

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.26766/2017 & WMP.Nos.28504 & 28505/2017

K.Gopu @ Gopal

Vs

Petitioner

- 1 The Commissioner Corporation
Chennai Corporation, Rippon Building
Chennai 600 003.
- 2 The Executive Engineer
Town Planning Section Work Department
Adayar Zone, No.115, Dr.Muthulakshmi Salai
Chennai 600 020.
- 3 The Executive Engineer
Zone-XIII, Adayar Zone,
Adayar Zone, No.115, Dr.Muthulakshmi Salai
Chennai 600 020.
- 4 The Assistant Executive Engineer
Zone-XIII, Adayar Zone,
No.115, Dr.Muthulakshmi Salai
Chennai 600 020.
- 5 The Assistant Engineer
Zone XIII, Adayar Zone, No.115, Dr.Muthulakshmi Salai
Chennai 600 020.
- 6 The Zonal Officer
Zone XIII, Greater Chennai Corporation
No.115, Dr.Muthulakshmi Salai
Adayar, Chennai 600 020.

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Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance a Writ of certiorari calling for the records on the file of the 3 to 5 respondents in their proceedings Letter No.27/DN173/2014 dated 06.10.2017 signed on 06.10.2017 and quash the same as illegal and unlawful.

For Petitioner : Mr.S.Venkatesh

For RR 1,3 to 6 : Mr.K.Soundararajan

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner, on an earlier occasion, had approached this Court by filing WP.No.19907/2014, challenging the proceedings of the Joint Engineer, Division No.173, Zone-XIII, the Assistant Executive Engineer, Division No.173, Zone-XIII as well as the Executive Engineer of the same Division / Zone dated 11.07.2014 issued under section 57 of the Tamil Nadu Town and Country Planning Act, 1971, and the said writ petition was disposed of on 06.10.2016 and it is relevant to extract the relevant paragraphs:-

"3 It is undisputed that the petitioner herein started construction without obtaining sanction. The proceedings held in an earlier writ petition filed by the private respondents being WP.No.13436/2012 resulted in an order of the Division Bench dated 30.01.2014 calling upon the Chennai City Municipal Corporation to cause an inspection to be made of the unauthorized construction. It appears that inspection is alleged to have been carried out on 11.07.2016, the same date on which the lock and seal notice was issued, though there are no separate records of such inspection. On being asked to produce records, the Corporation further stated that the planning permission applied by the petitioner was rejected in 2013 itself and the petitioner has taken back the documents, a position now sought to be disputed by the petitioner.

4 We are of the view that it is necessary to untangle this endless exercise which seems to be on, on a simple issue whether the existing construction of basement and ground floor or whether the property has to be restored to its original position by removal of such construction.

5 On hearing the learned counsel for the

parties , we issue the following directions:-

1. The petitioner may apply to the 2nd respondent for sanction of plan within fifteen days from today.
2. The Corporation will take a decision on the plan submitted within a maximum period of two [2] months thereafter.
3. In case the plan is approved, the petitioner would be entitled to go ahead with the construction, but such construction would be subject to the final result of the suits filed by the two parties.
4. If the plan is rejected, the petitioner would be entitled to seek such remedy as may be available in law against the same, but ultimately if the petitioner is not able to succeed, the petitioner will restore the property to its original position, failing which the corporation can carry out the exercise at the cost of the petitioner.
5. The window for the petitioner to do the needful would be one (1) month in such eventuality of the decision on the issue, failing which the corporation would take action within one (1) month thereafter.

6 Writ petition, accordingly, stands disposed of. No costs. Consequently, M.P.No.1 of 2014 stands closed."

3 Thereafter, the petitioner has submitted an application as directed by this Court in the above cited order and the Executive Engineer, Town Planning, vide communication dated 24.01.2017, in WDC.No.T.P.PPA/WDCN13/06442/2016 has returned the said application as "Unapproved" with the following remarks:-

"The applicant failed to submit:-

[1] Please produce copy of any partitioned deed for the partition made from an extent of 240s.ft.

[2] Clarify the existing building in first floor violates the front set back of 1.50m."

4 The petitioner, challenging the legality of the said proceedings, has filed an appeal under section 234 of the Chennai City Municipal Corporation Act, 1919, to the Commissioner, Corporation of Chennai and according to him the same is maintainable. Subsequently, the petitioner made a challenge to the proceedings of the Assistant Executive Engineer, Zone-XIII and the Assistant Engineer of the same Zone, Chennai-20, dated Nil, signed on 08.03.2017, by filing WP.No.8544/2017, with a prayer to quash the same as illegal and unlawful and consequently, to direct the Commissioner, Corporation of Chennai, to dispose of the appeal dated 02.03.2017 and the Hon'ble First Bench of this Court had disposed of the said writ petition on 10.04.2017 and it is relevant to extract the relevant paragraphs:-

"5 In the instant case, the writ petitioner, on not being successful at the first instance, has preferred a statutory appeal under section 234 of the Chennai City Municipal Corporation Act, 1919, [hereinafter "said Act" for clarity]. The statutory Appellate Authority is the first respondent before us, i.e, the Commissioner of Corporation, Chennai. The Statutory appeal under section 234 of the said act is dated 02.03.2017.

6 Pending such statutory appeal, the impugned order has been issued by the fifth respondent before us. Aggrieved, the writ petitioner has filed the instant writ petition calling in question the impugned order.

7 Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents 1 to 5 and admits that the aforementioned statutory appeal dated 02.03.2017 is pending before the 1st respondent, who is the Statutory Appellate Authority.

8 Therefore, we have no hesitation in holding that the action of the fifth respondent in issuing the impugned notice militates against the above said paragraph 5[iv] of the order of this Court dated 06.10.2016 in WP.No.19907 of 2014.

9 We, therefore, set aside the impugned order dated 08.03.2017 bearing Reference Letter No.27/DN173/2014 passed by the fifth respondent. The respondent authorities will have to await the outcome of the appeal.

In the result, the writ petition is allowed. No costs. Consequently, WMP.No.9333 of 2017 is closed."

5 Mr.S.Venkatesh, learned counsel for the petitioner would submit that the 3rd respondent, in utter violation of the above order, has issued the De-Occupation Notice dated 06.10.2017 and even prior to the receipt of the same, pre-notice for initiating contempt, has been issued on 31.07.2017 and in spite of receipt and acknowledgment, the said official has issued the De-Occupation Notice and the same is unsustainable.

6 Per contra, Mr.K.Soundararajan, learned Standing Counsel who accepts notice on behalf of the respondents 1, 3 and 6, would submit that admittedly, the petitioner has put up unauthorized construction in the form of basement and ground floor and the application submitted by him for retention/regularisation, has also been returned and the remedy open to the petitioner is to re-submit the application after complying the defects and as such, the writ petition is not maintainable and would further submit that the invocation of the appeal remedy under the said provision, is also not correct.

7 In response to the said submission, the learned counsel for the petitioner would submit that the petitioner may be granted liberty to invoke the special revisional remedy under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, along with a petition for stay and till the disposal of the stay petition, further proceedings may be deferred for the reason that the said building/superstructure is purely used for residential purpose.

8 This Court, taking into consideration, the alternate plea made by the learned counsel for the petitioner and without going into the merits of the claim projected by the petitioner, in this writ petition, grants liberty to the petitioner, if he is so advised, to invoke the special revision remedy under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 along with a petition for stay under section 80-A[iii] of the said Act, before the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9, within a period of two weeks from the date of receipt of a copy of this order along with necessary and relevant documents and the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9, or the delegated official, on receipt of the same, shall entertain the revision, if the papers are otherwise in order and take up the petition for stay and give a disposal in accordance with law within a further period of four weeks thereafter and till the disposal of the stay petition, the 3rd respondent shall defer further decision in

terms of the impugned notice and it is also open to the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9 or the delegated official to dispose of the main revision itself on merits and in accordance with law within a further period of ten weeks thereafter and communicate the decision taken, to the petitioner. It is made clear that till the disposal of the revision by the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-9, or the delegated official, the petitioner shall not alter the physical features of the superstructure in question and shall also not create any third party right in respect of the same.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

- 1 The Commissioner Corporation
Chennai Corporation, Rippon Building
Chennai 600 003.
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6 The Zonal Officer
Zone XIII, Greater Chennai Corporation
No.115, Dr.Muthulakshmi Salai
Adayar, Chennai 600 020.

+1 CC to Mr. K.Soundararajan Advocate SR.NO.73511
+1 CC to Mr. S.Venkatesh Advocate SR.NO.73320

W.P.No.26766/2017

VC (13/11/2017)



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