

IN 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

W.P.No.25333 of 2017

and WMP.No.26794 of 2017

G.Hari

.. Petitioner

Vs.

- 1.The Secretary to Government
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.
- 3.The Regional Deputy Commissioner
Corporation of Chennai (North Zone)
No.62, Basin Bridge Road,
Old Washermenpet, Chennai - 600 021.
- 4.The Executive Engineer
Zone V, Corporation of Chennai,
Royapuram, Chennai - 600 013.
- 5.The Member Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore High Road, Egmore,
Chennai - 600 008.

.. Respondents

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Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Mandamus to quash the notice Ref.No.5/02895/17 dated 06.09.2017 issued by the fourth respondent under Section 56 Sub-Section 2(A) and Section 57 read with Section 85 of the Tamil Nadu & Country Planning Act 1971 and further direct the first respondent to dispose of the appeal dated 25.11.2014 filed by the petitioner.

For Petitioner : Mr.T.Velumani

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader [R1]
Mr.K.Soundarrajan [RR2 to 4]
Mr.N.Sampath [R5]

O R D E R

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

By consent, the writ petition is taken up for final disposal.

2. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the first respondent; Mr.K.Soundarrajan, learned counsel accepts notice on behalf of the respondents 2 to 4 and Mr.N.Sampath, learned Standing Counsel accepts notice on behalf of the fifth respondent.

3. The petitioner would state that he is residing at Door No.74, Xavier Street, Chennai - 600 001 and he is carrying on the business of selling fruits. The petitioner would further state that through a registered Sale Deed dated 23.10.2007, he had purchased the entire house bearing Door No.36 (54), Bunder Street, Kathavalchavadi, Sowcarpet, Chennai-600 001, admeasuring to an extent of 2430 sq.ft. The petitioner would further state that after purchasing the property, he has demolished the existed superstructure and applied for planning permission for reconstruction of the building in the said property consisting of Stilt plus 2 floors and it was accorded by the Corporation of Chennai as well as Chennai Metropolitan Development

Authority, Chennai, subject to certain conditions. The petitioner would further state that after obtaining the patta, he has put up the construction and it was assessed to statutory levies. The petitioner would state that to his shock and surprise, the respondents 2 to 4 have issued notice of locking, sealing, demolition and discontinuation of use and occupation of the premises vide Notice No.DN-57/55/2014 dated 14.11.2014, and challenging the same he filed a Special Revision under Section 80-A of the Town and Country Planning Act, 1971 and the same is pending. The petitioner has also filed W.P.No.31182 of 2014, praying for issuance of writ of mandamus, directing the respondents 2 to 4 herein, forbearing them in any way in interfering with his possession in the building bearing Door No.54, New No.36, Bunder Street, Sowcarpet, Chennai-600 001, and

the apprehension expressed by the petitioner is that despite the pendency of revision, attempts have been made to dispossess him and demolish the superstructure. This Court, vide order dated 28.11.2014, has directed the first respondent to consider and dispose of the appeal in accordance with law, within a stipulated time.

4. The petitioner was also issued with a notice calling for approved plan by the fourth respondent on 03.07.2015, which was followed by the lock and seal notice dated 28.03.2017, issued by the respondents 2 to 4, for which the petitioner has submitted his objection on 10.07.2017. The grievance expressed by the petitioner is that inspite of his submission before

the fourth respondent that the appeal preferred by him, in connection with the notice dated 13.04.2014, issued by the respondents 2 to 4, is pending, the fourth respondent has once again issued the de-occupation notice dated 06.09.2017, under Section 56 Sub-Section 2(A) & Section 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971, as amended by Act 61 of 2008, calling upon the petitioner to de-occupy the premises, and challenging the said notice, the present writ petition has been filed.

5. Mr.T.Velumani, learned counsel appearing for the petitioner would submit that the petitioner, in response to the earlier lock and seal notice, has submitted his detailed response on 10.07.2017 and without taking cognizance of the same, once again the impugned notice came to be issued on 06.09.2017, and prays for appropriate orders.

6. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the first respondent would submit that the remedy open to the petitioner if any, is to once again file a Special Revision before the first respondent, and insofar as the earlier revision filed by the petitioner is concerned, it will be given disposal on an early date in accordance with law.

7. This Court, heard the rival submissions and also perused the entire materials placed before it.

8. The fact remains that the Special Revision filed by the petitioner, during the year 2015, is still pending on the file of the first respondent and once again the fourth respondent has issued the impugned de-occupation notice dated 06.09.2017. In the considered opinion of the Court, the remedy open to the petitioner, if any, is to file a revision before the first respondent along with a petition for stay.

9. In the result, the writ petition is disposed of with an observation that the petitioner is at liberty to file a Special Revision before the first respondent, challenging the impugned de-occupation notice dated 06.09.2017, along with a petition for stay, within a period of two weeks from the date of receipt of a copy of this order along with necessary and relevant documents, and the first respondent, on receipt of the same, is at liberty to take up the petition for stay and give disposal in accordance with law, within a further period of three weeks thereafter and dispose of the main revision itself within a period of ten weeks from the date of receipt of a copy of the order. The first respondent shall also make a further endeavour to dispose of the earlier revision filed by the petitioner, during the year 2015 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. The respondents 2 to 5, till the disposal of the petition for stay, shall defer further proceedings in terms of the impugned notice dated 06.09.2017. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner
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Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore High Road, Egmore,
Chennai - 600 008.

+1cc to Mr.N.Sampath, Advocate, S.R.No.69567
+2cc to Mr.Y.Mohamed Ghouse, Advocate, S.R.No.69588
+1cc to Mr.K.Soundarajan, Advocate, S.R.No.69569
+1cc to the Government Pleader, S.R.No.70088

W.P.No.25333 of 2017

GN(11/10/2017)



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