

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.No.25818 of 2017
and
W.M.P.Nos.27252 and 27253 of 2017

D.Hari

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai-600 005.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai-600 003.
3. The Executive Engineer (Enforcement-Region Central),
2nd Cross Street (East),
Pulla Avenue,
Shenoy Nagar, Chennai-600 030.
4. P.Sambandham

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 2 and 3 and their men to stop all further demolition of the petitioner's house at Plot No.3, Old Door No.46, New Door No.48, West Namachivayapuram, Choolaimedu, Chennai-600 090.

For Petitioner : Ms.D.Geetha

For Respondents : Mr.R.Sivakumar for R-1

Mr.A.Nagarajan for RR-2 & 3

Mr.Edwin Prabhakar for R-4

ORDER

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

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents 2 and 3 and their men to stop all further demolition of the petitioner's house at Plot No.3, Old Door No.46, New Door No.48, West Namachivayapuram, Choolaimedu, Chennai-600 090.

2. The case of the petitioner is that he has constructed the building in accordance with the plan. But according to the Corporation of Chennai, there is violation of the plan and there is no set back left by the petitioner while constructing the building in question. It is the further case of the petitioner that under the complaint given by the fourth respondent, action has been initiated.

3. From the records, it is clear that even the building belonging to the fourth respondent is also in violation of the plan. When this was pointed out to the Corporation's counsel, it is fairly conceded by him that if the buildings in the area are constructed in violation of the plan and without any set back, proper steps will be taken for demolition of the same.

4. Heard both sides and perused the materials available on record.

5. 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."

6. 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."

7. 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 permit the regularisation of set back violations.

8. Accordingly, the respondents 1 to 3 are directed to measure Plot Nos.1 to 5 mentioned in the letter of the Information Officer of the Tamil Nadu Slum Clearance Board addressed to the petitioner, dated 14.01.2016, as seen from page 29 of the typed set of papers filed along with the Writ petition, including the building of the fourth respondent. To ascertain as to whether the claim of the petitioner that the fourth respondent has encroached upon the petitioner's property, is justified or not, the measurement of the property should take place from the rear portion of the property, so that the encroachment on the road, if any, can also be ascertained.

9. A joint inspection shall be conducted by the officials of the Corporation of Chennai (respondents 2 and 3) and the officials of the Tamil Nadu Slum Clearance Board (TNSCB) (first respondent), in respect of Plot Nos.1 to 5 as mentioned supra, after due notice to the residents/tenements in the area and the measurement shall be taken and the exact area of the plots shall be identified. If it is found that any building(s) had been constructed without the sanctioned plan or in violation of the sanctioned plan, suitable action shall be taken against the violators of the plan, irrespective of the fact as to whether any complaint has been lodged or not and the construction made in violation of the plan, should be demolished. The above direction shall be complied with by the respondents 1 to 3 within one month from the date of receipt of a copy of this order. If there is any complaint made by any person, the complainant(s) shall also be heard before demolition. Any failure by the officials to carry out the above direction will be viewed seriously.

10. Till such time the above said inspection is completed and the entire process is over, no further demolition shall be made by the respondents 1 to 3 in respect of the petitioner's house.

11. If any set back violations are regularised by the authorities, namely the Chennai Metropolitan Development Authority (CMDA), Corporation of Chennai, Housing and Urban Development Department, or such other authority who is empowered with the same, they should be taken to task and they shall be posted in a non-sensitive post.

12. With the above observations and direction, the Writ Petition is disposed of. No costs. W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai-600 005.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai-600 003.
3. The Executive Engineer (Enforcement-Region Central),
Corporation of Chennai,
2nd Cross Street (East),
Pulla Avenue,
Shenoy Nagar, Chennai-600 030.
4. The Chairman,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8
5. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai-9.

+1cc to Ms.D.Geetha, Advocate, S.R.No.70848
+1cc to Mr.A.Nagarajan, Advocate, S.R.No.70878
+2cc's to Mr.Edwin Prabhakar, Advocate, S.R.No.70879

W.P.No.25818 of 2017

CS V
CA(09/10/2017)