

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29454 of 2016

P.Sridharan

.. Petitioner

Vs.

1. The Executive Engineer,
Corporation of Chennai,
Zone 13, Dr.Muthulaxmi Salai,
Chennai-600 020.
2. The Assistant Commissioner,
Corporation of Chennai,
Zone 13, Dr.Muthulaxmi Salai,
Chennai-600 020.
3. The Regional Deputy Commissioner,
Corporation of Chennai,
Zone 13, Dr.Muthulaxmi Salai,
Chennai-600 020.
4. Wang's Chinese Beauty Parlour,
Owned by Florence Wang,
Plot No.152, Panchayat Main Road,
Thirumalai Nagar,
Perungudi, Chennai-600 096.
5. Sparadise Saloon,
Owned by Babita Mathew,
Plot No.152, Panchayat Main Road,
Thirumalai Nagar,
Perungudi, Chennai-600 096.

6. S.V.Moiz @ Moiz Shabbir Bhai, Vadnagerwala,
S/o Shabbir Bhari,
195, Rasappa Chetty Street,
Chennai, Rep. by his Power of Agent
Bhavikadhoka,
W/o R.Kamlesh Kumar,
No.55/26, Nattu Muthu Street,
Teynampet, Chennai-18.

7. Shree Constructions,
rep. by R.Kamlesh Kumar,
at No.27, Nattu Muthu Street,
Vanniya Teynampet, Chennai-18.

8. The Secretary,
Housing and Urban Development Department,
Govt. of Tamil Nadu,
Fort St.George, Chennai.

(Respondents 6 to 8 impleaded as per
order dated 06.11.2017 in W.M.P.No.30413 of 2017
in W.P.No.29454 of 2016)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying
for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to consider
the representation of the petitioner, dated 02.07.2016 within the time fixed by
this Court.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.T.C.Gopalakrishnan for RR-1 to 3

Mr.D.Kumar for RR-4 and 5

No appearance for RR-6 and 7

Mr.S.Diwakar, Spl.G.P. for R-8

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to consider the representation of the petitioner, dated 02.07.2016 within the time fixed by this Court.

2. According to the petitioner, he has purchased the property in question from the sixth respondent. The petitioner has purchased the house at the first floor of an extent of 1290 Sq.Ft. and near house of an extent of 950 Sq.Ft. The second floor consists of two houses. As per the approved plan, the building comprised of two floors and the ground floor. As per the plan, the ground floor is shown as car parking and store maintenance, which was approved by the authority. On seeing the plan which was approved, the petitioner decided to purchase the property and accordingly, he purchased the same. The petitioner further states that the residential area was attempted to be converted into commercial area without the knowledge of the petitioner and no application has been filed for modification of the plan. The unauthorised ground floor portions were occupied by the respondents 4 and 5. According to the petitioner, there cannot be any commercial place in the land and that probably, the sixth and seventh respondents would have duped the respondents 4 and 5 while selling the property. As the portion occupied by the respondents 4 and 5 is in violation

of the plan, the same has got to be demolished, and hence, the petitioner made a representation, dated 02.07.2016 to the respondents 1 to 3.

3. The respondents 6 to 8 have been impleaded as parties to the present Writ Petition, by order dated 06.11.2017 in W.M.P.No.30413 of 2017 in W.P.No.29454 of 2016.

4. Learned counsel for the respondents 4 and 5 stated that the violation of the plan is with regard to the construction of the portion of the property enjoyed by the petitioner and the same has also been pointed out, but the petitioner has not come forward with clean averment that he has violated the planning conditions.

5. Learned counsel for the respondents 4 and 5, by filing counter affidavit, stated that as per the lock and seal and demolition notice, dated 12.09.2016, the front set back, rear set back, side set back on both sides and the plinth area of the first floor, belongs to the petitioner and the second floor has been deviated from the approved plan. The petitioner has deviated 5.64 Sq.Mtrs. equivalent to 61 Sq.Ft. from the sanctioned building plan. Hence, he has no right to challenge the construction of the respondents 4 and 5.

6. It is further stated in the counter affidavit that there are seven other flat owners, who have also deviated the sanctioned plan and constructed the properties and their names are reflected in paragraph 4 of the counter affidavit and those seven persons are as follows:

- (i) Sharmila Govindaraj (Doc.No.1981/2010);
- (ii) Dasari Venkataraja (Doc.No.3214/2010);
- (iii) S.Anandakumar (Doc.No.4173/2010);
- (iv) P.Sathiyar (Doc.No.5192/2010);
- (v) Parameswari & Singaravelan (Doc.No.5193/2010);
- (vi) Jemima Rabi & Rabi Priya Sundar Singh (Doc.No.5534/2010);
- (vii) K.Vasuki (Doc.No.661/2011).

Since the above said seven flat owners are not parties to the present Writ Petition, this Court is not rendering any finding against them.

7. Admittedly, as per the sanctioned plan, there cannot be any commercial place that has now been occupied by the respondents 4 and 5 and that the authority concerned will have to demolish the same. The contention of the respondents 4 and 5 is that they have made application under Section 80-A of the Tamil Nadu Town and Country Planning Act before the eighth respondent and that the prayer of the petitioner is only to consider and pass appropriate orders on the said representation, dated 02.07.2016.

8. Learned counsel for the respondents 1 to 3/Corporation of Chennai submitted that if there are any illegal constructions, in violation of the sanctioned plan, stringent action will be initiated against the persons, be that it is the petitioner or the respondents 4 and 5 or any other resident in the place pointed out by the respondents 4 and 5.

9. Heard both sides and perused the materials available on record.

10. Admittedly, the petitioner is the owner of the property in the first floor of the building in question and the respondents 4 and 5 are also the owners of the property in ground floor. As per the sanctioned plan, there cannot be any commercial space and the respondents 4 and 5 have no locus-standi to continue in that place. The building constructed therein has got to be demolished. It has got to be used for the purpose for which the plan had been sanctioned. It is pointed out by the learned counsel for the respondents 4 and 5 that the petitioner has also violated the plan and notice has been issued by the Corporation of Chennai. Learned counsel for the petitioner drew the attention of this Court to a decision of a Division Bench of this Court reported in 2012 (1) CWC 337 (Elizebeth Ebenezer Vs. The Junior Engineer, Corporation of Chennai), wherein, it has been held by the Division Bench that the authorities shall not only take action against person who is constructing unauthorisedly or in violation of the approved plan, but also against person who has lodged a complaint for his illegal construction.

11. Thus, if any construction has been made in violation of the plan, it has got to be razed to the ground. The pendency of appeal/application before the eight respondent under Section 80-A of the said Act, cannot be a ground for illegal construction of the building to continue and thereafter seek regularisation, which cannot be accepted by any one much less by this Court. A complete violation of the construction in the city of Chennai is mainly on account of the

existence of the Tamil Nadu Town and Country Planning Act, and the said Act, instead of trying to curtail the unauthorised construction, is paving way for illegal construction and illegal regularisation. Not only the citizens of the country, but also the authorities are trying to approve the illegal constructions that are being made without any set-backs. Hence, I direct the respondents 1 to 3/Corporation of Chennai to demolish the building of the respondents 4 and 5 and ensure that it is retained for the purpose for which the plan has been sanctioned. If there is any violation of the construction made by the petitioner, he cannot also be spared and the axe will have to fall on him also and the authorities will have to take steps to demolish the building, if any constructed by the petitioner in violation of the plan.

12. Learned counsel for the respondents 4 and 5 pointed out that there are several other flats in the same building which are constructed in violation of the plan. The authorities shall issue notice to those persons also to ascertain about the so-called construction made. If any violation is made beyond the permissible limit under the provisions of the said Act, those portions have got to be brought down. The official respondents 1 to 3 and 8 are directed to initiate action against the petitioner and also the respondents 4 to 7 for constructing the building in violation of the plan, within a period of 15 days from the date of receipt of a copy of this order. This order will not preclude the respondents 1 to 3 and 8 to proceed against the respondents 4 and 5, and the respondents 4 and

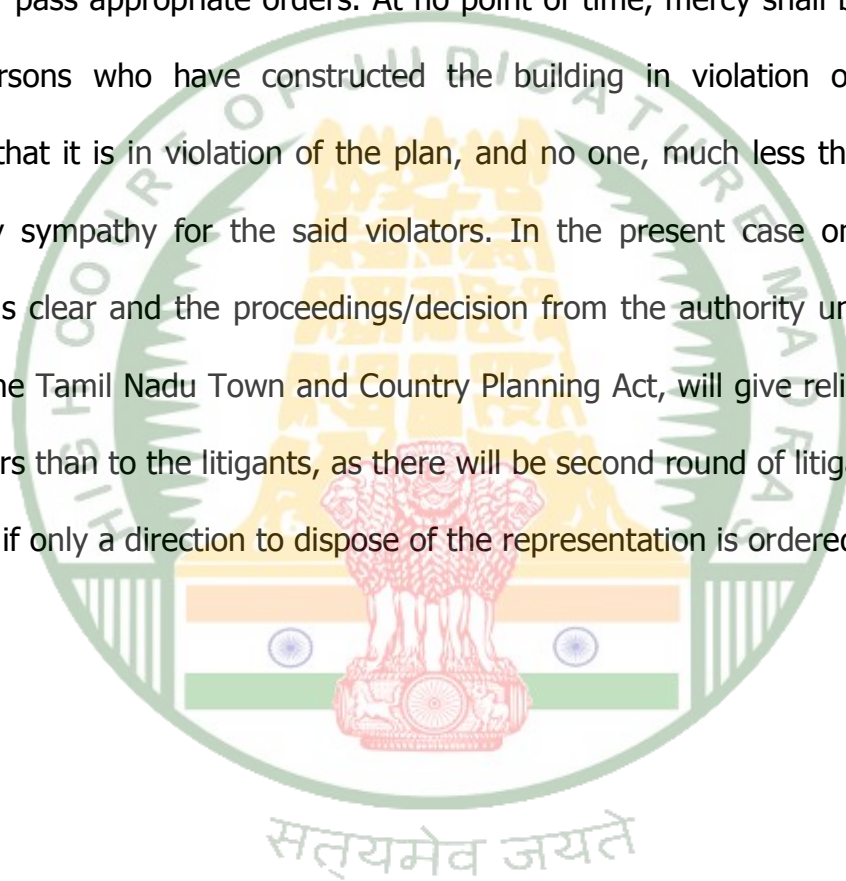
5 are entitled to approach the respondents 6 and 7 and demand repayment of the amount for the property being sold illegally, apart from claiming damages, as their hard-earned money is parted with for buying the building(s) illegally. Any illegal sale of the property cannot give any right to a builder to retain the building. Liberty is given to the respondents 1 to 3 and 8 to proceed against the respondents 6 and 7 and any sale made in a portion of the property, cannot be sold at all. There is no appearance for the respondents 6 and 7 before this Court and the private notice sent by the learned counsel for the petitioner to them returned "unclaimed". There is no response to the newspaper publication effected in respect of the seventh respondent. The names of the sixth and seven respondents have also been printed in the cause list today.

13. After dictating the order, learned counsel for the respondents 4 and 5 submitted that the respondents 4 and 5 may be granted time till April 2018 to vacate and hand over the possession, so that they may seek alternative place to vacate the premises in question. This Court observes that the respondents 4 and 5 shall vacate and hand over the possession to the authorities as expeditiously as possible so as to demolish the violated portions.

14. With the above observations and directions, the Writ Petition is dismissed. No costs. Post the Writ Petition "for reporting compliance" on 19.01.2018.

15. Before parting with this case, this Court is of the view that whenever

an application for regularisation of illegal construction is made or the application/appeal is filed under Section 80-A of the said Act, the authority concerned shall not only hear the complainant if there is one, but also take videographs and photographs of the portions built in violation of the plan, and thereafter pass appropriate orders. At no point of time, mercy shall be shown to those persons who have constructed the building in violation of the plan, knowing that it is in violation of the plan, and no one, much less this Court will show any sympathy for the said violators. In the present case on hand, the violation is clear and the proceedings/decision from the authority under Section 80-A of the Tamil Nadu Town and Country Planning Act, will give relief mainly to the lawyers than to the litigants, as there will be second round of litigation on the property, if only a direction to dispose of the representation is ordered.



19.12.2017

Index: Yes

Internet: Yes

Speaking order

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To

1. The Executive Engineer,
Corporation of Chennai,
Zone 13, Dr.Muthulaxmi Salai,
Chennai-600 020.
2. The Assistant Commissioner,
Corporation of Chennai,
Zone 13, Dr.Muthulaxmi Salai,
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4. The Secretary,
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Govt. of Tamil Nadu,
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S.VAIDYANATHAN, J

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