

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.28490/2017

and W.M.P.No.30610 of 2017

Pushpalingam

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Petitioner

vs

- 1 The Secretary to Government
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai
- 2 The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai
- 3 The Executive Engineer, Zone-13
TP Enforcement-Region South,
Corporation of Chennai, Chennai
- 4 The Assistant Executive Engineer, Zone-13
TP ENF, Corporation of Chennai
Chennai
- 5 The Assistant Engineer
Division 176,
Corporation of Chennai,
Chennai

6 Viswanatha

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the 1st respondent to dispose the stay application of the petitioner dated 01.11.2017, challenging the notice dated 17.03.2015, 26.10.2017 in Notice No.11670/2015 Region Joint Commissioner (South) (Enforcement Cell) Adyar, Chennai-600 020 under section 56 read with section 57 of the Town and Country Planning act issued by respondents 2 to 5, after affording an opportunity of personal hearing and dispose the same in accordance with law within a time frame as stipulated by this

Court in the facts and circumstances of the case.

For Petitioner : Mr.G.Dakshinamurthy
For R1 : Mr.M.Digvijay Pandian, AGP
For R2 to R5 : 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. Mr.M.Digvijay Pandian, learned Additional Government Pleader accepts notice on behalf of the 1st respondent; and Mr.K.Soundararajan, learned standing counsel accepts notice on behalf of the respondents 2 to 5.

2 The petitioner is a resident of Door No.A4, Thiruvallur Nagar, 5th Avenue, Besant Nagar, Chennai-90 and a perusal of the affidavit filed in support of the writ petition would also disclosed among other things that he is an encroacher and claims that he is a resident of the aforesaid premises along with family for over 60 years and likewise there are very many encroachers who are put up superstructure and all the superstructure are also subjected to the statutory levies.

3 The petitioner would further claims that the land belongs to Tamil Nadu Slum Clearance Board wherein very many such constructions have come into place. It is the specific case of the petitioner that the 6th respondent who is on enemical terms with the petitioner, seems to have submitted a representation stating that the construction put by the petitioner is totally unauthorized the said issue was also tried to be amicably solved in the local panchayat; but it was not successful. However to the shock and surprise of the petitioner, he has received a notice on 26.10.2017 from the third respondent, wherein it has been stated that in compliance of the order made in W.P.No.18608 of 2017, the said notice has been sent to the petitioner and that the Lock and Seal notice dated 17.03.2015 was issued under sections 56 and 57 read with Scheme 8 of the Tamil Nadu Town and Country Planning Act, 1971, and it was also confirmed and if the petitioner fails to comply with the same, further action will be taken in accordance with law. The petitioner on receipt of the notice, made enquiry and he became aware that the sixth respondent filed the above said writ petition and this Court disposed of the same on 25.07.2017, directing the 4th respondent therein/petitioner herein on notice and proceed further in accordance with law and in pursuant to the said direction only, the confirmation of the Lock and Seal notice has been issued through the above said proceedings. The petitioner, in this regard, has also submitted a representation on 31.10.2017 to the respondents 2 to 5 and also filed an appeal / special revision

under section 80A of Tamil Nadu Town and Country Planning Act, 1971, to the first respondent on 01.11.2017 and it was also received and acknowledged.

4 The learned counsel for the petitioner would submit that along with the appeal/special revision, the petitioner has also filed a petition for stay and however no orders has been passed so far and in interregnum, the petitioner and his family are likely to be dispossessed and therefore prays for appropriate orders.

5 Per contra, Mr.K.Soundararajan, learned standing counsel appearing for the respondents 2 to 5 would submit that even as per the own admission of the petitioner, he is a rank encroacher and also put up unauthorized structure and compliance of the above said order passed by this Court only, action is being taken strictly in accordance with law and he would further add that the Tamil Nadu Slum Clearance Board is also a necessary party.

6 The learned Additional Government Pleader appearing for the 1st respondent would submit that if the papers are otherwise in order, the appeal/special revision will be entertained and appropriate orders will be passed in accordance with law.

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

8 This Court, taking into consideration the limited scope of the prayer sought for by the petitioner and without going into the merits of the claim projected by him either in the appeal / special revision petition or in this writ petition, directs the first respondent to entertain the said appeal / special revision if the papers are otherwise in order and either the 1st respondent or the delegated official is to take up the petition for stay initially and give a disposal in accordance with law within a period of four weeks from the date of receipt of a copy of this order and they are also at liberty to take up the main appeal/special revision itself and give a disposal in accordance with law as expeditiously as possible. The respondents 2 to 5, till the disposal of the petition for stay by the 1st respondent / delegated official, shall defer further proceedings in terms of the impugned notice dated 26.10.2017 of the 3rd respondent. It is also made clear that the petitioner, till the disposal of the appeal/special revision by the 1st respondent / delegated official, shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the same.

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

rpl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1 The Secretary to Government
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai
- 2 The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai
- 3 The Executive Engineer, Zone-13
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Corporation of Chennai, Chennai
- 4 The Assistant Executive Engineer, Zone-13
TP ENF, Corporation of Chennai, Chennai
- 5 The Assistant Engineer
Division 176,
Corporation of Chennai,
Chennai.

Copy to:-

The Chairman
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chepauk, Chennai-600 005.

+2 cc to M/S G.Dakshina murthy, Advocate Sr.79414
+1cc to Government Pleader Sr.79344
+1cc to M/S S.Soundararajan, Advocate Sr.79177

W.P.No.28490/2017

GMR(CO)
RVR 29/11/2017