

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.12566 of 2017

Dr.S.Arunkumar ... Petitioner

vs.

1.The Commissioner,
Corporation of Greater Chennai,
Rippon Buildings,
Part Town, Chennai.

2.The Chairman cum Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
Pumping Station Road, Chindadripet,
Chennai-600 002.

3.P.G.Srinivasalu

4.A.M.Vikramaraja

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to remove the encroachments by demolishing the concrete area put up by the 4th respondent in the common areas of MIG Block No.11, P.T.Rajan Salai, K.K.Nagar, Chennai-600 078 and by restoring the sewer inspection chamber and all other sewer chambers in and around MIG Block No.11 situated on P.T.Rajan Salai, K.K.Nagar, Chennai-600079, to its original condition by making it visible for carrying out repair and renovation work by Chennai Metropolitan Water Supply and Sewerage Board.

For Petitioner : Mr.B.Harikrishnan
For Respondents : Mr.A.Nagarajan for R1
Mr.M.Jothikumar for R2

O R D E R

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

By consent, this Writ Petition is taken up for final disposal. It appears that private notice to the third respondent returned with an endorsement "Left" and as regards the fourth respondent, though his name appear in the cause list, there is no representation on his behalf.

2. The petitioner would aver that the building complex in Block No.11, M.I.G. Block, P.T.Rajan Salai, K.K.Nagar, Chennai-600078, admeasuring to an extent of 6800 sq.ft., comprises of a building complex having ground plus one floor, in which 4 residential flats, two in the ground floor and two in the first floor are located, each having a built-up space of 876 sq.ft. Originally, the Tamil Nadu Housing Board allotted four flats in the said complex to four persons, after paying the entire cost of the building. According to the petitioner, sale deeds also contain restrictions which are spelt out in Schedule II, III, IV and V appended to the respective sale deeds. The grievance expressed by the petitioner is that he was earlier working in Cancer Insitute, Adyar, Chennai and after retirement, started practicing and he was running a clinic by converting his garage, which is situated adjacent to his flat No.11A and he has also applied for regularization to the Chennai Metropolitan Development Authority [CMDA] and the same is pending consideration. However, to his shock and surprise, the petitioner was issued with a Locking, Sealing and Demolition Notice dated 10.02.2017 by the first respondent/Corporation of Chennai and challenging the same, he filed W.P.No.5394 of 2017 and this Court, vide order dated 03.03.2017, has directed that till the disposal of the petitioner's application for regularization, no coercive steps shall be taken by the authorities concerned.

3. The petitioner would futher aver that the third respondent has entered into some kind of agreement with the fourth respondent, by which he has parted with possession and handed over the possession of Flat No.11-B in the ground floor to the fourth respondent and as a consequence, the fourth respondent has unauthorisedly constructed 2 shops on the eastern side without any sanction or approval and that apart, the fourth respondent had demolished the compound wall put up by the TNHB and also raised the common area situated on the eastern side and a portion on the northern side and in this process, the terminal sewer inspection chamber situated on the eastern side has been buried and completely made invisible and in the event of any drainage block, it cannot be set right as the access to the same has been completely blocked on account of the said offending

construction and though the said fact has been brought to the knowledge of the Corporation officials in the form of representation, no action has been taken so far.

4. The learned counsel appearing for the petitioner would submit that the petitioner along with another had filed O.S.No.2008 of 2017 on the file of the City Civil Court, Chennai against the respondents 3 and 4 and also against one Rangabashyam, praying for mandatory injunction restraining them from encroaching upon the common area and other consequential reliefs and he is also having the benefit of interim orders dated 19.04.2017 made in I.A.Nos.5410 and 5411 of 2017 in O.S.No.2008 of 2017 and as such, there cannot be any impediment on the part of the Corporation officials to remove the offending construction put up on the drainage/sewerage chamber.

5. The learned Standing Counsel appearing for the Corporation of Chennai has drawn the attention of this Court to the counter affidavit and additional counter affidavit of the Corporation of Chennai and would submit that property tax assessment in respect of Flat No.11-B stands in the name of the third respondent and the regularization application submitted by the petitioner was rejected, vide order dated 20.07.2017 and the premises under lock and seal from 31.07.2017.

6. In response to the same, the learned counsel appearing for the petitioner would submit that the order rejecting the petitioner's regularization application was put to challenge by filing a writ petition, wherein this Court directed the Government to consider and dispose of the Special Revision filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 and till the disposal of the same, directed the parties to maintain Status Quo.

7. The second respondent has filed a Report dated 15.11.2017 and it is relevant to extract paras 4, 5 and 6 of the said report:

"4. It is submitted that on 01.02.2017, Dr.Arun Kumar, one of the owner of the above flat, has made a complaint of sewer block in the above premises. The same was inspected and found that terminal chamber was covered with concrete flooring and not visible, hence could not open the terminal chamber cover. However, inside chambers were checked and there was no sewer obstruction. As per CMWSS Act 1978, Sec.59(i), the occupants of the apartment were informed view letter dated 03.02.2017 that the inspection chamber should be put into visible condition and easily openable position so as to enable Chennai Metropolitan Water

Supply and Sewerage Board to clear the obstructions.

5. It is submitted that on 20.02.2017, three flat owners among four flats in the premises have made a complaint stating that the 4th respondent Thiru A.M.Vikramaraja is the lessee of one the owner Thiru P.G.Srinivasalu (Flat No.11B) had sealed the terminal inspection chamber. It is submitted that the 4th respondent has encroached the common area and raised the floor and also sealed the terminal sewer inspection chamber in the North East Portion with cement concrete flooring. It was informed to them that the terminal chambers and other chambers inside the premises should be made visible to attend any sewer block. Upon inspection, there was no sewer block at present.

6. It is submitted that the inspection chambers should be in an accessible position and should be in an easily openable position as per Clause 59(i) of CMWSS Act, 1978."

8. It is also the specific case of the petitioner that the fourth respondent has put up some offending construction/unauthorized construction and it appears that with regard to the same, no inspection has been carried out so far for the construction put up on the drainage/sewer chamber. In the light of the stand taken by the second respondent, no further orders are necessary.

9. In the result, this Writ Petition is disposed of and the Zonal Officer-X, Greater Chennai Corporation shall cause inspection of the construction put up by the fourth respondent as to whether it is in accordance with the sanctioned plan/deviated construction and depending upon the same, shall take further action in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as the respondents 3 and 4. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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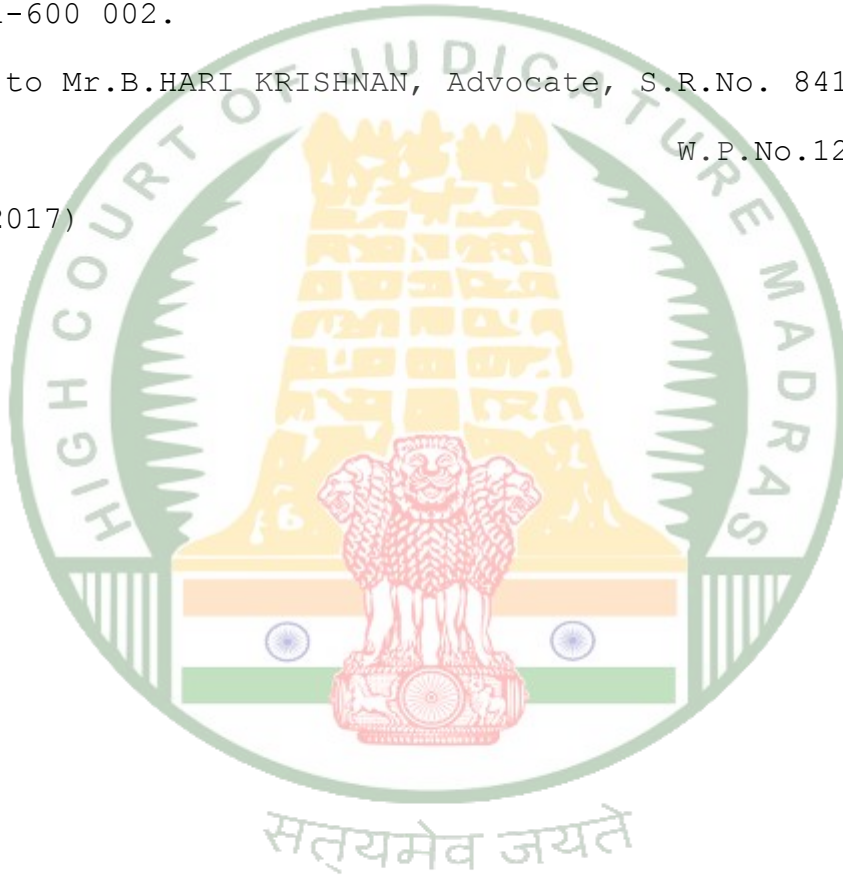
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+1cc to Mr.B.HARI KRISHNAN, Advocate, S.R.No. 84120

W.P.No.12566 of 2017

TR(13/12/2017)



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