

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.25460 of 2017
and WMP.No.26903 of 2017

P.K.Jose

.. Petitioner

Vs.

1.The Commissioner
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

2.The Executive Officer,
Zone VI,
Corporation of Chennai,
Regional Office at :
No.5, Anderson Road,
Ayanavaram,
Chennai - 600 023.

... Respondents

Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned notice vide Region Central/TPENF/014A/2017, dated 31.08.2017 issued by the second respondent herein and quash the same.

For Petitioner : Mr.M.B.Mushtaque Ahamed
For Respondents : Mr.A.Nagarajan, Standing Counsel

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.Nagarajan, learned Standing Counsel accepts notice on behalf of the respondents.

3. The petitioner claims that he along with Tmt.Margaret are the absolute owners of the land and building bearing Door No.5/2, V.V.Koil Lane, Choolai, Chennai and it was purchased by way of registered Sale Deed bearing document No.1561/1995 dated 18.05.1995, registered on the file of Office of the Sub Registrar, Purasawalkam and the petitioner claims that right from the date of purchase, he is in possession and enjoyment of the same. The petitioner would further aver that the superstructure was constructed in the year 2006, after obtaining planning permission and in adherence to its plan and it is also subject to statutory levies.

4.The petitioner would further state that on an earlier occasion, the second respondent has issued a de-occupation notice dated 31.08.2016 and challenging the same he filed W.P.No.3190 of 2017, praying for issuance of Writ of Certiorari, calling for the records of the impugned notice No.Zone VI/TNCPT/014/2016 dated 08.12.2016. This Court vide order dated 09.02.2017, has disposed of the said writ petition, by taking note of the stand of the learned counsel appearing for the petitioner that fresh measurement would be carried out in the unauthorised/deviated construction of the petitioner's property to find out the extent of deviation and unauthorised construction at the instance of the petitioner, and also recording the submission of the learned Standing Counsel appearing for the Corporation that measurement will be carried out within a stipulated time upon production of the sanctioned plan and other relevant documents by the petitioner, depending upon which, a final decision will be taken within a stipulated time by the Corporation. The grievance now expressed by the petitioner in this writ petition is that inspection has been carried out behind the back of the petitioner and without affording opportunity to him, once again impugned de-occupation notice dated 31.08.2017 came to be issued and it exhibit total non-application of mind on the part of the concerned respondents as to the order dated 09.02.2017 made in W.P.No.3190 of 2017 and hence, prays for interference.

5. The learned counsel appearing for the petitioner would submit that the petitioner challenging the impugned notice has also filed a Special Revision under Section 80-A of the Tamil Nadu Town and Planning Act, 1971 along with a petition for stay, and it was received and acknowledged on 11.09.2017, and since the impugned order is per se in violation of principles of natural justice and not in consonance with the statutory provisions, prays for interference.

6. Per contra, Mr.Nagarajan, learned Standing Counsel appearing for the respondents would submit that action has been taken strictly in accordance with law and therefore, the petitioner cannot make any grievance or complaint.

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

8. It is relevant to extract the details of unauthorised and deviated construction pointed out in the impugned order dated 31.08.2017 :

"Sub : Corporation of Chennai - Town
Planning Enforcement -
Unauthorised & Deviated building at
Door No.5/2, V.V.Koil Lane, Choolai, Chennai-
112

- De-occupation Notice - Reg.

Ref.: 1. Stop Work Notice / Notice Calling for
Approved

Plan No..... dated 28.11.2016

2. Locking & Sealing and Demolition
Notice No.014/2016
Dt.01.12.2016

* * * * *

The Residential building at Door No.5/2,
V.V.Koil Lane, Choolai, Chennai-112, which is
occupied by you is unauthorized and deviated
construction as mentioned in Locking & Sealing
and Demolition Notice as cited in the
reference 2

S.No.	Description	As per Plan in sq.m	As per Site in sq.m.	Deviated / unauthoris ed in sq.m.
1	GF	140.52	171.92	31.40
2	FF	140.52	212.03	71.51
3	SF	-	212.03	212.03
4	TF	-	133.22	133.22

9. The fact remains that the petitioner has invoked the alternative remedy by filing a Special Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the Secretary to Government, Housing and Urban Land Development Department, Secretariat, Chennai, which was received and acknowledged by the authority on 11.09.2017. This Court, in the light of the invocation of the effective alternative remedy by the petitioner, without going into the merits of the claim projected by the petitioner, directs the Secretary to Government, Housing and Urban Land Development Department, Secretariat, Chennai, to entertain the revision filed by the petitioner, if the papers are otherwise in order and the said

official is at liberty to decide the petition for stay and give a disposal within a period of two weeks from the date of receipt of a copy of the order and shall dispose of the main revision itself 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 1 and 2, till the disposal of the petition for stay, shall defer further proceedings in terms of the impugned notice dated 31.08.2017.

10. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To:

1.The Commissioner
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

2.The Executive Officer,
Zone VI,
Corporation of Chennai,
Regional Office at :
No.5, Anderson Road,
Ayanavaram,
Chennai - 600 023.

Copy to:

The Secretary
Housing and Urban Development Department,
Secretariat,
Chennai-9

+ 1 cc to M/s.Ramesh, Advocate,SR.70063

+ 1 cc to M/s.Nagarajan, Advocate,SR.70427

W.P.No.25460 of 2017

MG(CO)
NR 24/10/2017