

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.26197 of 2017 and W.M.P.No.27844 of 2017

T.Dhanpatraj Sanklecha,
Old No.53, New No.58,
Samipandaram Street,
Chindadripet, Chennai-600 002.

...Petitioner

Vs.

1. The State of Tamil Nadu rep. by its Secretary
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1,Gandhi Irwin Rpad, Egmore,Chennai-600 008.
3. The Corporation of Chennai
Rep. by its Commissioner
Rippon Building, Chennai-600 003.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating the order of the second respondent made in Letter No.EC/C-1/12072/2016 dated 21.09.2017, to quash the same and pass orders.

For Petitioner : Mr. L. Chandrakumar
For Respondent : Mrs.M.E.Rani Selvam for R1
Mr.A.Kumar for R2
Mr.A.Nagarajan for R3.

ORDER

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

By consent the writ petition is taken for final disposal.
Mr.M.E.Rani Selvam accepts notice on behalf of the 1st respondent and
A.Kumar, learned counsel accepts notice on behalf of 2nd respondent.

2 The petitioner in the affidavit filed in support of this writ petition would aver among other things is that the property situated at Old No.53, New No.58, Sami Pandaram Street Chinthadripet, Chennai-2 originally belongs to his mother namely, Tmt.T.Kamal Kavar and she had executed a Settlement Deed in favour of the petitioner and his brother T.Rajendrakumar vide Documents No.834 of 2006 and 835 of 2006, which were registered on the file of Joint Sub-Registrar's office, Chennai Central, Periyamet.

3 It is also averred by the petitioner that even prior to the execution of the settlement deed, his mother had applied for planning

permission and accordingly, it was granted vide PP No.B/Spl Bldg/186/2005 in Permit No.635 vide Letter No.BCI/26136/2004 and the construction came to be commenced and completed way back in the year 2006 and the said superstructure is also subjected to statutory levies.

4 The petitioner would further aver that the additional construction in the form of toilet in the ground floor and that of the head room which came to be constructed due to sheer necessity and the same is used only for residential purpose and taking cognizance of the same, the 1st respondent has issued locking & sealing and demolition notice dated 21.09.2017 and the petitioner aggrieved by the same, has also submitted his response dated 24.09.2017 and also filed Special Revision under section 80 A of of the Tamil Nadu Town and Country Planning Act, 1971.

5 Mr.L.Chandrakumar, learned counsel appearing for the petitioner would submit that the petitioner has been advised to demolish the head room and in so far as the additional construction of toilet in the ground floor is concerned, it is located for the basic necessity and the petitioner has also applied for approval of the same and since the premises is being used as a residential one and in the light of the ensuing Deepavali

Festival, protection may be granted in respect of the said construction.

6 The learned standing counsel appearing for the second respondent has drawn attention of this Court to the impugned notice and would submit that the petitioner has put up construction in deviation of the approved plan. Therefore, the action has been taken strictly in accordance with law.

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

8 It is relevant to extract the deviation / violation observed in the impugned notice dated 21.09.2017 issued by the 2nd respondent :

Sl. No.	Parameter	As per approved Plan	As on site	Deviation to approved plan
1.	Floor	GF +1F+2F(pt) + 3F (Pt)	GF + 3F + 4F (pt)	Unauthorised 2F(pt), 3F(pt) & 4F(pt)
2.	FSI	1.40 (498.67m ²)	2.53 (843.71m ²)	Excess by 1.04 (345.04m ²)
3.	SSB(E)	1.50m	0.90m	Less by 0.60m
4.	Parking	10 Nos (for present site condition)	Feasible 1 No.	Less by 9 Nos.

Sl. No.	Parameter	As per approved Plan	As on site	Deviation to approved plan
5.	Servant Room with toilet has been constructed in the Rear Setback space.			

9 Though the petitioner prays for a larger relief, this Court in the light of the above facts and circumstances without going in to the merits of the claim projected by the petitioner, directs the 1st respondent to entertain the special revision petition / appeal dated 26.09.2017, if the papers are otherwise in order and first take up the petition for stay and give a disposal in accordance with law, within a period of four weeks from the date of receipt of copy of this order and till such time, the respondents 2 and 3 shall defer further decision in terms of the impugned locking, sealing and demolition notice dated 29.09.2017. The 1st respondent is also at liberty to take up the main revision / appeal itself and give a disposal on merits in accordance with law within a further period of ten weeks from the date of disposal of the stay petition and communicate the decision taken to the petitioner and it is also made clear that the petitioner till the disposal of the revision/appeal petition by the 1st respondent shall not alter the physical features of the superstructure and shall not create any third party rights in respect of the same.

10. The writ petition stands disposed of accordingly.

Consequently the connected miscellaneous petition is also closed.

(M.S.N.,J) (N.S.S.,J)
09.10.2017

rka/smn

Index: No

Internet: Yes

Note : Issue order copy on 12.10.2017

To.

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M.SATHYANARAYANAN, J.,

AND

N.SESHASAYEE, J.,

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