

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.16982/2017

G.V.Shanmugam

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Petitioner

Vs

1.The Secretary to Government
State of Tamil Nadu,
Municipal Administration & Water
Supply Department, Secretariat
Fort St George, Chennai 600 009.

2.The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road,
Thalamuthu Natarajan Maaligai, Egmore
Chennai 600 008.

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

4.Mr.Ravi Appasamy
The Managing Director
M/s.Appasamy Real Estates Limited
3, Mangesh Street, T.Nagar
Chennai 600017.

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Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents 1, 2 and 3 to consider the petitioner's representation dated 09.06.2017 and or to take suitable action against the 4th respondent for carrying out unauthorised/deviation in the construction activities at S.No.4310/5 and RS.Nos.4569/34 and 35, Block No.100, Santhome High Road, Mylapore Village in accordance with law.

For Petitioner : Mr.K.Bijay Sundar
 For R1 : Mr.R.Vijayakumar, AGP
 For R2 : Mr.N.Sampath
 For R3 : Mr.A.Nagarajan
 For R4 : Mr.Sathish Parasaran, SC
 assisted by Mr.Rohan Cherian

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 is a resident of Lazarus Church Road, bearing Old No.15, New No.35, R.A.Puram, Chennai 600 028. In the affidavit filed in support of this writ petition, the petitioner would aver among other things that the 4th respondent has started his construction activities on the rear side of his premises in Survey No.4310/5 and

<http://www.judis.nic.in> RS.Nos.4569/34&35, Block No.100, Santhome High Road, Mylapore,

Chennai-4 and on account of the construction activities, the petitioner as well as the neighbours in the locality are facing various problems, such as air, noise and water pollutions including illegal extract of ground water at the side by the 4th respondent and the petitioner in this regard, has also approached the National Green Tribunal, Southern Bench, by filing an application in No.109/2017 regarding illegal ground water extraction and other pollutions caused on account of the construction activities and also prayed for appropriate orders to ensure Floor Space Index [FSI] permitted is as per the FSI permitted under the Notification, which is as per the regulation existing as on 19.02.1991.

3 The National Green Tribunal has entertained the said application and vide order dated 19.05.2017, has granted interim orders in respect of the construction activities being carried out by the 4th respondent. The 4th respondent filed miscellaneous applications in M.A.Nos.79, 80 and 81/2017 in Appln.No.109/2017 for vacating the interim order granted on 19.05.2017 and in support of the same, the 4th respondent has also filed copies of Environmental Clearance besides Blue Print of the permission granted by the respondents 2 and 3. The petitioner would further aver that as per the documents filed by the 4th respondent, permission has been obtained for construction of One Single

Block consisting of Double Basement with Stilt + 3 to 16 floors consisting of 98 dwelling houses.

4 The National Green Tribunal also directed the Chennai Metropolitan Water Supply and Sewage Board [CMWSSB] as well as the Tamil Nadu Pollution Control Board [TNPCB] to cause inspection and and file a Status Report and accordingly, CMWSSB has filed a Status Report on 30.05.2017 pointing out that the 4th respondent is constructing 3 Blocks in Survey No.4310/5 and RS.Nos.4569/34 and 35, Block No.100, Santhome High Road, Mylapore, Chennai-4, and is also extracting ground water for construction activities. It is the specific case of the petitioner that though the 4th respondent had obtained planning permission for construction of One Single Block, has deviated and started putting up construction by constructing Three Blocks in the said survey numbers and the same is evidenced from the Status Report filed by CMWSSB on 30.05.2017.

5 The petitioner, in this regard, has also submitted a representation dated 09.06.2017 to the respondents 1 to 3 enclosing a copy of the latest report dated 30.05.2017 filed by CMWSSB and prayed for appropriate action and despite receipt and acknowledgment, no

orders have been passed and therefore, the petitioner came forward to file the present writ petition.

6 The writ petition was listed for admission on 06.07.2017 and after hearing the submission of the learned counsel for the petitioner, this Court has directed the respondents 2 and 3 to inspect the construction being put up by the 4th respondent and file a report as to whether the said construction is in accordance with the sanctioned plan/authorisation. This Court has also directed the Corporation of Chennai to inspect the premises of the petitioner to find out whether the superstructure exist, is in accordance with the sanctioned plan or not and both parties were directed to produce the approved planning permit to the 2nd respondent to carry out the inspection.

7 Accordingly, the Chennai Metropolitan Development Authority has inspected the construction activities carried out by the 4th respondent and the Corporation of Chennai has also filed a status report with regard to the superstructure of the petitioner premises for which, the petitioner has also filed his objections.

8 The learned counsel for the petitioner would submit that as per the Status Report of CMDA dated 01.07.2017, as far as the construction put up by the 4th respondent in SSB [West], there is a deviation / violation to an extent of 0.15m and insofar as the Set Back violation regarding construction being put up in SSB [East], is concerned, the CMDA could not take measurement on account of the earth excavation and water logging between the building lines and boundary lines and therefore, the petitioner has made out a *prima facie* case. Insofar as the report filed by the Corporation of Chennai as regards superstructure is concerned, it is the submission of the learned counsel for the petitioner that the superstructure was constructed by his mother, viz., [late] Vembuammal, about 42 years back and after her demise, the petitioner has succeeded to the estate and in terms of G.O.Ms.Nos.110 and 111 dated 22.06.2017 under section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, the petitioner is entitled to apply for regularisation and the petitioner is in the process of applying regularisation and undertakes necessary steps for such regularisation.

9 Mr.Sathish Parasaran, learned Senior Counsel appearing for the 4th respondent has drawn the attention of this Court to the order of

the National Green Tribunal dated 24.05.2017 made in Order No.5 and would submit that the National Green Tribunal has noted that *"the Project Proponent [4th respondent] has violated FSI norms and continue with the construction and complete the construction, it could always be provided that any construction made hereafter would be subject to the final orders that may be passed by the Tribunal."* Insofar as the air and noise pollutions are concerned, the Tribunal has noted that *"if the Project Proponent [4th respondent] undertakes to comply with the relevant rules and regulations, applying the principle of sustainable development, it is not in the interest of justice to continue the prohibition on constructing the project, especially when it is found that any further construction would be subject to the final orders that could be passed by the Tribunal. At the same time, the Project Proponent shall not cause any disturbance to the neighbours and shall not cause any violations of the provisions of Air [Prevention and Control of Pollution] Act, 1981 or 2000 Regulations."* The Tribunal has also directed CMWSSB to depute a Senior Engineer to inspect the construction site and file a status report and accordingly, CMWSSB has filed a Status Report dated 30.05.2017, wherein they have pointed out that the proposed construction consisting of 3 Blocks with 2 Basements, Stilt floors, first and second floors and Car Parking and 16 floors of residential

premises and it gave cause of action to the writ petitioner to submit a representation dated 09.06.2017 to take appropriate action against the 4th respondent and since he has not been favoured with any kind of response, the petitioner came forward to file the present writ petition.

10 The learned Standing Counsel appearing for CMDA would submit that as per the orders passed by this Court, the site was inspected and a minimal deviation within condonable limits was noted on SSB [West] side and insofar as the measurement of set back on Eastern side is concerned, they could not do so for the reason that the earth excavation work was going on and there was water logging between the building lines and boundary lines also.

11 In response to the said submission, the learned Senior Counsel appearing for the 4th respondent would submit that the 4th respondent is carrying out construction activities strictly in accordance with the sanctioned plan / permission and if any deviation is noted, it is always open to the respondents 2 and 3 to take appropriate action and it is also open to the 2nd respondent to deny completion certificate to the 4th respondent also and would further add that the matter is still pending adjudication in the National Green Tribunal and as

such, the petitioner cannot be said to be a person really aggrieved and prays for dismissal of the writ petition with exemplary cost.

12 This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

13 The cause of action for filing this writ petition would emanate from the report of CMWSSB dated 30.05.2017 in compliance of the order No.5 passed by the National Green Tribunal, Southern Bench, dated 24.05.2017. In the light of the subsequent stand taken by the petitioner that the 4th respondent is carrying on the construction activities in gross violation of the sanctioned plan / permission, this Court has directed CMDA to cause inspection and their report dated 19.07.2017 along with photographs would indicate that there was a deviation on SSB [Western side] and the same is within the condonable limits. Insofar as the set back measurement on SSB Eastern side, it is the stand of CMDA that they could not carry out measurement on account of the earth excavation and water logging between the building line and the boundary lines.

14 It is also to be pointed out at this juncture that the

2nd respondent is under obligation to carry out periodical monitoring and inspection in respect of the construction activities going on to find out whether it is in accordance with the sanctioned plan / permission and if there is any infraction of the statutory provisions or violation of the sanctioned plan / permission, they have to take appropriate action to set right the same.

15 It is also open to the 2nd respondent to deny the completion certificate to the 4th respondent in the event of violation of the sanctioned plan / permission.

16 Insofar as the superstructure of the petitioner is concerned, it is the stand of the Corporation of Chennai, in their report dated 19.07.2017 that the premises was inspected on 18.07.2017 and the following deviations/unauthorised constructions were noted and the same is extracted below:-

<i>Sl.No</i>	<i>Description</i>	<i>As per Plan</i>	<i>As per site</i>	<i>Deviation / Unauthorised</i>
1	Ground Floor	87 sq.m	107.70 sq.m	20.70 sq.m
2	First Floor	-	60.13 sq.m	60.13 sq.m

17 The stand of the petitioner in the form of Objections

dated 07.08.2017 is that his mother had put up the superstructure about

42 years back and after her demise, he has succeeded to the said property and the deviation can also be regularised in terms of G.O.Ms.Nos.110 and 111 dated 22.06.2017 under section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, and he is in process of working out his remedy by filing an application for regularisation. In the light of the said stand taken by the petitioner, this Court is not commenting upon the same.

18 In the light of the stand taken by CMDA, this Court is of the view that no orders need be passed in favour of the petitioner and insofar as the alleged violation of air and noise pollutions is concerned, the National Green Tribunal, Southern Bench, has already seized of the matter. It is open to the petitioner to work out his remedy in the pending proceedings before the Tribunal.

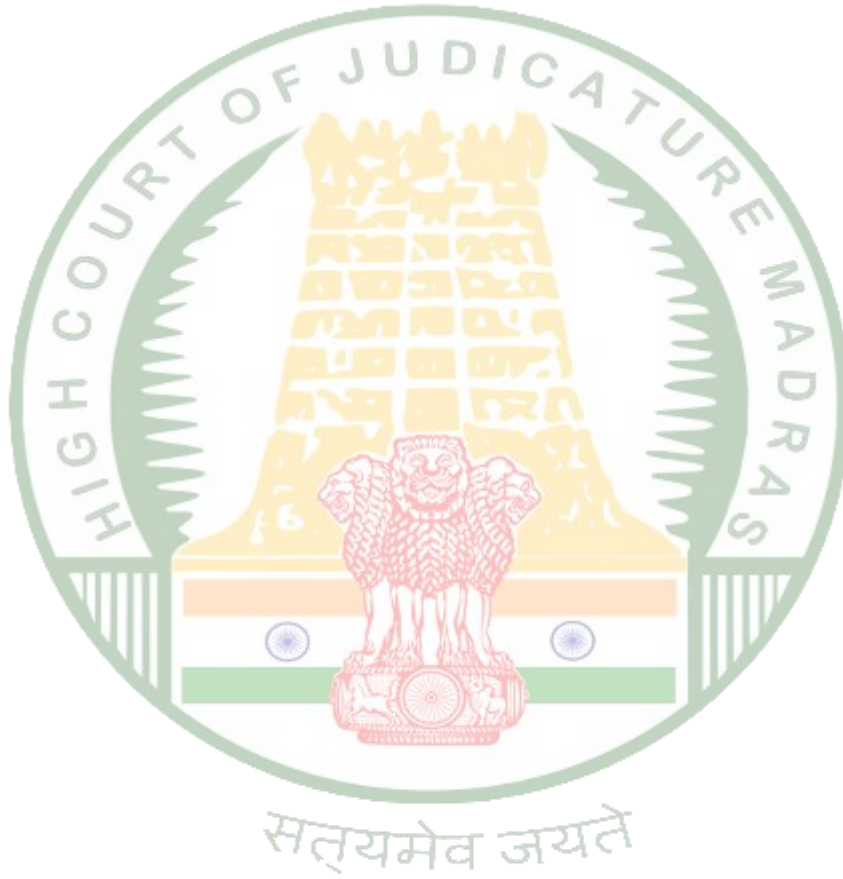
19 It is also made clear that the 4th respondent shall put up construction strictly in accordance with the sanctioned plan / building permission and the 2nd respondent shall regularly monitor the same and see to that the 4th respondent is complying with the relevant norms.

20 In the result, the writ petition is dismissed. No costs.

[M.S.N., J.] [N.S.S., J]
07.08.2017

Index : No
Internet : Yes

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M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,
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