

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4066 of 2018
and
WMP No.5000 of 2018

G.Krishnamurthy ...Petitioner

vs.

1. The Commissioner,
Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2. The Executive Engineer,
Zone V,
Division 54,
Chennai Corporation, Chennai. ...Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondents particularly that of the 2nd respondent dated 05.02.2018 in Lr.No.05/03586/2018 that was received on 08.02.2018 and quash the same as illegal, unlawful and without jurisdiction and consequently forbear the respondent, their men, agents, servants or anyone acting on their behalf from in any manner interfering with nor disturb the peaceful possession and occupation and enjoyment of the land and building situate at No.338, Walltax Road, Sowcarpet, Chennai - 600 079.

For Petitioner : Mr.T.S.Rajamohan

For Respondents: Mr.K.Soundarrajan,
Standing counsel for
Chennai Corporation

ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

With the consent of the parties, writ petition is taken up for final hearing and disposed of, at the stage of admission itself.

2. Material on record discloses that on 22.01.2018, the Assistant Executive Engineer, Unit 13, Chennai Corporation, has issued notice to Mr.Gopal Pillai (since deceased). As per the averments of the writ petitioner, notice dated 22.01.2018, has been replied by the petitioner on 03.02.2018, stating that superstructure at Door No.338, Wall Tax Road, Sowcarpet, Chennai, was constructed prior to 1978 and since then, Mr.G.Krishnmurthy, the writ petitioner and his wife are in physical possession and occupation. Said reply sent to the Executive Engineer, Unit-13, Ward 54, Zone-5, Chennai Corporation, the Assistant Engineer, Unit-13, Division 54, Chennai Corporation, and the Commissioner, Chennai Corporation, is stated to have been acknowledged on 06.02.2018. According to the petitioner, without considering the reply, Lock & Seal and Demolition Notice dated 05.02.2018, has been sent to the petitioner.

3. Perusal of the same shows that the Assistant Engineer, Division-54, has signed the Lock & Seal and Demolition Notice on 05.02.2018, the Assistant Executive Engineer, Unit 13, has signed the abovesaid noitce on 07.02.2018 and that the Executive Engineer, Zone-5, has signed the Lock & Seal and Demolition Notice on 07.02.2018.

4. According to the writ petitioner, construction was over, prior to 1978 and since then, petitioner and his wife are in physical possession and occupation of the same. Even in the writ petitions viz. W.P.Nos.10577 & 10578 of 2008, filed by the petitioner and his wife, contentions have been made that both of them, became tenants in respect of the two L-shaped portion - one on the north-west and another on the south-west of the premises at Door No.38, Walltax Road, Chennai-79 under one T.Gopala Pillai, the erstwhile owner of the premises. Petitioners therein, have further contended that the said Gopala Pillai died in 1978 and that thereafter, they were paying the property tax and licence was issued, in their favour to run an industry, in the name and style of 'Thirumalai Metal Agencies'. According to them, though a representation was submitted, seeking for change of property tax assessment from the name of T.Gopala Pillai (since deceased) to them, the said grievance was not addressed warranting, filing of W.P.Nos.10577 & 10578 of 2008 for a mandamus, directing, Commissioner of Chennai Corporation, Chennai, and Assistant Revenue Officer, Corporation of Chennai, Ward No.44, Zone 3, Waltax Road, Chennai-79, respondents therein.

5. Upon considering the submission of the petitioners in W.P.Nos.10577 & 10578 of 2008, a learned Singe Judge vide common order dated 25.04.2008, in the abovesaid writ petitions, directed the Assistant Revenue Officer, Corporation Chennai, Ward No.44, Zone No.3, Waltax Road, Chennai-79, as hereunder.

"7.Considering the said submissions made by the learned counsel on either side and without going into the merits of the case, the writ petitions are disposed of with the following direction:-

The second respondent herein shall consider the representation of the petitioners dated 28.03.2008 on merits and in accordance with law after ascertaining as to whether the original owner of the super structure namely T.Gopala Pillai is alive or not and if not alive whether he has left behind him any legal heirs / legal representatives and if any legal heirs / legal representatives are alive such persons should be given an opportunity of hearing by conducting an enquiry and thereafter dispose of the representation of the petitioner dated 28.03.2008 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected MPs are closed."

6. Thus, perusal of the common order made in W.P.Nos.10577 & 10578 of 2008, dated 25.04.2008, shows that the petitioners have contended that the super structure at Door No.38, Walltax Road, Chennai-79, was put up by Mr.T.Gopala Pillai (since deceased) and that they are running an industry in the name and style of "Thirumalai Metal Agencies". Though, in the notice dated 22.01.2018, the Assistant Executive Engineer, Unit-13, has stated that the construction was in deviation of plan approved, there is no specific finding that there was any ongoing construction work at the time of inspection, warranting a direction to stop construction. Unless and until, there is a specific finding, that there was any ongoing construction activity, directions to stop construction, is illusory. Moreso, on the facts and circumstances, construction is stated to have been made prior to 1978, by the erstwhile owner T.Gopala Pillai (since deceased).

7. Though, a reply dated 03.02.2018, is stated to have been sent to the Assistant Executive Engineer, Unit-13, Division 54, Chennai Corporation, Chennai, there is no acknowledgment of receipt. Nevertheless, the petitioner has substantiated receipt of the abovesaid reply by the Zonal Office, as well as the Commissioner of Corporation, Chennai.

8. Reply received by the Office of the Commissioner of Corporation, Chennai and Assistant Engineer, Unit 13, Division-54, on 06.02.2018 ought to have been forwarded to the office of the Assistant Executive Engineer, Unit-13 and Executive Engineer, Zone-V, who had signed the impugned notice. When both the Assistant Executive Engineer, Unit-13 and Executive Engineer, Zone-V have affixed their signatures on 07.02.2018, the notice is dated 05.02.2018. Without considering the reply that superstructure had been constructed prior to 1978, notice dated 05.02.2018 for Lock & Seal and Demolition, has been purportedly issued under Section 57 read

with 85 of the Town and Country Planning Act, 1971 as amended by Act 61 of 2008.

9. Though, Mr.K.Soundarrajan, learned counsel for the Corporation, submitted that by virtue of the amended Act, 2008 (TN Act 61 of 2008), the expression "within three years of such development" has been omitted with effect from 10.12.2008, in Section 56 of the Town and Country Planning Act, 1978 and therefore, the authorities are empowered to issue a direction to stop construction and consequently, issue a Lock & Seal and Demolition Notice, this Court is not inclined to delve into the said contention for the reason, that nothing is mentioned in the stop work notice dated 22.01.2018, that there was any ongoing construction. As rightly contended by Mr.Rajamohan, learned counsel for the petitioner, the direction to stop the construction work with immediate effect and the further action of Lock & Seal and Demolition, seizure and confiscation of the construction materials, auction of the material seized, etc., are without considering the state of affairs and reply of the writ petitioner dated 03.02.2018.

10. Though, an order under Section 56(1) and 57 r/w Sec.85 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972 as amended by Act 61 of 2008), is revisable under Section 80-A of the said Act, on the facts and circumstances, when both stop work notice dated 22.01.2018 and Lock & Seal and Demolition Notice dated 05.02.2018, have been issued without reference to the actual state of affairs notwithstanding availability of an alternative remedy, we are inclined to interfere with the same.

11. Though, Stop Work Notice dated 22.01.2018, has not been challenged, which culminated in the Lock & Seal and Demolition notice, the former also requires to be set aside for the reason stated supra.

12. Thus, by exercising, powers under Article 226 of the Constitution of India, we mould the relief sought for in the instant writ petition, by quashing both the proceedings. Writ Petition is allowed. Competent authority is at liberty to proceed further, if there is any requirement. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2. The Executive Engineer,
Zone V,
Division 54,
Chennai Corporation, Chennai.

+ 2 ccs to Mr.T.S. Rajamohan, Advocate SR.13931
+ 3 ccs to Mr.K. Soundararajan, Advocate SR.13917

W.P.No.4066 of 2018
and
WMP No.5000 of 2018

AD(CO)
EU(12/03/2018)



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