

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22264 of 2004

B.Raman

... Petitioner

Vs.

1. The Commissioner,
Chidambaram Municipality,
Chidambaram.

2. R.Natarajan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to take necessary action against the second respondent for violation in the construction of the building in S.Nos.913/1, 914/1A, 914/2A, 915 and 916 of Chidambaram Kaspas within the limits of Chidambaram Municipality under the District Municipalities Act.

For Petitioner : No appearance

For Respondents : Mr.K.R.Thamizhmani for R-1

Ms.Aishwarya for

Mr.Srinath Sridevan for R-2

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to take necessary action against the second respondent for violation in the construction of the building in S.Nos.913/1, 914/1A, 914/2A, 915 and 916 of Chidambaram Kaspas within the limits of Chidambaram Municipality under the District Municipalities Act.

2. When the Writ Petition is taken up for hearing, there is no representation for the petitioner. Heard the learned counsel for the respondents and perused the materials available on record.

3. The case relates to violation of construction in the property in question by the second respondent, without leaving any set-back.

4. In the above context, it is worthwhile to notice that in the following decisions, this Court had held that there cannot be any violation of set-backs while constructing the buildings:-

(i) W.P.No.6109 of 2013, dated 10.02.2017 (First Bench -- S.K.Kaul, CJ and M.Sundar,J) (R.Mahendra Kumar Jain Vs. The Member Secretary, CMDA, Chennai and another);

(ii) W.P.No.18777 of 2014, dated 08.11.2016 (First Bench -- S.K.Kaul, CJ and R.Mahadevan,J) (N.B.Punniamoorthi and two others Vs. The Member Secretary, CMDA, Chennai and four others);

(iii) W.P.No.25274 of 2013, dated 16.09.2014 (N.Selva Mohan Vs. The Tamil Nadu Electricity Board, rep. by its Chairman and four others);

(iv) 2006 (4) CTC 483 (Division Bench of this Court) (Consumer Action Group Vs. State of Tamil Nadu);

(v) Contempt Petition No.1769 of 2015 and 2166 of 2015 (suo motu) (First Bench -- S.K.Kaul, CJ and R.Mahadevan,J).

5. It is also to be noted that while disposing of the complaints/petitions, etc., not hearing the applicant/complainant on the ground that the High Court order is silent to hear the applicant/complainant or there is no provision to hear the applicant/complainant, would be fatal, if there is illegal construction/encroachment/violation of plan, etc., as the complainant would be the best person to bring to the attention of the authorities about the violation of plan/illegal construction/encroachment. No prejudice is going to be caused to any one if the applicant/complainant is heard. This Court makes it clear that whenever such applications are pending, while hearing the applicant/complainant, if any other person will have to be heard before arriving at a decision, that person will also have to be heard and, as the plan will throw better light on the issue, the Rural Development and Local Administration Department Secretary/Housing and Urban Development Department Secretary/any other authority concerned of the State of Tamil Nadu shall demand authorised plan and ascertain from the person concerned as to whether the construction has been made as per the plan, leaving proper set back, and decide the issue after hearing the applicant/complainant and after getting comments from the CMDA and the Corporation in all pending matters. Further, while taking up the matter, the authorities concerned must enquire as to whether the application has been made based on the complaint and if a reply is given that there is no complaint and subsequently if it is found to be false, on that score itself, the request of the applicant can be rejected.

6. From the above discussion, it is needless to state that the set-backs have to be maintained and without maintaining set-back, no construction in the building is to be made. The purpose of set-back is to enter into the premises in case of fire or any other untoward incident. The first respondent in

this case, shall ensure that the officials shall take steps to demolish the violated construction of the building, failing which, disciplinary action should be taken against the officials concerned. If no disciplinary action is taken, the persons who are responsible to take the disciplinary action, shall be taken to task and they shall face capital punishment (in service jurisprudence, dismissal from service is the capital punishment).

7. After dictating this order, a communication dated 06.10.2004 of the Commissioner of Chidambaram Municipality, addressed to the learned counsel for the first respondent, is produced, stating that there is no construction made in the place in question. Learned counsel for the first respondent ought to have produced the said communication and brought to the attention of this Court even at the time of commencement of arguments, but not after dictating the order in this Writ Petition. However, the said communication, dated 06.10.2004 is taken on file.

8. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner,
Chidambaram Municipality,
Chidambaram.
2. The Secretary,
Rural Development and Local Administration Department,
Secretariat, Fort St.George,
Chennai-600 009.
3. The Secretary,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai-600 009.

+ 1 cc to M/s.Srinath Sridevan Advocate,SR.63754

W.P.No.22264 of 2004

GR(CO)
NR 13/10/2017