

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.25811 and 25812 of 2017

and

WMP Nos.27241 to 27244 of 2017

M.Kalyani

... Petitioner in W.P.No.25811 of 2017

S.Srinivasan

... Petitioner in W.P.No.25812 of 2017

Versus

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.

2. The Executive Engineer,
Zone -3, Greater Chennai Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai - 600 060.

3. The Assistant Executive Engineer,
Unit-8, Zone-3, Greater Chennai
Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai - 600 060.

4. The Assistant Engineer,
Division - 33, Zone-3, Greater
Chennai Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai-600 060.

.. Respondents in both the petitions

Prayer in W.P.No.25811 of 2017: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice No.Dn/33/2017, dated 25.07.2017 and the consequential de-occupation notice letter No.03/00003/2017, dated 13.09.2017, issued by the respondents 2 to 4, pertaining to the petitioner's property at ground floor of the premises bearing Door No.46C, Madhavaram High Road, Moolakkadai, Madhavaram, Chennai - 600 060 and quash the same.

Prayer in W.P.No.25812 of 2017: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice No.Dn/33/2017, dated 25.07.2017 and the consequential de-occupation notice letter No.03/00003/2017, dated 13.09.2017, issued by the respondents 2 to 4, pertaining to the petitioner's property at first floor of the premises bearing Door No.46C, Madhavaram High Road, Moolakkadai, Madhavaram, Chennai - 600 060 and quash the same.

For Petitioner : M/s.V.R.Kamalanathan
(in both the petitions)

For Respondents : Mr.A.Nagarajan
(in both the petitions)

O R D E R

(Order of the Court was made by S.VAIDYANATHAN, J.,)

The petitioners have come forward with the following prayers:

W.P.No.25811 of 2017: The Writ Petition is filed seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice No.Dn/33/2017, dated 25.07.2017 and the consequential de-occupation notice letter No.03/00003/2017, dated 13.09.2017, issued by the respondents 2 to 4, pertaining to the petitioner's property at ground floor of the premises bearing Door No.46C, Madhavaram High Road, Moolakkadai, Madhavaram, Chennai - 600 060 and quash the same.

W.P.No.25812 of 2017: The Writ Petition is filed seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice No.Dn/33/2017, dated 25.07.2017 and the consequential de-occupation notice letter No.03/00003/2017, dated 13.09.2017, issued by the respondents 2 to 4, pertaining to the petitioner's property at first floor of the premises bearing Door No.46C, Madhavaram High Road, Moolakkadai, Madhavaram, Chennai - 600 060 and quash the same.

2. According to the petitioners, they have got sanctioned plan in the year 2005. Unfortunately, without referring to the said plan, taking into account of some other plan, vide P.P.No.962/2010, dated 01.11.2010, the respondents have proceed to demolish the house and also issued lock and seal notice, dated 25.07.2017 and de-occupation notice has also been issued on 13.09.2017.

3. The respondents are unable to refute the contention of the petitioners. However, it is submitted that the respondents may be permitted to issue fresh notice and take appropriate action in accordance with law, if there is any violation.

4. Taking note of the fact that without reference to the earlier plan of the year 2005 issued by the Madhavaram Municipality, the present impugned notices have been issued, we have no other option except to interfere with the impugned lock and seal notice dated 25.07.2017 and also with the de-occupation notice issued on 13.09.2017, which were issued on the ground that there is deviation of the approved plan. This will not preclude the respondents from issuing fresh notice to the petitioners, if the petitioners have violated the plan and made construction thereon not in accordance with the plan, and the respondents shall proceed further on the same. It is very unfortunate that the officer concerned without applying his mind, referred to the plan pertaining to some other person of the year 2010 even without reference to the earlier plan of the year 2005 issued by the Madhavaram Municipality in respect of the petitioners' building. There is no reference in the impugned order dated 25.07.2017 as to the various violations said to have been made while constructing the site under reference. If there is any complaint, the complainant should also be heard before taking further action.

5. Accordingly, while quashing the said two notices, the Writ Petitions are allowed with the said liberty/directions to the respondents as discussed supra. No costs. Consequently, connected miscellaneous petitions are closed.

6. Before parting with the case, this Court would like to observe that the authorities should not regularise the set-back violations/OSR violations of the lands. Earlier, a Division Bench of this Court, by order dated 10.02.2017 in W.P.No.6109 of 2013, has considered the construction made therein in violation of the plan and the relevant paragraphs are extracted hereunder:

"5. The Secretary, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai is impleaded as respondent No.2 in this petition. Memo of parties be amended accordingly. Mr.M.K.Subramanian, learned Government Pleader accepts notice for the said respondent.

6. We also find there are set back violations in the building, apart from floor violations. The set back violations are not capable of being cured as per the Master Plan, as observed by us in a series of orders."

Similarly, in yet another judgment, dated 08.11.2016 in W.P.No.18777 of 2014, this Court held as follows:

"6. Firstly, the purpose of issuing notice calling upon the private party to submit a sanctioned plan is to verify the position qua the sanction. This is stated to be so as, if the building is more than the second floor construction, sanction would have been granted by the Chennai

Metropolitan Development Authority/respondent No.1, while in any other case, by the Chennai Corporation. Thus, if the plan sanctioned is only upto the second floor, but actually the construction is of more than second floor, though CMDA may issue notice, it would not have any sanctioned plan as such and the sanctioned plan would be only with the Corporation. This being the objective, we do follow the said process, but then, if the authority states that it has no sanctioned plan available (indicated who sanctioned it) or fails to produce the sanctioned plan, then the concerned authorities must look into its own records and interact with the Corporation to verify the position of the sanctioned plan before issuing the locking and sealing notice. We say so as a number of writ petitions are being filed only because of non-production of the sanctioned plan, burdening the docket of this Court. We believe that if this process is followed, no cause of action would arise to approach the Court, as the authority would have verified from the records, whether it be of the CMDA/respondent No.1 or Corporation/respondent No.2, as to the legality of the construction.

7. We clarify that this in no manner absolves the obligation of the private parties from producing the sanctioned plan. But this is only a preliminary measure before the authorities to take the final action.

8. We may also note with concern that the non-disposal of the interim applications pending the appeals and the Special Revision Petitions filed under Section 80-A of the Act is another area where petitions are filed before this Court for obtaining interim stay. If these interim applications are promptly dealt with, the occasion for the same would not arise. As to how there could be an expeditious disposal of these appeals and sufficient officers are made available, it is a matter for the State Government and the Corporation to take care of. We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

This Court has categorically held that the Chennai Metropolitan Development Authority (CMDA), Corporation of Chennai, Housing and Urban Development Department, or such other authority, cannot and shall not permit the

regularisation of set back violations. If there are any set back regularisations, the same will have to be recalled. If any set back regularisation is made, the officials responsible for the same has to be taken to task, and, they should not be allowed to continue in their respective posts, apart from initiating departmental action.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
2. The Executive Engineer,
Zone -3, Greater Chennai Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai - 600 060.
3. The Assistant Executive Engineer,
Unit-8, Zone-3, Greater Chennai Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai - 600 060.
4. The Assistant Engineer,
Division - 33, Zone-3, Greater Chennai Corporation,
No.1, Thattankulam Road,
Madhavaram High Road,
Madhavaram, Chennai - 600 060.
5. The Chairman,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
6. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai-600 009.

+ 2 ccs to Mr. V.R. Kamalanathan, Advocate SR.70932, 70933
+ 2 ccs to Mr.A.Nagarajan, Advocate Sr.70877,70871

W.P.Nos.25811 & 25812 of 2017

MN(CO)
EU(27/10/2017)

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