

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.37175/2006 & MP.No.1/2006

J.Abid Ali ... Petitioner

Vs

- 1 The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, No.8, Gandhi Irwin Road
Egmore, Chennai 600 008.
- 2 The Commissioner
Corporation of Chennai
Ripon Building, Chennai-3.
- 3 Syed Ashraf Ali
- 4 Mohamed Siraj
Hyderabad Briyani
No.20, Moore Road, Nungambakkam
Chennai 600 006.
- 5 Park Circle Building Owners Association
rep.by its President having Office at
No.28, Sucons Apartments, II Floor
Crescent Park Street, T.Nagar,
Chennai 600 017. ... Respondents

***R5 implied as per the order of this Court
made in WMP.No.27718/2017 in
WP.No.37175/2006 vide order dated 05.10.2017.

Prayer: Writ petition filed under Article 226 of the
Constitution of India for issuance a Writ of mandamus directing
the respondents 1 and 2 to take necessary action against the 3rd
and 4th respondents by demolishing the unauthorized construction
put up by them at Park Circle, 20, Moore Road, Chennai-6, which
is in violation of the Development Control Rules framed under
the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.K.V.Sundararajan
For R1 : Mr.N.Sampath
For R2 : Mr.R.Arunmozhi
For R3 : No appearance
For R4 : Mr.N.Senthil Kumar
For R5 : Mr.N.C.Ashok Kumar

ORDER

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

By consent, the writ petition itself is taken up for final disposal.

2 The deponent of the affidavit claims to be the Power of Attorney Agent of the petitioner and he would aver that he is the owner of the 3rd Floor of the property bearing Door No.20, Moorse Road, Nungambakkam, Chennai-600 006, named as "Park Circle" and that the 3rd respondent is the owner of the Ground Floor portion of the said premises and he had let out his portion to the 4th respondent who is running a Hotel under the name and style "Hyderabad Briyani". It is further averred that the 4th respondent during the third week of September 2006 started putting up unauthorized construction in the common area and in this regard, a representation was submitted to the respondents 1 and 2 as well as telegrams were sent to respondents 3 and 4 and in spite of receipt and acknowledgment, no action has been taken to remove the offending construction and hence, the petitioner came forward to file this writ petition.

3 This writ petition was entertained on 09.10.2006 and an order of ad-interim injunction was granted restraining the respondents 3 and 4 from proceeding with the construction without there being any planning permission.

4 The matter was listed on 20.07.2017 and this Court has taken note of the report of the Junior Engineer, Corporation of Chennai dated 14.12.2016 as well as the counter affidavit of the 3rd respondent and found that in the common passage area, the 4th respondent is running an Eatery and taking note of the location, directed the said official to cause inspection of the entire premises and to find out as to whether the petitioner and the present owner of ground floor had put up any unauthorized construction in common area and using it for any other purpose and also to state whether any permission or license have been obtained to do so and directed listing of the matter on 16.08.2017 and on that date, found that the 4th respondent has put up an unauthorized construction in the ground floor and that some unauthorized construction has also been put up on the

terrace portion and also taken note of the counter affidavit filed by the Chennai Metropolitan Development Authority and granted time to the Corporation of Chennai to file their counter.

5 The Building Owners Association has also filed a petition for impleadment in WMP.No.27718/2017 and vide order passed today, this Court has ordered the impleadment also.

6 The Chennai Metropolitan Development Authority has filed its counter affidavit and it is relevant to extract paragraphs 3 to 5:-

"3 I respectfully submit that the CMDA has not issued any Planning Permission for the said site under reference. CMDA takes Enforcement Action under Section 56 & 57 of Tamil Nadu Town and Country Planning Act, 1971, on those cases for which the CMDA has issued Planning Permission. Therefore, action against this building is within the purview of the Greater Chennai Corporation.

4 I respectfully submit that the Government promulgated the Ordinance No.1 of 2007 on 27.07.2007 to suspend enforcement action on the buildings constructed up to 01.07.2007 for a period of one year. The Ordinance was continuously extended up to 2011 till a status quo order was passed by the Hon'ble Supreme Court of India on 14.12.2007 while granting leave in SLP [Civil] 23098/2007 against the judgment/order of the Hon'ble High Court of Madras dated 13.11.2011 and it was vacated on 15.03.2011. Therefore, no enforcement action could be taken as against the buildings during the period from 2007 to 2011.

5 Further, I submit that the 3rd respondent Thiru Syed Ashraf Ali can avail the regularisation scheme under section 113[C] of the Tamil Nadu Town and Country Planning Act, 1971, as per G.O.Ms.No.110 & 111, dated 22.06.2017."

7 The report of the Corporation of Chennai dated 11.08.2017 would disclose the following deviations / unauthorized construction. It is relevant to extract the same:-

"5....

I The 4th respondent has constructed an unauthorized construction in the front side of the building measuring an extent of 366 sq.ft. by blocking the frontage of the building using as dining hall for his restaurant.

II The 4th respondent has also constructed an unauthorized construction in rear side of the building measuring an extent of 215 sq.ft., using as kitchen and also put up a shed measuring an extent of 67 sq.ft for storing the gas cylinders.

III On inspection of the terrace it was found that there is an unauthorized construction measuring room an extent of 175 sq.ft., and a toilet measuring an extent of 90 sq.ft.

IV Further there are two cell phone towers and a box rooms for the same measuring an extent of 250 sq.ft. and 2 generators being placed on the terrace floor.

6 I respectfully submit that neither the petitioner nor the other occupants has obtained any permission either from the Chennai Metropolitan Development Authority nor from the Greater Chennai Corporation."

8 The Communication of the Chennai Metropolitan Development Authority dated 24.05.2007 bearing Letter No.EC1/26736/1995 would also disclose that the Planning Permission Approval in CMDA Letter No.B1/15807/1995 dated 16.10.1995 has been granted and the superstructure put up is in deviation to the approved plan and accordingly, the demolition notice dated 25.08.1998 in EC1/26736/1995, has been issued and therefore, the occupiers were called upon to discontinue the occupation of the premises within seven days so as to enable the CMDA to carry out demolition of the deviated/unauthorised construction.

9 The learned Standing counsel appearing for the 1st respondent / CMDA would submit that in the light of the Ordinance and section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, no action has been taken so far.

10 Though the 3rd respondent who has let out a portion in favour of the 4th respondent has been served and his name appears in the Cause List, there is no representation on his behalf.

11 The learned counsel for the 4th respondent would submit that in the light of the report of the CMDA, the removal of the offending construction is to take place in accordance with law and in that event, he is also entitled to invoke the remedy available to them under the provisions of the Town and Country

Planning Act, 1971.

11 The learned counsel appearing for the impleaded party, viz., Park Circle Building Owners Association - the 5th respondent herein, has drawn the attention of the Court to the affidavit filed in support of WMP.No.27718/2017 and would submit that the unauthorised construction pointed out by the Corporation of Chennai in its report dated 11.08.2017, would be removed and insofar as the removal of the Cell phone towers are concerned, necessary communication has been addressed to the said Companies for removal of the same and in the event of further proceedings take place as to the demolition of the deviated / unauthorized construction, they may be granted liberty to avail the remedy available to them under the relevant Act and Rules.

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

13 As per the report filed by the Corporation of Chennai dated 11.08.2017, the 4th respondent has put up unauthorized construction in front side of the building measuring to an extent of 366 sq.ft., blocking the frontage of the building and using it as dining hall for his restaurant and had also put up unauthorized construction on the rear side of the building, admeasuring to an extent of 215 sq.ft., and using it as kitchen and had also put up a shed admeasuring to an extent of 67 sq.ft. and on the terrace also, unauthorized construction has been put up admeasuring to an extent of 175 sq.ft., and a toilet admeasuring to an extent of 90 sq.ft., has been put up and that apart, two cellphone towers have also been erected. The report would further indicate that neither the petitioner nor the occupants had got permission either from CMDA or from the Corporation of Chennai. The counter affidavit filed by CMDA coupled with the letter dated 24.05.2007 would also disclose that the construction put up in the main building is in deviation of the approved plan and though the demolition notice was issued as early as on 25.08.1998, no action could be taken in the light of section 113-A of the Town and Country Planning Act and the Ordinance which came to be issued at the relevant point of time.

14 Be that as it may, the fact remains that in deviation of the sanctioned plan, the unauthorized constructions have been put up and the 4th respondent, prima facie, appears to have violated Chapter-X of the Chennai City Municipal Corporation Act, 1919 as well as the provisions of the Chennai City Municipal Corporation Rules, 1972 and the Special Rules for Multi-Storeyed and Public Buildings, 1974.

15 In the light of the above facts and circumstances, the respondents 1 and 2 are directed to take appropriate action as to the offending construction in respect of the main building as well as the construction put up by the 4th respondent who is running a commercial establishment in the form of a Restaurant, in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and as and when such an action is taken, the occupiers / owners of the main building as well as the 4th respondent, if so advised, are entitled to work out their remedy in accordance with law.

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

AP

Sd/-
Assistant Registrar
/TRUE COPY/
Sub-Assistant Registrar

To

1 The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Maligai, No.8, Gandhi Irwin Road
Egmore, Chennai 600 008.

2 The Commissioner
Corporation of Chennai
Ripon Building, Chennai-3.

+1CC to M/S.R.ARUNMOZHI, Advocate SR.NO.71843
+1CC to M/S.V.PARTHIBAN Advocate SR.NO.71388
+1CC to M/S.K.V.SUNDARARAJAN Advocate SR.NO.72193
+1CC to M/S.N.C.ASHOK KUMAR, Advocate SR.NO.72504

WP.No.37175/2006

CP[CO]
MK:28/10/2017