

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.16090 of 2017

Bha. Saravanan

.. Petitioner

Vs.

1.The District Collector,
Nagapattinam District,
Nagapattinam.

2.The Commissioner,
Nagapattinam Municipality,
Nagapattinam.

3.A.T.Maideen

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the first and second respondents to demolish the illegal and unauthorised construction made by the third respondent in the light of the notice issued by the second respondent in KA.MA.No.89 of 2015 dated 05.07.2016.

For Petitioner	: Mr.P.Parthiban
For R1	: Mr.A.N.Thambidurai, Spl.GP
For R2	: Mr.P.Srinivas
For R3	: Mr.J.Ferozkhan

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 appears on behalf of the first respondent ; Mr.P.Srinivas, learned Standing counsel appears for the second respondent and Mr.J.Ferozkhan, learned counsel appears for the third respondent.

2 The petitioner in the affidavit filed in support of this writ petition would aver that he is the owner of the property situate at Door No.5, Bungalow Club Road, Nagapattinam and he purchased the said property through a registered Sale Deed bearing Doc.No.2596/2010, registered on the file of the office of the District Registrar, Nagapattinam and the said property is having a total measurement of 2800 sq.ft. comprising of RCC build house with Ground + 2 storied surrounded by a RCC compound wall. The petitioner had shifted his family to Chennai in connection with his job and leased out the property in favour of a Non-Governmental Organization, namely Bed Rock and some renovation work is also going on. The petitioner was informed by the Supervisor on 27.06.2017 that the third respondent had put up a commercial building therein of three storeys and on the

western side of his compound wall, no set back space has also been provided and the same is in violation of the provisions of the Tamilnadu District Municipalities Act, 1920. The petitioner, in this regard, made a representation/complaint to the second respondent dated 27.06.2016, pointing out the said irregularities and in response to the same, the second respondent issued a notice dated 05.07.2016 under Sections 205(1) & (2) of the Tamilnadu District Municipalities Act, 1920, calling upon them to show cause as to why the said order cannot be confirmed. Since no further progress took place after the said notice, the petitioner has submitted one more representation dated 17.10.2016 to the first respondent and though, it was received and acknowledged, no steps have been taken to demolish the unauthorised portion of the construction put up by the third respondent and hence, the petitioner has come forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that since the third respondent did not respond to the said notice, the second respondent ought to have proceeded further and demolished the offending portion of the construction put up by the 3rd respondent and since the said authority has failed to discharge his statutory duty, the petitioner is constrained to approach this Court by filing the

present writ petition.

4 Mr.J.Ferozkhan, learned counsel for the third respondent would submit that the 3rd respondent is confined at the Central Prison, Cudappah, as an Under-Trial Prisoner, in connection with some other case and invited the attention of this Court to the counter affidavit wherein the 3rd respondent would aver that the petitioner himself is guilty of putting up an unauthorised construction and denied the averments that he had put up a superstructure without leaving any set-back space.

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

6 Section 216 of the Tamilnadu District Municipalities Act, 1920, speaks about the demolition or alteration of building work unlawfully commenced, carried on or completed and the second respondent has invoked the said provision and issued notice. The third respondent did not respond to the said notice and therefore, this Court is of the considered view that there is no impediment on the part of the second respondent to proceed further, in terms of Section 339 of the

Tamil Nadu District Municipalities Act, 1920.

7 The decision rendered by this Court reported in ***AIR 1976 Mad 50 : 1975 [2] MLJ 251 [The Commissioner, Pattukottai Municipality Vs. Chandrasekar]*** also laid down the proposition when the owner neglects the obeying of the order u/s.216[3], there is no further obstruction to the Executive Authority for taking action u/s.339 of the Act. It is further observed that Section 317 relates to the prosecution for failure to comply with the order under Section 216, but that does not in any way affect the right of the Executive Authority to take action under Section 339 [2] of the Act.

8 In the light of the ratio laid down in the above cited decision, the second respondent shall proceed further in terms of section 204[3] read with 339 of the Tamilnadu District Municipalities Act, 1920, as a follow-up action in pursuant to the notice dated 05.07.2016 and take appropriate action within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken ,to the petitioner as well as the third respondent herein.

M.SATHYANARAYANAN,J.
&

SATRUGHANA PUJAHARI.J.,

AP

9 The writ petition is disposed of, with the above direction.

No costs.

[MSNJ]

[SPIJ]

12.12.2017

Internet : Yes
AP

To

- 1.The District Collector,
Nagapattinam District,
Nagapattinam.
- 2.The Commissioner,
Nagapattinam Municipality,
Nagapattinam.



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