

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE  
AND  
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.13894 of 2017

R.Mathi

... Petitioner

Vs.

1. The Commissioner  
Greater Chennai Corporation  
Ripon Buildings  
Chennai-600 003.
2. The Executive Engineer  
Zone-9, Greater Chennai Corporation  
No.1, Lake Area, Nungambakkam  
Chennai-600 034.
3. The Assistant Engineer  
Ward No.109, Area 24  
Zone-9, Greater Chennai Corporation  
No.1, Lake Area, Nungambakkam  
Chennai-600 034.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent in their de-occupation Notice No.Z.O.C.No.002/2017, dated 22.3.2017, quash the same and consequently forbear the respondents from in any manner interfering the lawful possession of the petitioner without following due process of law.

For Petitioner : Mr.B.Kumar, Senior Counsel  
for Mr.K.A.Mariappan

For Respondents : Mr.A.Nagarajan

ORDER

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

This writ petition has been filed assailing a de-occupation notice dated 22.3.2017, bearing reference Notice No.Z.O.C.No.002/2017, passed by the second respondent.

2. On facts, it is admitted by the writ petitioner that the writ petitioner is in occupation of one of the seven flats in the apartment complex and that it is in ground floor. It is also admitted by the writ petitioner that she has converted her flat into a commercial establishment and that she is running an eatery there.

3. It is submitted by the learned Senior Counsel for the writ petitioner, Mr.B.Kumar, that the locking and sealing notice dated 28.2.2017, issued prior to the impugned de-occupation notice, only pertains to protrusion of a small sunshade and nothing more. However, as it is touching upon facts, we do not express any opinion one way or the other on that, but the submission is noted.

4. Be that as it may, we also find from the averments in the affidavit that prior to filing this writ petition, the writ petitioner has filed two civil suits in the City Civil Court, being O.S.No.2576 of 2017 on the file of the VIII Assistant Judge, City Civil Court, Chennai and O.S.No.2572 of 2017 on the file of the VII Assistant Judge, City Civil Court, Chennai. In these suits, the writ petitioner has sought decrees of bare injunction on the teeth of the locking and sealing notice and the de-occupation notice. There can be no dispute that such suits are not maintainable at all in view of the obtaining legal position.

5. The learned Senior Counsel now submits at the bar that the suit in O.S.No.2576 of 2017 has been withdrawn today (06.06.2017). It is further submitted that the other suit in O.S.No.2572 of 2017 is coming up on 8.6.2017 and the writ petitioner states that they have already made an endorsement for withdrawal and that they undertake to withdraw the suit on 8.6.2017, as the same is not maintainable.

6. Under such circumstances, the second respondent before us, namely the Executive Engineer, Zone-9, Greater Chennai Corporation, has filed a counter affidavit dated 2.6.2017. From the averments in the counter affidavit, we notice that the officials of the Corporation of Chennai, on receipt of a complaint, inspected the site on 5.10.2016. It is the case of the Corporation of Chennai that immediately after inspecting the site, stop work notice under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971

("TNTCP Act" for brevity) was issued. This notice is dated 6.10.2016.

7. The Corporation of Chennai would go on to say that the petitioner failed to comply with the above notice and, therefore, further action was initiated which has culminated in the de-occupation notice.

8. As we have already noted supra, the learned Senior Counsel would submit that it is only protrusion of a small sunshade and there is no major violation. It is also assured before this Court that the building is not in a dilapidated condition. However, being a question of fact, we express no opinion on that.

9. In the light of the stand that has now been taken by the writ petitioner and in the light of the order we propose to pass, though the prayer sought in the writ petition, as stated supra, is assailing the de-occupation notice, the learned Senior Counsel abridges and restricts the prayer to the extent that he will be satisfied if the writ petitioner is granted leave to file an appeal/revision under Section 80A of the TNTCP Act before the appropriate authority, which will be the State Government.

10. We take the submission on record and permit the writ petitioner, in the light of the submissions made supra, to file an appeal/revision under Section 80A of the TNTCP Act before the State Government within a fortnight from today. If the writ petitioner so files an appeal/revision, the same shall be disposed of by the State Government (Appellate/Revisional Authority) as expeditiously as possible and in any event within two months from the date of receipt of this order. While filing the appeal/revision under Section 80A of the TNTCP Act, it is open to the writ petitioner to take out a petition for stay/interim order of any other nature under sub-section (3) of Section 80A of the TNTCP Act. If the petitioner chooses to file an interlocutory petition/application under Section 80A(3) of the TNTCP Act, the appellate/revisional authority, being the State Government, shall dispose of the same forthwith without any delay whatsoever.

The writ petition is disposed of in the above terms. No costs. Consequently, W.M.P.Nos.15079 to 15081 of 2017 are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

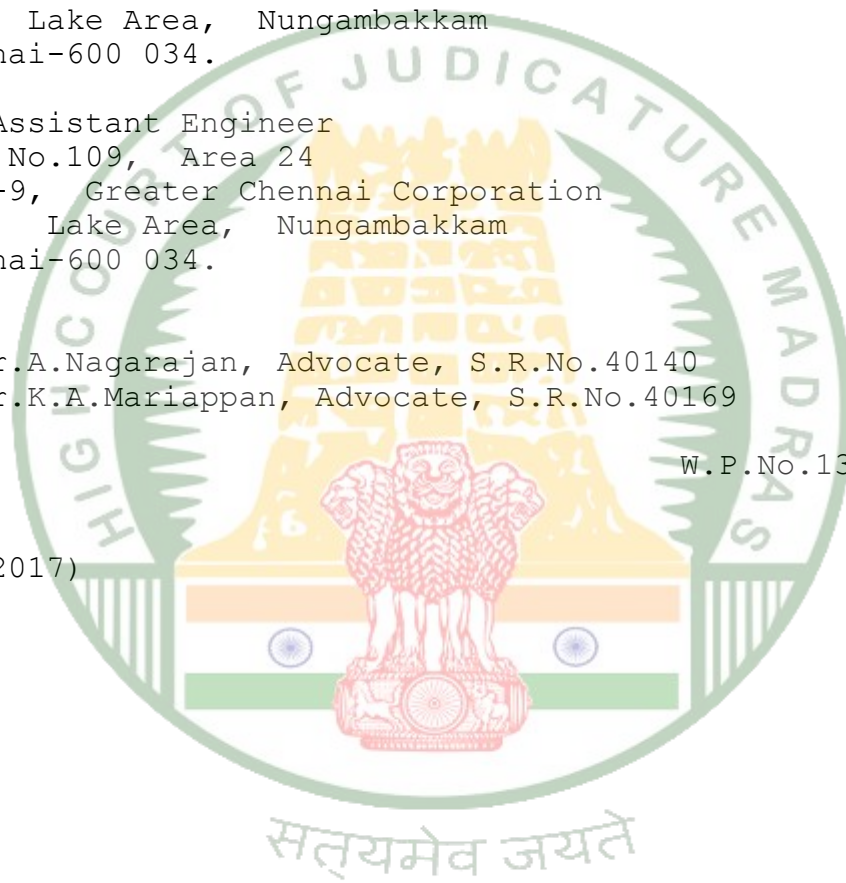
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+1cc to Mr.A.Nagarajan, Advocate, S.R.No.40140

+1cc to Mr.K.A.Mariappan, Advocate, S.R.No.40169

W.P.No.13894 of 2017

RSY(CO)  
CA(06/06/2017)



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