

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.26236/2017 & WMP.No.27891/2017

P.Sambandhan

...

Petitioner

Vs

1 The Government of Tamil Nadu
rep.by the Secretary to Government
Housing and Urban Development
Department, Secretariat,
Chennai 600 009.

2 The Commissioner
Corporation of Chennai
Rippon Building, Park Town
Chennai 600 003.

3 The Assistant Engineer
Division No.109 [76]
Gill Nagar, Choolaimedu
Chennai 600 094.

4 The Assistant Executive Engineer
Unit No.24, Corporation of Chennai
Rippon Building, Park Town
Chennai 600 003.

5 The Executive Engineer
Zone-09, No.01, Lake Area
4th Street, Nungambakkam
Chennai-34.

...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of mandamus directing the 1st respondent herein to dispose of the appeal filed by the petitioner under section 79 read with section 80-A of the Town and Country Planning Act, 1971, with regard to property in Door NO.46/47, Plot No.2, West Namasivayapuram, Choolaimedu, Chennai-

600094 for an extent of 527 sq.ft. build up area out of 893 sq.ft. and pass orders in accordance with law and on merit within the time frame to be fixed by this Court.

For Petitioner : Mr.A.Edwin Prabakar

For R1 : Mrs.M.E.Rani Selvam, AGP

For RR2 to 5 : Mr.A.Nagarajan

For Intervenor : Ms.D.Geetha for Mr.D.Hari
[Intervenor / Petitioner in
WP.No.25818/2017]

ORDER

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

By consent, the writ petition itself is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the 1st respondent ; Mr.A.Nagarajan, learned Standing Counsel accepts notice on behalf of the respondents 2 to 5 ; and Ms.D.Geetha, learned counsel appears on behalf of the intervenor, viz., Mr.D.Hari - petitioner in WP.No.25818/2017.

2 The petitioner, on an earlier occasion, filed WP.No.21568/2015 against the Chennai Metropolitan Development Authority and the Corporation officials as well as the intervenor, viz., Mr.D.Hari, praying for issuance of a writ of mandamus, directing the respondents 1 to 3 therein to consider his representations dated 26.06.2014 ; 12.07.2014 and 02.04.2015 respectively and to stop, demolish and permanently remove the illegal, unsanctioned and unauthorised construction carried out by the 4th respondent in Plot No.3, Door No.48/46, West Namachivayapuram, Choolaimedu, Chennai-94, and a Division Bench of this Court, has taken up the said writ petition at the admission stage itself and disposed of it on 20.07.2015, directing the Corporation of Chennai, to take necessary action in the matter within a period of four weeks from the date of receipt of a copy of that order and further granted liberty of being heard to be given to the alleged encroacher, viz., the 4th respondent therein-Mr.D.Hari, before resorting to enforcement act. The petitioner, alleging violation of the said order, had also initiated contempt proceedings and thereafter, the offending construction in the form of construction of the 2nd floor put up by the intervenor, has been demolished.

3 It appears that the intervenor has also approached the official respondents alleging that the petitioner himself is guilty of putting up unauthorised / deviated construction and taking cognizance of the same, inspection was carried out and the 5th respondent, vide notice dated 08.09.2017, called upon the petitioner herein to secure the compliance with the sanctioned plan within thirty days from the date of receipt of the notice, failing which, action will be taken under the provisions of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner challenging the legality of the notice, filed an appeal under section 79 and 80-A of the said Act on 03.10.2017 and pending disposal of the same, he had also moved a petition for stay of all further proceedings. The grievance expressed by the petitioner is that despite moving the 1st respondent by way of an appeal / special revision and as well as stay of all further proceedings, no orders have been passed so far and in the interregnum, taking advantage of the same, the officials of the Corporation of Chennai, threatened to demolish the alleged unauthorised construction and therefore, the petitioner has approached this Court, by filing the present writ petition.

4 Mr.A.Edwin Prabakar, learned counsel appearing for the petitioner would submit that the petitioner has been issued with a Sale Deed very recently and the superstructure is in existence for quite long time and the petitioner is intending to pull down the entire structure and after obtaining necessary planning permanently, is intend to reconstruct the superstructure strictly in accordance with the sanctioned plan and till such time, further action may be deferred on the part of the officials of the Corporation of Chennai.

5 Per contra, Mr.A.Nagarajan, learned Standing counsel appearing on behalf of the respondents 2 to 5 / Corporation of Chennai, has invited the attention of this Court to the order dated 7.09.2017 made in WP.No.25818/2017, filed by the intervenor, viz., Mr.D.Hari, and would submit that this Court has directed the conducting of joint inspection by the officials of the Corporation of Chennai and the officials of the Tamil Nadu Slum Clearance Board in respect of Plot Nos.1 to 5 and thereafter, take action and till such time the inspection is completed and the entire process is over, no further demolition shall take place in respect of the petitioner's premises therein and the joint inspection will be conducted shortly.

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

7 The fact remains that the alleged offending construction put up by the intervenor, viz., Mr.D.Hari, has been demolished in compliance of the order dated 20.07.2015 made in WP.No.21568/2015 and the intervenor has also filed

WP.No.25818/2017, praying for appropriate direction to demolish the unauthorised construction put up by the petitioner herein - 4th respondent therein and a Division Bench of this Court, while disposing of the said writ petition on 27.09.2017, directed the officials of the Corporation of Chennai and the officials of the Tamil Nadu Slum Clearance Board to cause inspection of Plot Nos.1 to 5 and after due notice to the residents/tenements in the area, directed taking of the measurement and the exact area of the plots and if it is found that any building[s] was constructed 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.

8 It appears that insofar as the petitioner is concerned, the said exercise has been carried out and it is relevant to extract the unauthorisedly constructed area pointed out in the notice of the 5th respondent dated 08.09.2017:-

Sl.No	Description	As per Plan	As per Site	Deviated / Unauthorised
1	Ground Floor	---	32.67 [6.60x4.95] M2	Unauthorised
2	Stair Case	---	3.52 [3.70x0.95] M2	Unauthorised
3	Balcony		7.92 [6.60x1.20] M2	Unauthorised
4	Toilet		4.16 [2.60x1.60] M2	Unauthorised
Total			48.27 M2	Unauthorised

9 The petitioner, challenging the said notice has also filed a special revision / appeal on 03.10.2017 along with a petition for stay and this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner and the intervenor, directs the 1st respondent to entertain the appeal/special revision, if the papers are otherwise in order and first, take up the petition for stay and after putting the intervenor, viz., Mr.D.Hari - petitioner in WP.No.25818/2017, on notice, shall give a disposal of the same in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and till such time, the officials of the Corporation of Chennai, shall defer further proceedings in terms of the notice of the 5th respondent dated 08.09.2017. It is also open to the 1st respondent to take up the main appeal/special revision itself

and after putting the intervenor, viz., Mr.D.Hari, on notice, shall give a disposal of the same, on merits and in accordance with law and pass appropriate orders, within a further period of ten weeks from the date of disposal of the stay petition and communicate the decision taken, to the petitioner as well as to the intervenor, viz., Mr.D.Hari.

10 In the light of the undertaking given by the learned counsel appearing for the petitioner, on instructions, that the alleged offending construction/superstructure have become old and that the petitioner is intending to carry out demolition of the same and after obtaining necessary planning permission, to put up a new construction strictly in accordance with the said plan/permission, this Court, directs the petitioner to do the needful as expeditiously as possible. It is also made clear that till the disposal of the appeal/revision petition by the 1st respondent, the petitioner shall not alter the physical features of the superstructure and shall not create any third party rights in respect of the superstructure in question.

11 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The Secretary to Government
Government of Tamil Nadu
Housing and Urban Development
Department, Secretariat, Chennai 600 009.
- 2 The Commissioner
Corporation of Chennai
Rippon Building, Park Town
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Zone-09, No.01, Lake Area
4th Street, Nungambakkam
Chennai-34.

+1cc to Mr.A.Edvin Prabakar, Advocate, S.R.No.72044

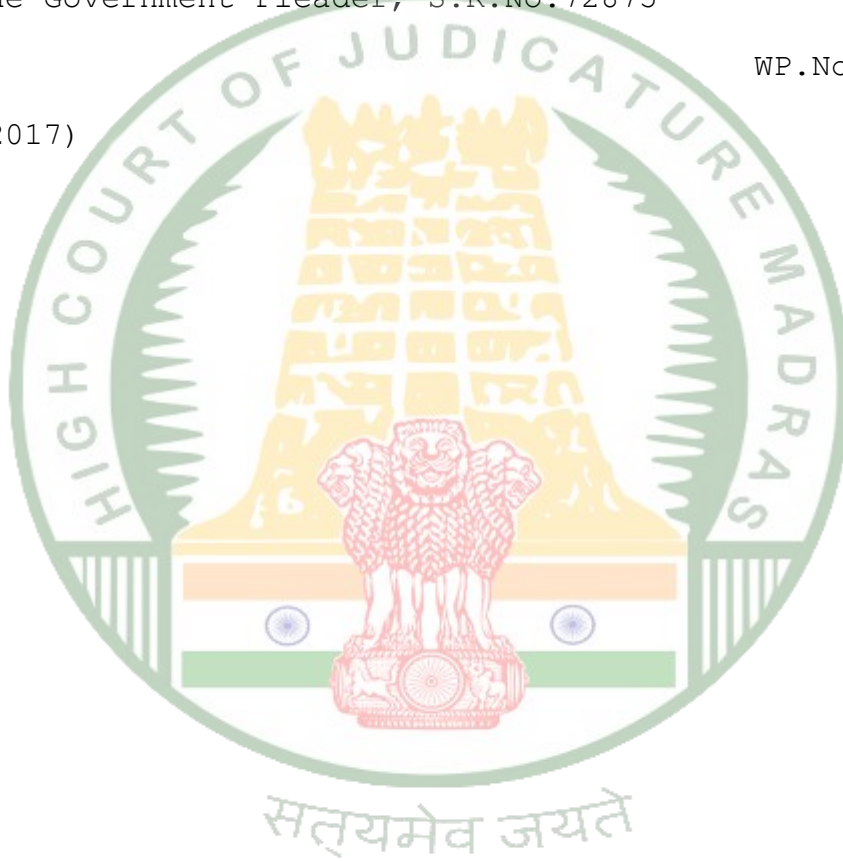
+1cc to Mr.D.Geetha, Advocate, S.R.No.72466

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.72222

+1cc to the Government Pleader, S.R.No.72875

WP.No.26236/2017

GN(20/10/2017)



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