

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.16412 of 2017

and WMP.Nos.17750 and 17751 of 2017

MGR Kathirvel

.. Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai-9.

2.The Commissioner,
The Greater Chennai Corporation,
Rippon Buildings,
Chennai-3.

3.The Executive Engineer,
Enforcement - Region Central,
The Greater Corporation, Zonal Office VIII,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

4.Mr.Kamala Kannan

5.Mrs.Jayashree

6.N.Ganesh

7.N.Radha Krishnan

8.Mechanic Ravi @ N.Ravichandran

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent with reference to the impugned order for de-occupation in Notice No.Zone VIII/TPENF/159/2017 dated 8.6.2017 and quash the same.

For Petitioner : Mr.S.V.Jayaraman, Senior Advocate
assisted by
M/s.T.Dhana Sekaran

For Respondents : Mrs.Vasudha Thiagarajan
Additional Government Pleader for R1
Mr.R.Arunmozhi for R2 to R4

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition, would state that he is an Advocate, practicing in Supreme Court of India and his son is also an Advocate, practicing in High Court, Chennai and claims that he is doing free social service decades together and training yoga, meditation etc., with an object of natural living, without medicines for a disease free living and crime free world. The petitioner would further aver that he is a statutory tenant under the sixth respondent and since attempts have been made to evict him/dispossess him out of the property, he has filed a Suit in O.S.No.4084 of 2016 on the file of the XV Assistant City Civil Court, Chennai and obtained an order of ad-interim injunction restraining the respondents 5 to 6 from interfering with his peaceful possession and enjoyment of the Suit property. The petitioner would also aver that the issue is inter se dispute between the petitioner and other private respondents and he has also filed a petition under Section 9(3) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 in R.C.O.P.No.1696 of 2016 on the file of the XV Small Causes Court, Chennai and the same is pending. The petitioner would further aver that to his shock and surprise, he has been issued with the impugned de-occupation notice dated 08.06.2017 in Notice No.ZONE VIII/TNENF/159/2017 by the third respondent and it has been marked to the sixth respondent and the petitioner, has not at all been put to notice and he has not been given opportunity to response to the said notice and he made a challenge to the said proceedings by contending that it is per se in violation of the relevant statutory legislations.

3. Mr.S.V.Jayaraman, learned Senior Counsel assisted by Mr.T.Dhanasekaran, learned counsel appearing for the petitioner would submit that the third respondent is under obligation to put the occupier of the premises on notice and admittedly, the petitioner/occupier has not been put on notice and therefore, prays for interference.

4. Heard the submissions of Mrs.Vasudha Thiagarajan, learned Additional Government Pleader, who accepts notice on behalf of the first respondent and Mr.R.Arunmozhi, learned counsel who accepts notice on behalf of the respondents 2 to 4 and would submit that due and proper procedure is being followed with regard to de-occupation notice issued to the petitioner.

5. This Court has considered the rival submissions and also perused the typed set of documents.

6. Section 56 of the Town and Country Planning Act, 1971 speaks about Power to require removal of unauthorised development and it is relevant to extract the same:

"56. Power to require removal of unauthorised development-

(1) Where any development of land or building has been carried out-

(a) without permission required under this Act; or
(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may, serve on the owner, a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice-

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.

(2) In particular, any such notice may, for the purposes aforesaid, require-

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building:

Provided that, in case the notice requires the discontinuance of any use of land or building, the appropriate planning authority shall serve a notice on the occupier also.

....."

Proviso to Section 56 stipulates that in case the notice requires the discontinuance of any use of land and building, the appropriate planning authority shall serve a notice on the

occupier also and admittedly, in the case on hand, the petitioner, who claims to be the occupier/tenant, has not been issued with any notice by the third respondent and hence, on the sole ground, the impugned notice warrants interference.

7. In the result, this Writ Petition is partly allowed and the impugned de-occupation notice in Notice No. Zone VIII/TPENF/159/2017 dated 08.06.2017 passed by the third respondent is set aside and the third respondent is at liberty to issue fresh notice, in compliance of Section 56(2) of the Tamil Nadu Town and Country Planning Act, 1971 within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the petitioner is directed to submit his response within a period of 15 days thereafter and upon receipt of response/explanation from the petitioner, the third respondent shall put the respondents 5 to 8 on notice and after hearing them, shall pass final orders in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner as well as the respondents 5 to 8. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai-9.
- 2.The Commissioner,
The Greater Chennai Corporation,
Rippon Buildings, Chennai-3.
- 3.The Executive Engineer,
Enforcement - Region Central,
The Greater Corporation, Zonal Office VIII,
2nd Cross Street (East), Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

+1 cc to Mr.T.Dhanasekaran Advocate sr 46205
+1 cc to the Government Pleader sr 46386
+1 cc to Mr.R.Arunmozhi Advocate sr 46386

W.P.No.16412 of 2017

sj(co)
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