

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24096/2017 & WMP.No.25433/2017

C.Yagna Priya

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Petitioner

Versus

1.The Executive Engineer
Zone-V, Corporation of Chennai
Basin Bridge Road, Chennai-79.

2.The Corporation of Chennai
rep.by its Commissioner
Ripon Buildings, EVR Salai
Chennai 600 003.

3.The Chennai Metropolitan Development
Authority, rep.by its Member Secretary,
Thalamuthu Natarajan Maaligai,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600008.

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent comprised in its De-Occupation Notice under section 56 [2A] and 57 read with section 85 of the Town and Country Planning Act, 1971, [as amended by Act 6 of 2008] in Letter

No.05/02467/2017 dated 07.08.2017 and quash the same and direct the respondents not to take any measures to de-occupy or lock and seal the building in which the petitioner resides.

For Petitioner : Mr.B.Ullasavelan
For R1&R2 : Mr.A.Nagarajan
For RR3 : Mr.N.Sampath

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents 1 and 2 and Mr.N.Sampath, learned Standing Counsel accepts notice on behalf of the 3rd respondent.

2 The petitioner claims that she is the owner of the property admeasuring to an extent of 1096 sq.ft., along with the superstructure bearing Old No.66, New No.32, Krishnappa Tank Street, Kondithope, Chennai 600 079 and she applied for Planning and Building Permission to the 2nd respondent during the year 2009 and after obtaining necessary permission, raised loan through a Bank and started construction and completed the same during the year 2010. The petitioner would admit that she had also constructed two more floors [4th floor – 800 sq.ft.] since

family members are more in number and in order to accommodate them and settle the Bank loan, she was forced to construct two more floors and in the facts and circumstances, it cannot be construed to be neither wilful nor wanton. It is also averred by the petitioner that except the 2nd floor, the ground and the other floors are in occupation of her family members and the alleged offending constructions are also subjected to statutory levies. It is also the case of the petitioner that the request to assess 3rd and 4th floors for tax assessment has also been accepted by the revenue officials of the Corporation of Chennai and she is also paying the property tax. It is the specific stand of the petitioner that she has not been issued with any notice and whereas, the tenants have been issued with notices dated 07.08.2017 under section 56[2A] and 57 read with 85 of the Tamil Nadu Town and Country Planning Act, 1971, informing about the De-Occupation of the premises. Challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that the tenants have been issued with such notices and the petitioner, being the owner, has not been issued with any notice and would further aver that the premises are used purely for residential purposes and she may be

permitted to go for retention of the regularisation of the building construction and till such time, her interest may be protected.

4 *Per contra*, Mr.A.Nagarajan, learned standing counsel appearing for the respondents 1 and 2 and Mr.N.Sampath, learned Standing counsel appearing for the 3rd respondent would submit that the petitioner is very well aware of the consequences of putting up the constructions without any authorisation and therefore, she has to take the blame and suffer the consequences.

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

6 In the light of the plea made by the learned counsel for the petitioner that the offending construction is used purely for residential purposes and that the area in which the premises is located is a contiguous one / street house area, this Court is of the view that the petitioner may be granted liberty to avail the remedy under section 49 of the Tamil Nadu Town and Country Planning Act, 1971.

7 In the result, the writ petition is disposed of and the petitioner is at liberty to avail the remedy available under section 49 of the Tamil Nadu Town and Country Planning Act, 1971, if so advised, by submitting necessary application along with prescribed fees and other documents as required to the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order and the 3rd respondent, upon receipt of the same, shall entertain the same, if the papers are otherwise in order and give a disposal on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, the 1st respondent shall defer further decision in terms of the impugned notice dated 07.08.2017. It is also made clear that the petitioner, till the consideration / disposal of the application to be filed under section 49 of the Tamil Nadu Town and Country Planning Act, 1971, shall not create any third party rights in respect of the superstructure in question and shall not alter the physical features of the property also. No costs. Consequently, the connected miscellaneous petition is closed.

[M.S.N., J.] [N.S.S., J.]
07.09.2017

Internet : Yes
AP

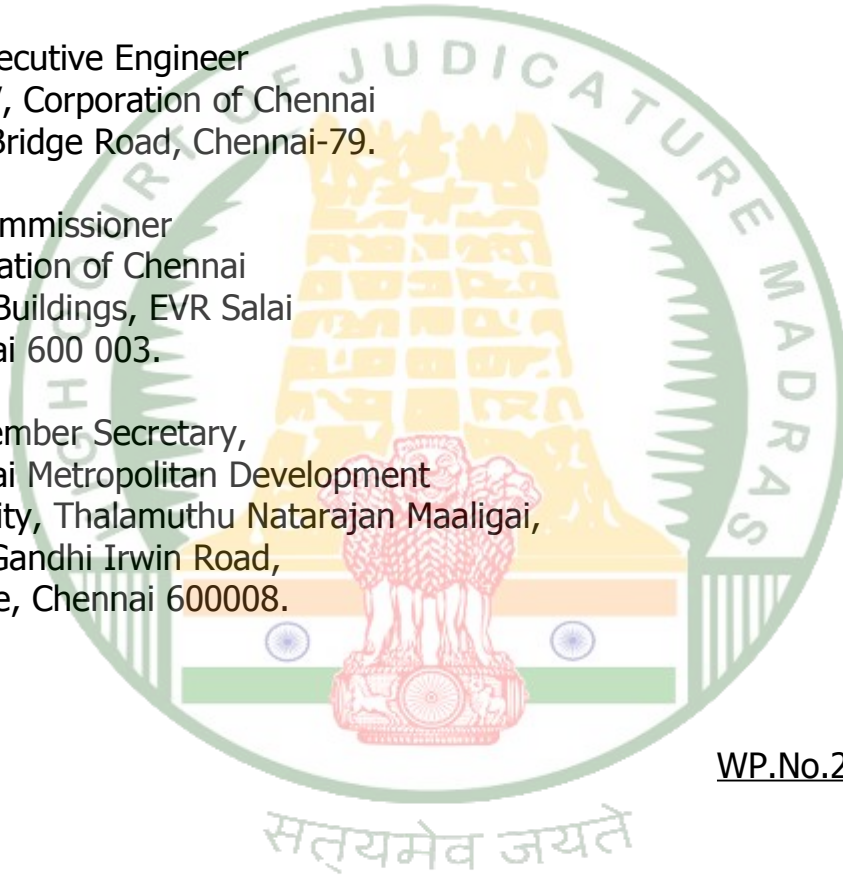


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M.SATHYANARAYANAN, J.
AND
N.SESHASAYEE, J.
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To

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