

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.27720 of 2017
and W.M.P.Nos.29676 & 29677 of 2017

V.Krishnamurthy ... Petitioner

.Vs.

- 1.The Principal Director (Appellate Authority),
Directorate Defence Estates,
Ministry of Defence, Southern Command,
Manekji Mehta Road, Pune - 4110001.
 2. The Chief Executive Officer,
Office of the Cantonment Board,
St. Thomas Mount,
Chennai 600 016.
 3. C.Suresh ... Respondents
 4. The Joint Chief Controller of Explosives,
Ministry of Commerce and Industry,
Government of India, Petroleum and Explosives
Safety organisation (PESO) A & D Wing,
Block No.1 - 8, II Floor 26, Haddows Road,
Nungambakkam, Chennai - 6
 5. The Indian Oil Corporation Limited,
Chennai Divisional Office,
Rep. By its Senior Divisional Consumer
Sales Manager, No.500, Anna salai, Teynampet,
Chennai 600 018.
 6. The District Officer,
Fire and Rescue Services,
South Chennai District,
Ashok Nagar, Chennai 600 083.
- R4 to R6 are suo-motu impleaded as per order
dated 01.11.2017 by MSNJ and NSSJ in
WP No.27720 of 2017. ... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent dated 20.10.2017 in No.STM/Works/Appeal/2644 in Tele No.2311718 and quash the same and consequentially direct the 2nd respondent to take up the appeal filed by the petitioner and pass appropriate orders.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
Assisted by Niranjan Rajagopalan.

For Respondents: Mr.Venkataswamy Babu
Senior Panel Counsel for R1, R4
Mr.Chevanan Mohan for R2
Mr.A.N.Thambidurai,
Special Government Pleader for R6
No Appearance for R5

ORDER

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

The petitioner is the proprietor of M/s.Aviation Express, Teynampet, Chennai 600 018, which is a 24 hour cab service mainly operated from Chennai Airport to the need of the passengers who are arriving at Domestic and International Terminals and it is in the said business for the past 30 years. The petitioner for the purpose of parking of cars, was searching for place to put up fuel storage tank and car maintenance shed, toilet, bathroom and other basic amenities for employees on the alleged land belonging to the 3rd respondent.

2. The Rental Agreement came into being with one M/s.Chelliah Chandar Buildings (landlord), the 3rd respondent and the petitioner on 23.01.2017 for lease of the premises measuring about 3986 Sq.ft. situated at New Door No.2/53, Veteran Lines, Cantonment Pallavaram, Comprised in Re Survey No.894, for the purpose of installation of the Equipment and Maintenance of vehicles and to install fuel storage, Toilet rooms and bathrooms.

3. The petitioner has also approached the Indian Oil Corporation, Chennai Divisional Officer, Chennai 18 for the supply of High Speed Diesel to their plant which is to be located on the above said property and the Ministry of Commerce & Industry, Petroleum & Explosives Safety Organisation (PESO),

had also sent a communication dated 20.02.2017, granting approval and also directed the petitioner to furnish all documents relating to the completion of the construction as shown in the approved plan for grant of license in Form XIC of the Petroleum Rules, 2002 and the petitioner has obtained No Objection Certificate from the Fire and Rescue Service, South Chennai District on 16.03.2017.

4. The 2nd respondent had sent series of communication commencing from 05.05.2017 to the 3rd respondent bringing to his knowledge that unauthorised construction without obtaining proper sanction of Cantonment Board as required under Section 235 of the Cantonment Act, 2006, is being done and the same would constitute an offence under Section 247 of the said Act. A copy of the said communication was also marked to the petitioner. The petitioner in response to the said communication submitted their reply to the 2nd respondent and it was entertained on 17.05.2017, wherein they requested them to approve the site plan submitted along with the said letter for erection of their own vehicle maintenance shed, Service room for servicing of their vehicles, toilets and bathrooms for their employees / Drivers use and construction of bricks wall for underground diesel storage tank in the rented premises and also undertake to pay the required fees for approval of the site plan and further action of undertaking entire area will be utilised for their own use and there is no commercial activities involved in the site plan.

5. The petitioner also submitted yet another representation dated 31.07.2017 to the 2nd respondent praying for regularisation of the temporary asbestos shed put up at Door No.2/53, Survey No.894 patta land and Door No.2/52 Survey No.896 Patta land at Pallavaram Cantonment area and in the said letter pointed out that they have only installed the diesel tank in the above said premises and however, they have not operated diesel tank arrangement, since the license from Explosives Department is awaited and once again, prayed for regularisation of the temporary asbestos shed construction put up in the above said premises.

6. However, to the shock and surprise of the petitioner, the 2nd respondent has issued a notice under sub-section (1) of Section 248 of the Cantonments Act, 2006 to the 3rd respondent with a copy marked to the 4th respondent contemplating action for demolition of the said building. The petitioner aggrieved by the said order, filed an appeal before the Appellate Authority, viz., the Principal Director, Southern Command, invoking Section 340 of the Cantonment Act, 2006 along with petitioner for suspension of action under Section 342 of the Cantonment Act, 2006 and it was received and acknowledged on 09.10.2017 and the 3rd respondent has also sent a representation dated

11.10.2017 to the 2nd respondent pointing out the lands in question had been leased in favour of the petitioner and therefore, he being the fit person to contest the case and to avoid any technical objection, is also authorised him to file an appeal or pursue other legal remedy against the above said notice. The 2nd respondent vide impugned 20.10.2017, has returned and rejected the appeal for the following reasons :-

(1)As per the Sale Deed documents, the subject two private lands have been registered in favour of Mr.C.Suresh in the Sub-Registrar Office, Pallavaram, Chennai.

(2)Mr.C.Suresh has been authorised to erect a working women's hostel building vide CBR Nos.17 and 18 dated 26.10.2016.

(3)The notice under Section 248(1) of the Cantonment Act, 2006 is given to Mr.C.Suresh, not to you.

and challenging the legality of the said order, the present writ petition is filed.

7. Mr.A.R.L.Sundaresan, learned Senior Counsel assisted by Mr.Niranjana Rajagopalan, learned counsel on record appearing for the petitioner would submit that the 2nd respondent became the adjudicator of the notice issued by them and he ought not to have processed the appeal and even for the sake of arguments that he is entitled to process the appeal to find out whether the appeal papers are in order, he had gone one step further and rejected the appeal and the said power is only available to the Appellate Authority and not to the 2nd respondent who issued the notice contemplating action for demolition of the alleged offending construction and hence prays for interference.

8. The writ petition was listed on 20.10.2017 and on that day, Mr.Chevanan Mohan, learned counsel accepted notice on behalf of the 2nd respondent and again the matter was listed on 01.11.2017 and on that day, M.Venkatasamy Babu, learned Senior Panel Counsel accepted notice on behalf of the 1st respondent and taking note of the facts and circumstances, this Court Suo-motu impleaded respondents 4 to 6 as parties to the writ petition and ordered notice to them and this Court taking note of the submissions made by the learned counsel appearing for the petitioner on instructions that though underground tanks have been put up, the petroleum products are yet to be stored and the same is also not put into use, has passed an order of direction, directing that the premises should not be used for any purpose other than the permission granted to the 3rd respondent to put up women / Ladies Hostel construction consisting of Ground + 2 Floors / storeys and the Form-A application submitted by the 3rd respondent would also disclose the said fact.

9. The 3rd respondent has filed counter affidavit along with the typed set of documents and in paragraph No.8 would aver

among many other things that he received a communication from the 2nd respondent dated 02.11.2017, with regard to his application dated 24.06.2016, informing that the Cantonment Board had taken a decision to grant him approval to the proposal to construct Working Women's Hostel and he is no longer interested in pursuing the said project and thereby, the said proposal is, no longer feasible for him, to proceed further.

10. The learned counsel appearing for the 2nd respondent has drawn the attention of this Court to the typed set of documents and would submit that as per the application dated 24.06.2016 submitted by the 3rd respondent, he sought permission to construction working women's hostel and the counter affidavit of the 3rd respondent would also disclose the proposal has been accepted vide communication dated 02.11.2017 and however, the 3rd respondent is not interested to pursuing the said project. Insofar as the maintainability of the appeal is concerned, it is submission of the learned counsel appearing for the 2nd respondent that the 3rd respondent alone is the competent to file an appeal and not the 2nd respondent for the reason that in the appeal, the petitioner has not explained as to how he is aggrieved by the notice for demolition.

11. It is further submission of the learned counsel appearing for the 2nd respondent that the appeal petition is to be submitted through the 2nd respondent who will forward the same to the The General Officer, Commanding in Chief, Southern Command, Head Quarters, Pune, if the papers are otherwise in order and they are under option to process the appeal and forward the same to the Appellate Authority, who is expected to perform action Under Section 340 of the Cantonment Act and prays for dismissal of this writ petition.

12. The petitioner has also filed an additional affidavit dated 15.11.2017 praying for representing the appeal within a stipulated time before the 2nd respondent after rectifying / explaining the defects pointed out and that he may be permitted to make all submissions before the Appellate Authority.

13. Mr. A.R.L.Sundaresan, learned counsel appearing for the petitioner would submit that in the light of the said additional affidavit, the defects pointed out in the impugned order would be complied with and the 2nd respondent may be directed to forward the appeal along with the petition for interim direction to the Appellate Authority with a direction directing the Appellate Authority to entertain the appeal and pass appropriate orders on merits within a stipulated period of time.

14. This Court heard the submissions of learned senior counsel appearing for the petitioner as well as the respective

learned counsel appearing for the respondents and also perused the materials placed before it.

15. It is relevant to extract Section 341 and 342 of Cantonment Act, 2006 :-

341. Petition of appeal - (1) Every appeal under Section 340 shall be made by petition in writing accompanied by a copy of the order appealed against.

(2) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may attach thereto any report which it may desire to make by way of explanation.

342. Suspension of action pending appeal :- On the admission of an appeal from an order, other than an order contained in a notice issued under Section 144, Section 183, Section 238, Section 273 or Section 302, where the appellate authority so directs, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and, if the order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

16. The primordial submission made by the learned counsel appearing for the 2nd respondent is that in the appeal memorandum the petitioner has failed to explain as to how he is aggrieved by the notice ordering demolition of the alleged offending construction. The word "any person" in Section 17 and 18 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 came up for consideration as well as this Court. The Hon'ble Supreme Court of India in the decision reported in 2014 (1) CTC 652 (SC) [Jagdish Singh V.Heeralal], has considered the word "any person" , as prescribed under Section 17(1) of the SARFAESI Act and observed as follows :-

19. The expression "any person" used in Section 17 is of wide import and takes within its fold not only the Borrower but also the Guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case.

20. Therefore, the expression "any person" referred to in Section 17 would take in the Plaintiffs in the suit as well. Therefore, irrespective of the question whether the Civil suit is maintainable or not, under the Securitisation Act itself , a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case of the Bank (Secured Creditor) adopt any measure

including the sale of the Secured Assets, on which the plaintiffs claim interest". and yet another earlier decision of the Hon'ble Supreme Court of India reported in 2012 (13) SCC 269 [Tara Chand v. Gram Panchayat, Jhupa Khurd] the word "any person" came up for consideration and it is relevant the same :-

"The word "any person" has to be understood in the context that was intended by the legislature with respect to the Tenancy Act, keeping in mind the purpose for which the statute was enacted. The provisions of the Act, thus, have to be constructed to achieve the purpose of its enactment. This Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part, considering the context and the subject of the said statute. (Vide Shri Balaganesan Metals v.M.N.Shanmugham Chetty and Sahyadri Sahakari Sakhar Karkhana Ltd v.CCE).

17. There is no doubt, the petitioner is an aggrieved person aggrieved by the notice of the 2nd respondent dated 13.09.2017 sent to the 3rd respondent and it is also pertinent to point out at this juncture that a copy of the said notice has also been marked to the petitioner and as such the petitioner is competent to invoke the appellate jurisdiction under Section 340 of the Cantonment Act, 2006.

18. In the light of the stand taken by the learned counsel appearing for the 2nd respondent that though this Court agrees that the 2nd respondent is entitled to process the appeal papers only for the purpose of forwarding it and it is not open to him to reject the appeal out rightly as it is the duty of the Appellate Authority to consider the same. At best, it is open to the 2nd respondent to return the appeal papers for complying with the defects and on representation, to find out whether the appeal papers are in order for the purpose of forwarding the same to the Appellate Authority.

19. In the light of the stand taken by the writ petitioner in his letter dated 31.07.2017 submitted to the 2nd respondent till the disposal of the application for interim direction by the Appellate Authority, the petitioner shall not use the premises for which he had obtained lease from the 3rd respondent and however, his possession of semi-permanent structure put up by him shall not be demolished and his possession shall not be disturbed. It is also open to the petitioner to approach the 2nd respondent seeking permission for using the premises for providing basic amenities such as bath room and wash room, for their employees and as and when such an application is received by the 2nd respondent / Cantonment Board, it shall process the

same and pass orders as expeditiously as possible in accordance with law.

20. In the light of the stand taken by the petitioner in his additional affidavit dated 15.11.2017, the petitioner is at liberty to represent the appeal papers to the 2nd respondent within a period of one week from the date of receipt of copy of this order and the 2nd respondent on receipt of the same, shall process the appeal papers and if the papers are otherwise in order, forward the same to the Appellate Authority within a further time of one week thereafter and the Appellate Authority on forwarding of the papers by the 2nd respondent, shall entertain the appeal and is at option to take up the interim petition or the main appeal itself and give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision / result of the order to the petitioner. It is also made clear that the Appellate Authority shall decide the interim relief as well as the main appeal on his own merits without being influenced by any observations made in this writ petition.

21. It is also brought to the knowledge of this Court that very many unauthorised construction/superstructures exist in the Cantonment Board and it is brought to the knowledge of the Court that the matter has also been seized by the Hon'ble First Bench of this Court and periodically, the status reports are being filed before the said court. This Court, hope and trust that the Cantonment Board is alive to the duties and responsibilities and perform their activities strictly in accordance with law while taking note / take care of public interest also.

22. The writ petition stands disposed of accordingly.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Principal Director (Appellate Authority),
Directorate Defence Estates,
Ministry of Defence, Southern Command,
Manekji Mehta Road, Pune - 4110001.

2. The Chief Executive Officer,
Office of the Cantonment Board,
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Commanding in Chief,
Southern Command,
Head Quarters, Pune,
 6. The District Officer,
Fire and Rescue Services,
South Chennai District,
Ashok Nagar, Chennai 600 083.
- + 1 cc to Mr.Venkataswamy Babu, Advocate, SR.81150
- + 1 cc to M/s.G.R.Associates, Advocate, SR.81093
- + 1 cc to M/s.King & Partridge, Advocate, SR.81122
- + 1 cc to The Govt.Pleader, SR.81150

W.P.No.27720 of 2017

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