the impugned notice dated 03.08.2017 and till the disposal of the revision petition, the petitioner shall not create any third party right in respect of the property in question and shall not alter the physical features of the building also.

14. The writ petition stands disposed of subject to the above observations and direction. No costs. Consequently, the Connected Miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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The Government of Tamil Nadu,
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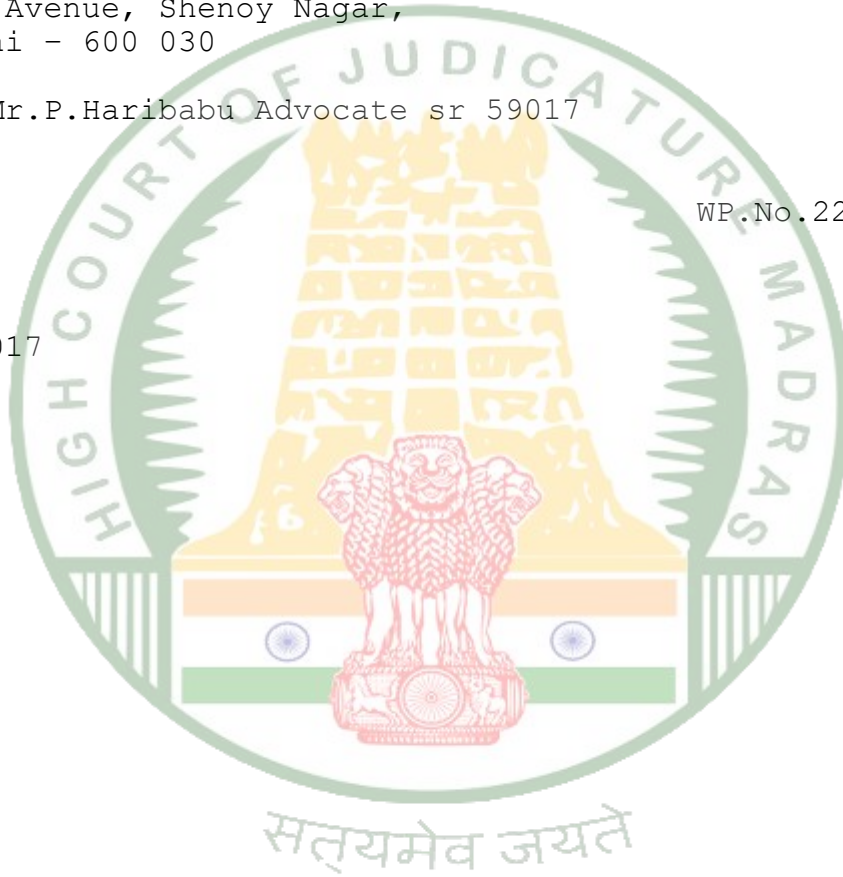
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+1 cc to Mr.P.Haribabu Advocate sr 59017

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