

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.25299/2017

&

WMP.No.26759/2017

Kesavan

Petitioner

Versus

- 1 The Secretary to Government
Housing and Urban Development,
Department, Secretariat,
Fort St.George, Chennai.
- 2 The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003.
- 3 The Executive Engineer
TP [Enforcement]
RDC [S]. Corporation of Chennai
Chennai.
- 4 The Assistant Executive Engineer
Unit 40, Corporation of Chennai
Chennai.
- 5 The Assistant Engineer
Division 173, Corporation of Chennai
Chennai.

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to dispose of the direction petition of the petitioner dated 18.09.2017 filed along with the appeal filed by the petitioner under section 79 and 80-A of the Tamil Nadu Town and Country Planning Act, challenging the Locking and

sealing notice dated 06.04.2017 in Notice No.434/15 issued by the Corporation of Chennai.

For Petitioner : Mr.P.Solomon Francis
For R1 : Mr.A.N.Thambidurai, Spl.GP
For RR 2 to 5 : Mr.K.Soundararajan

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent and Mr.K.Soundararajan, learned Standing counsel accepts notice on behalf of the respondents 2 to 5.

2 It is the claim of the petitioner that his predecessors were in possession of the land and building admeasuring to an extent of 335 sq.ft., bearing Old Door No.58, New No.112, Govindaswamy Nagar, Raja Annamalaipuram, Chennai-28 and after their demise, the petitioner succeeded to the said property and is in possession for more than three decades and the superstructure is also subjected to statutory levies. The petitioner would further aver that while he was carrying on minor repair works to the superstructure, the Corporation officials had issued Stop Work notice dated 28.05.2015 and he appeared before them and explained that he is carrying on only minor repair works and the said reply was not taken cognizance of and he was issued with the Locking and Sealing Notice dated 25.06.2015, followed by the De-Occupation notice dated 18.01.2016. The petitioner, aggrieved by the same, filed an appeal under section 80 of the Tamil Nadu Town and Country Planning Act, 1971, along with a petition for stay and since it has not been taken up and disposed of, the petitioner filed WP.No.4442/2016 and this Court, has directed the concerned respondent to dispose of the appeal on merits and in accordance with law within the stipulated time. The petitioner also aggrieved by the fact of non-issuance of patta, had filed WP.No.488/2016 and the Single Bench of this Court, vide order dated 26.07.2016, has directed the Tahsildar, Mylapore-Triplincane, Greenways Road, Chennai-28, to consider and dispose of the petitioner's appeal within the stipulated time and also indicated that till such decision is taken, the possession of the petitioner shall not be disturbed.

3 The grievance now expressed by the petitioner is that the respondents 3 to 5, without taking note of the relevant facts and circumstances, had once again issued a notice dated

06.04.2017, under section 56[2][a] and 57 read with 85 of the Tamil Nadu Town and Country Planning Act, 1971, calling upon the petitioner to de-occupy the premises in question within seven days from the date of receipt of the said notice and challenging the same, the petitioner has also filed a special revision before the 1st respondent under section 80-A of the Town and Country Planning Act, 1971, and it was received and acknowledged on 18.09.2017 along with the petition for stay.

4 The learned counsel for the petitioner would submit that despite the entertainment of the revision, the premises of the petitioner has been locked and sealed, without granting any time to remove the articles and hence, prays for appropriate orders.

5 Per contra, the learned Standing counsel appearing for the respondents 2 to 5 would submit that the construction put up by the petitioner is an unauthorised one and hence, action is being taken strictly in accordance with law.

6 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent would submit that special revision along with the petition for stay will be given disposal at an early date, in accordance with law.

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

8 It is the specific case of the petitioner that his predecessors were in title and after their demise, the petitioner is in possession and enjoyment of the superstructure which is being used for residential purpose for very many years and his request for patta is also pending and pursuant to the orders passed by this Court in WP.No.4878/2016, his possession is also protected. The learned counsel also expressed further grievance that after issuance of the Locking and Sealing and De-Occupation Notice, without affording any opportunity to the petitioner, the premises in question has been locked and sealed and therefore, the petitioner is unable to remove the household articles and thereby, he and his family members are put to grave difficulty and hardship.

9 In the light of the above facts and circumstances, this Court directs the respondents 3 to 5 to remove the Lock and Seal put on the premises bearing Old Door No.58, New Door No.112, Govindaswamy Nagar, Raja Annamalaipuram, Chennai-28, on 26.09.2017 and 27.09.2017 between 11.00 a.m. and 5.00 p.m. so as to enable the petitioner to remove the household articles lying in the said premises in the presence of the officials of the Corporation of Chennai and on such removal, the respondents 3 to 5 shall re-seal the premises and the same will be subject

to the result of the special revision filed by the petitioner before the 1st respondent. It is further directed that the 1st respondent shall entertain the special revision along with the petition for stay, received and acknowledged on 18.09.2017, if the papers are otherwise in order and the said official is at option, either to take up the petition for stay and give a disposal on merits and in accordance with law, 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, on merits and in accordance with law 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.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

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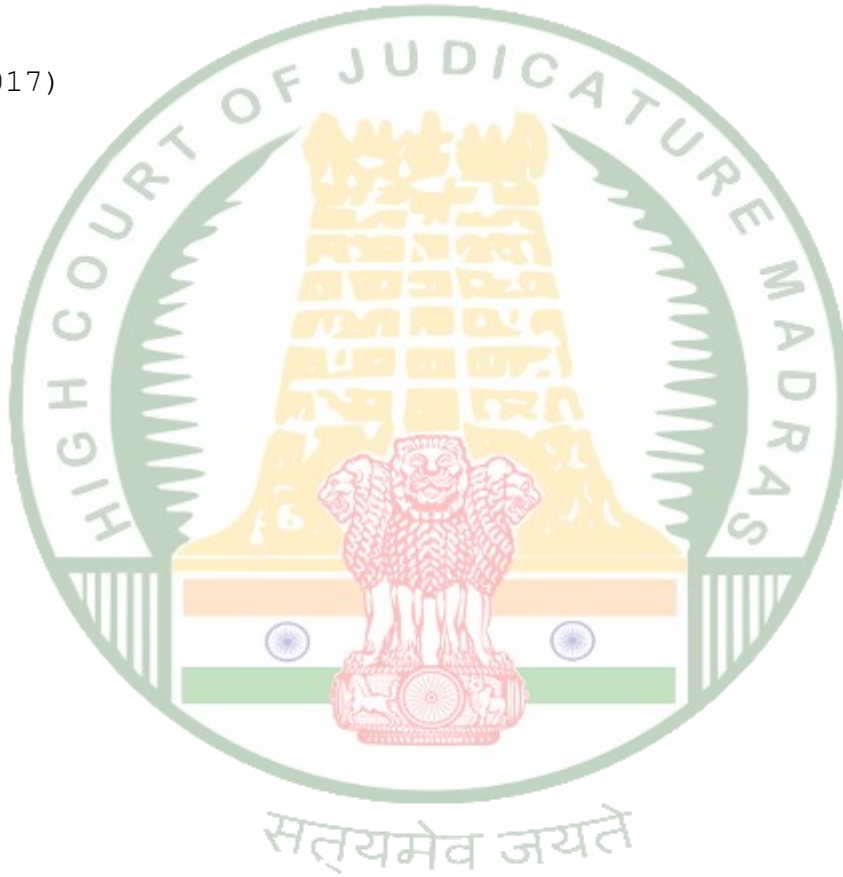
5 The Assistant Engineer
Division 173, Corporation of Chennai
Chennai.

+1cc to Mr.K.Soundararajan, Advocate sr.69568

+1cc to Mr.P.Solomon Francis .Advocate sr.69150

WP.No.25299/2017

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ss(25/9/2017)



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