

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.26875/2017 & WMP.No.28643/2017

1.Dr.Saleem Basha
2.Mrs.Nafiya Jabeen

...Petitioners

Vs

1 The Secretary,
State of Tamil Nadu
Housing and Urban Development
Department, Fort St George
Chennai 600 009.

2 The Chairman
Chennai Metropolitan Development
Authority, [CMDA] Thalamuthu
Natarajan Building, Egmore, Chennai-600008.

3 The Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.

4 The Assistant Engineer
Chennai Corporation,
Ward No.33, Zone No.3
Bazaar Street, Madhavaram
Chennai 600060.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance a Writ of mandamus forbearing the respondents from locking and sealing the petitioner premises at first and second floor at Door No.55, Madhavaram High Road, Moolakadai, Chennai 600 060, in pursuant to the Lock and Seal Notice dated 25.07.2017 in Ref.No.03/00010/2017, issued under section 56 and 57 read with section 85 of the Tamil Nadu Town and Country Planning Act, 1971, as amended by Act 61 of 2008 and De-Occupation Notice in Letter No.03/00003/2017 dated 13.09.2017 under section 56 sub-section 2[A] and 57 read with section 85 of the Tamil Nadu Town and Country Planning Act, issued in the name of Elahi Dental Clinic pending disposal of the petitioners

revision dated 26.09.2017 on the file of the 1st respondent.

For Petitioners: Mr.J.R.K.Bhavanantham
For R1 : Mr.A.N.Thambidurai, Spl.GP
For R2 : Mr.A.Kumar
For RR3&4 : Mr.A.Nagarajan

ORDER

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

By consent, the writ petition itself is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent ; Mr.A.Kumar, learned Standing Counsel accepts notice on behalf of the 2nd respondent and Mr.A.Nagarajan, learned Standing Counsel accepts notice on behalf of the respondents 3 and 4.

2 The petitioners would aver that they are the owners of the ground floor of the premises bearing Door No.55, Madhavaram High Road, Moolakadai, Chennai-60, along with 285 sqft., UDS out of 855 sq.ft., and the wife of the 1st petitioner is running a Dental Clinic in the name and style as "Elahi Dental Clinic". The petitioners would further aver that their neighbours on the Southern side, viz., Sridevi, Ushanandhini and Jayasree, daughters of [late] Sivasankaran, had started putting up unauthorized construction on the open terrace of the first floor of the existing building bearing Door No.47/64, Madhavaram High Road, Moolakadai, Chennai-60 and aggrieved by the same, one Suresh Chand Chodia has filed WP.No15658/2017 praying for issuance of a writ of mandamus, directing the respondents 1 to 3 therein, to consider his representation dated 27.05.2017 and take action against the unauthorized construction for commercial purpose carried out by the private respondents therein in the premises bearing Door No.47/64, Madhavaram High Road, Moolakadai, Chennai-60 and this Court has directed the respondents 1 and 2 therein - CMDA and the Corporation of Chennai, to cause a joint inspection of the petitioner's property bearing Door No.46-C as well as the property of the private respondents therein bearing Door No.47/64, Madhavaram High Road, Moolakadai, Chennai-60, within the stipulated time frame and depending upon the result of the same, directed the officials concerned to take appropriate action.

3 The learned counsel for the petitioners would submit that under the guise of joint inspection, without pointing out any alleged violation, the 4th respondent has issued the Locking and Sealing and Demolition notice dated 25.07.2017 and challenging the legality of the same, the petitioners have also filed a special revision petition before the 1st respondent herein and in the interregnum, the De-Occupation Notice dated

13.09.2017 was also issued by the 4th respondent and would further submit that till the disposal of the revision petition, the further proceedings in pursuant to the Locking, Sealing and Demolition Notice dated 25.07.2017 and the De-Occupation Notice dated 13.09.2017, may be deferred with.

4 Heard the submissions of the learned Special Government Pleader appearing for the 1st respondent and the respective learned Standing counsel appearing for the respondents 2 to 4, who would submit that since unauthorized constructions have been noted, action is being taken strictly in accordance with law.

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

6 This Court, taking into consideration of the fact that a special revision petition has been filed under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent, permits the petitioner to file a petition for stay under section 80-A[iii] of the said Act and the 1st respondent, if the papers are otherwise in order, shall entertain the revision petition along with the petition for stay and shall take up the petition for stay and give a disposal in accordance with law within a period of four weeks from the date of entertainment of the revision petition as well as the petition for stay and the said official is also at option to take the main revision itself and give a disposal in accordance with law within a further period of ten weeks thereafter and communicate the decision taken, to the petitioners. It is made clear that till the entertainment and disposal of the petition for stay, the respondents 2 to 4 shall defer further proceedings in terms of the impugned Locking, Sealing and Demolition Notice dated 25.07.2017 and the De-Occupation Notice dated 13.09.2017 respectively.

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

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

AP

To

1 The Secretary,
State of Tamil Nadu
Housing and Urban Development
Department, Fort St George, Chennai 600 009.

2 The Chairman
Chennai Metropolitan Development
Authority, [CMDA] Thalamuthu
Natarajan Building, Egmore, Chennai-600008.

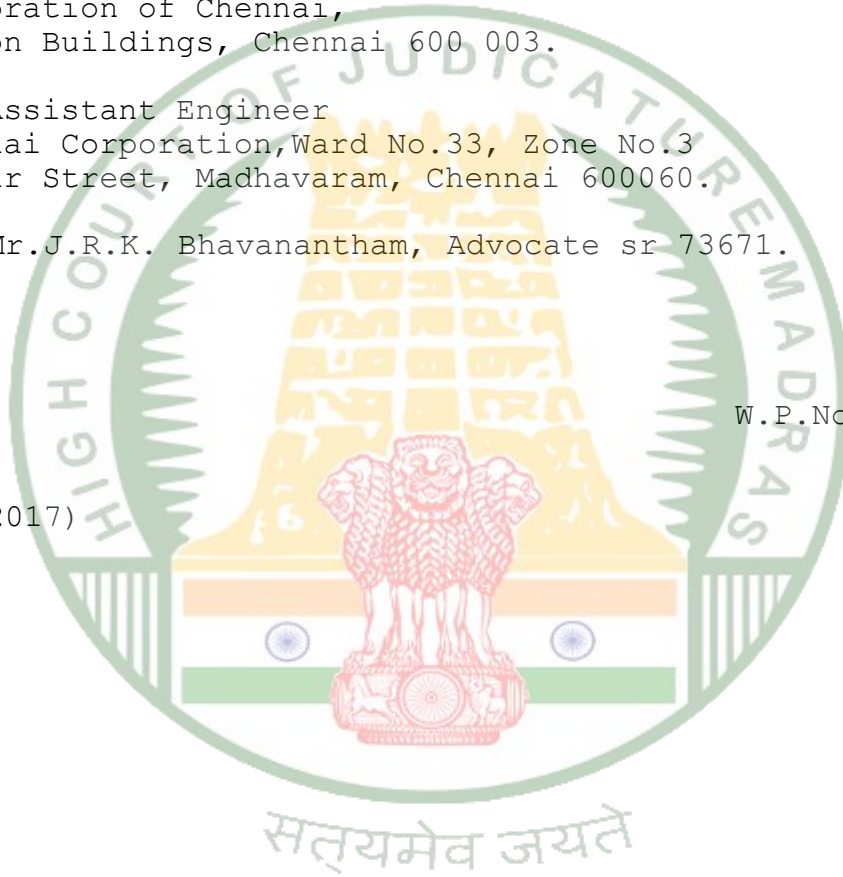
3 The Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.

4 The Assistant Engineer
Chennai Corporation, Ward No.33, Zone No.3
Bazaar Street, Madhavaram, Chennai 600060.

+1 Cc to Mr.J.R.K. Bhavanantham, Advocate sr 73671.

W.P.No.26875/2017

SP(23/10/2017)



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