

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

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

WP.No.24688 of 2004
and

W.M.P.Nos.30033 and 30034 of 2004

Reach Telecommunication Pvt. Ltd
rep.by its Managing Director
L.Ramachandran
M-75/3 Third Avenue,
Anna Nagar East,
Chennai 600 102.

... Petitioner

Versus

1. The Corporation of Chennai
rep.by its Commissioner,
Ripon Buildings,
Chennai 600 003.
2. The Executive Engineer,
Corporation of Chennai,
Works Department,
Zone Office V-Division No.68,
Chennai 600 003.
3. The Assistant Executive Engineer,
Corporation of Chennai,
Works Department,
Zone Office V-Division No.68,
Chennai 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the proceedings of the 1st respondent dated 26.08.2004 in Notice No.77 under Section 378 of the Chennai City Municipal Corporation act and quash the same and consequently forbear the respondents from in any manner interfering with the right of the petitioner to be in possession and put up construction in the property bearing Door No.678/1-A Dr.Ambedkar Street, Pullah Avenue, Chennai 600 030.

For Petitioner : Mr.P.Seshadri

For RR 1 to 3 : Mr.C.Ravichandran

ORDER

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

The petitioner challenges the impugned notice dated 26.08.2004 issued by the respondents 2 and 3 signed by the 1st respondent under Section 378 of the Chennai City Municipal Corporation Act IV of 1919 (in short "CCMC Act"), informing that the officials interfering the premises bearing No.678/1A, Dr.Ambedkar Street, for the purpose of demolishing the deviated portion after the expiry of twenty four hours from the service of demolition notice.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the land admeasuring to an extent of 1008 sq.ft in T.S.No.33, Block No.7, Periyakudal Village, Thamilar Nagar, Anna Nagar, Chennai 600 102 under a registered Sale Deed dated 28.03.2002 bearing Document No.1056 of 2002 registered in the office of the Sub Registrar of Anna Nagar. The said land forms part of the larger extent of the land purchased by the petitioner's Vendor viz., Dheenadayalan under the registered Sale Deed dated 15.02.1990 registered as Document No.1948 of 1990 in the office of the Sub Registrar, Anna Nagar from the Tamil nadu Housing Board, who in-turn conveyed the land admeasuring to an extent of four grounds and 1875 sq.ft and out of it, lands admeasuring to an extent of 1008 sq.ft. was conveyed by Dheenadayalan in favour of the petitioner under the above said Sale Deed dated 28.03.2002.

3. The learned counsel appearing for the petitioner would further submit that the petitioner had applied the sanctioned building plan and also paid the requisite fees under PPA/6855/2003 dated 14.11.2003 and building permission was also issued under BA/5895/2003 and completed the construction strictly in accordance with the approved plan. It is further submission of the learned counsel appearing for the petitioner that to the shock and surprise of the petitioner, he was issued with the impugned notice dated 26.08.2004, without pointing out the necessary particulars regarding the deviated portion / unauthorized construction, granted him 24 hours to do the needful and immediately, he filed the writ petition on 31.08.2004 and it was entertained and interim order was granted on 31.08.2004, which was not extended thereafter and therefore, the respondents carried out demolition on the alleged offending portion.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to Section 256 of CCMC Act and would submit that the procedure contemplated have not been followed and admittedly, in the impugned notice, the details regarding the deviated portion / offending portion have not been indicated and thereby, deprived him the benefit of responding to the said notice properly and therefore, prays for interference.

5. Per contra, Mr.C.Ravichandran, learned standing counsel appearing for the respondents has invited the attention of this Court to the counter affidavit and would submit that the land belonging to the Corporation has been wrongly included in survey number of the land belonging to the Tamil Nadu Housing Board and it has been allotted in favour of original vendor of the petitioner viz., Deenadayalan, who in-turn conveyed the same in favour of the petitioner through registered Sale Deed. Action was initiated to recover the said land, which is the subject matter of challenge in W.P.No.6591 of 2004 and this Court, while dispose of the writ petition on 25.08.2004, has granted liberty to the respondents to take appropriate action against the petitioner for construction in violation of the statutory provisions in accordance with law and in pursuant to the liberty granted, impugned notice came to be issued only after following due process of law and action has been taken and hence prays for dismissal of this writ petition.

6. This Court has carefully considered the rival submission and also peruse the materials placed before it.

7. It is relevant to extract Section 256 of Chennai City Municipal Corporation Act, 1990. A perusal of the said Section would indicate that "the obligation is cast upon the Commissioner to serve a copy of the provisional order made under sub-section (1) on the owner of the building, together with a notice requiring him to show cause within a reasonable time and if the owner fails to show cause to the satisfaction of the commissioner the commissioner may confirm the order with any modification he may think fit to make and such order shall then be binding on the owner".

8. It is the submission of the learned counsel appearing for the petitioner that the offending construction has also been removed by officials of Corporation of Chennai.

9. In the considered opinion of this Court, the respondents have not followed Section 256 of CCMC in letter and spirit and therefore, impugned notice warrants interference.

10. In the result, the writ petition is partly allowed and the impugned notice passed by the first respondent dated 26.08.2004 in Notice No.77 is set aside and if the respondents wants to proceed further, they may do so strictly in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(VI)

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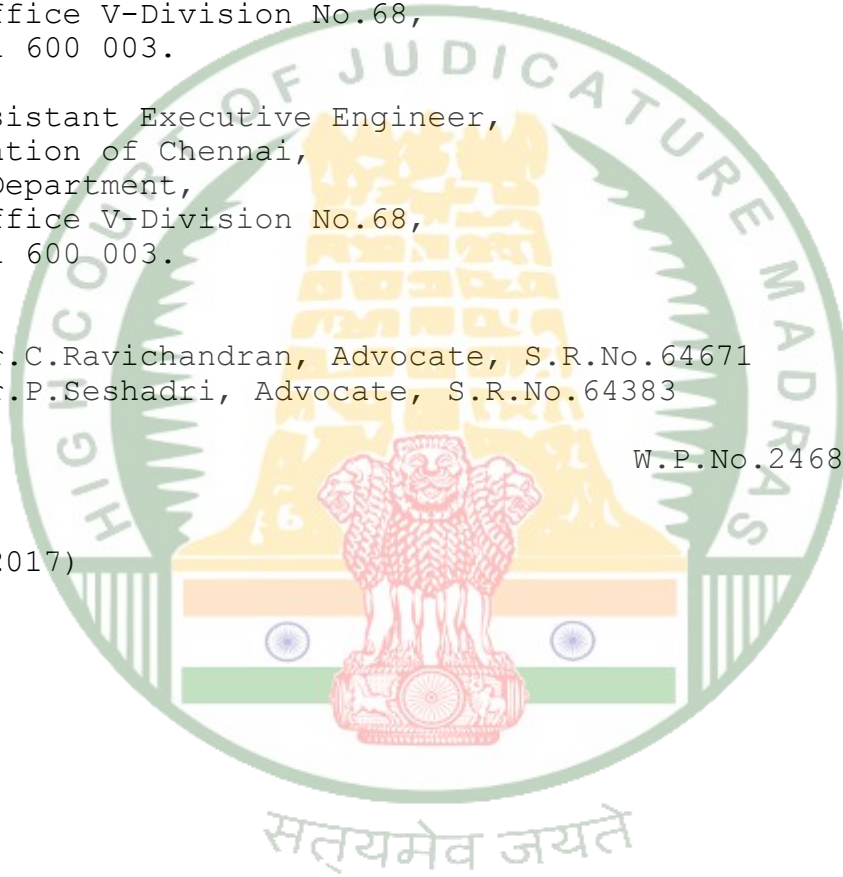
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+1cc to Dr.C.Ravichandran, Advocate, S.R.No.64671

+1cc to Mr.P.Seshadri, Advocate, S.R.No.64383

W.P.No.24688 of 2004

GMI (CO)
CA(11/10/2017)



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