

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WP.Nos.23456 & 23457/2017
& WMP.Nos.24629 & 24630/2017

R.Sathish Mohan .. Petitioner in
WP.No.23456/2017

U.Shyam Mohan .. Petitioner in
WP.No.23457/2017

Versus

1.The Commissioner
Greater Chennai Corporation
Rippon Building, Chennai-1.

2.The Executive Engineer,
Corporation of Chennai,
O/o.The Regional Deputy Commissioner
[North], Zone-5, Basin Bridge Road
Chennai 600 021.

3.The Assistant Executive Engineer,
Corporation of Chennai, Unit -3
Zone-5, Basin Bridge Road,
Chennai 600 021.

4.The Assistant Engineer,
Corporation of Chennai
Division-056, Zone-5
Basin Bridge Road, Chennai 600 021.

.. Respondents
in both WPs

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records of the respondents 2 to 4 made in the impugned De-occupation Notice in Letter No.05/01767/2017 dated 10.08.2017 for the premises situated at

No.146 [89/1 TO 3], Pedariar Koil Street, Seven Wells, George Town, Chennai 600 001 and quash the same.

For Petitioners in
both WPs : Mr.N.Nithianandam

For RR 1 to 4 in
both WPs : Mr.A.Nagarajan

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal. Since the issue involved and to be adjudicated in the above writ petitions is one and the same, the writ petitions are disposed of by the following common order. Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents.

2 The petitioners, in the affidavits filed in support of these writ petitions would aver among other things that the petitioner in WP.No.23456/2017 is one of the co-owners of the entire Ground and First Floors and the petitioner in WP.No.23457/2017 is one of the co-owners of the Second Floor of the premises bearing No.146 [89/1], Pedariar Koil Street, Seven Wells, George Town, Chennai - 600 001,, comprised in OS.No.7275-7277, RS.No.1896/2, CC.No.5997, together with 2/3rd undivided share in the total land measuring to an extent of 1716 sq.ft., by virtue of the Deed of Settlement dated 25.09.2006, executed by mother of the petitioner in WP.No.23456/2017/grandmother of the petitioner in WP.No.23457/2017, viz., Tmt.R.Sarojini and claim to be in possession and enjoyment of the property along with the other owners and the said property is also subjected to statutory levies. The petitioners would further aver that to their shock and surprise, the Occupiers/tenants of the said premises have been issued with Form-II - De-Occupation Notices dated 10.08.2017, stating that the said superstructure is a deviated one and the occupants / tenants have already been served with the Lock and Seal Notice on 10.06.2016 and with a direction to de-occupy the said premises within fifteen days from the date of receipt of the notice. The petitioners, in response to the said notice, had submitted a representation

dated 24.08.2017 to the respondents pointing out that the above said building and premises had been constructed in the year 1956-1957, after obtaining duly sanction plan from the then Corporation of Madras vide Sanction Plan No.443/56/10 dated

05.09.1956 and there is no deviation in the construction of the premises and the said superstructure is also subjected to statutory levies and therefore, prays for withdrawal of the De-Occupation Notice dated 10.08.2017.

3 The learned counsel for the petitioners would submit that along with the representation, relevant documents have also been enclosed to sustain their case and though the representation was received and acknowledged by the office of the Zonal Officer, Zone-V, Chennai-21 on the very same day, no orders have been passed and in the interregnum, emergent steps are being taken to dispossess the petitioners and therefore, the petitioners are constrained to approach this Court by filing the above writ petitions.

4 Per contra, Mr.A.Nagarajan, learned Standing counsel appearing for the respondents would submit that in the absence of any statutory backing, the representation dated 24.08.2017 would not be disposed of and prays for dismissal of the above writ petitions.

5 This Court has considered the rival submissions and also perused the materials placed before this Court.

6 It is relevant to extract section 56 [2-A][3] of the Tamil Nadu Town and Country Planning Act, 1971:-

"Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates."

7 In the considered opinion of the Court, the remedy open to the petitioners if any, is to invoke section 49 or section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

8 The learned counsel for the petitioner on instructions, would submit that the petitioners may be granted liberty to seek for permission under section 49 of the Tamil Nadu Town and Country Planning Act, 1971, and till such time, the impugned notices may be kept in abeyance and on the said submission, the Court heard the submission of the learned Standing counsel appearing for the respondents also.

9 This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners, grants liberty to the petitioners to file an application / representation under section 49 of the

Tamil Nadu Town and Country Planning Act, 1971, for retention along with necessary documents, subject to payment of prescribed fees within a period of four weeks from the date of receipt of a copy of this order to the 2nd respondent and the 2nd respondent, may entertain the said application/representation, if the papers are otherwise in order and thereafter, pass orders on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioners and till such time, the respondents shall defer further decision in terms of the impugned notices. It is also made clear that till the disposal of the application/representation to be filed by the petitioners under section 49 of the Tamil Nadu Town and Country Planning Act, 1971, the petitioners shall not create any third party rights in respect of the superstructure in question or alter the physical features of the same.

10 The writ petitions stand disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

AP

To

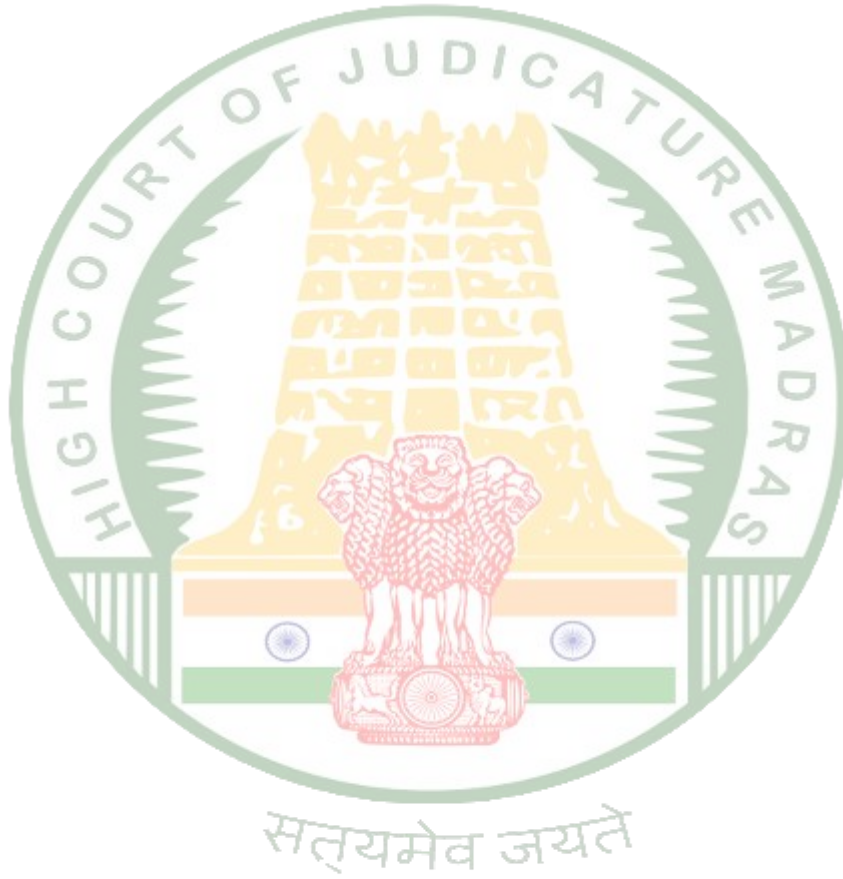
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+1 C.C. to M/S.A.NAGARAJAN Advocate SR.NO. 63303/17

WP.Nos.23456 & 23457/2017

AK(CO)
T.R (06/10/2017)



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