

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.8175/2018 & WMP.No.10164/2018

K.Vijayalakshmi

.. Petitioner

Versus

1.The Secretary to Government
Housing and Urban Development
Department, Fort St George
Chennai 600 009.

2.The Executive Engineer
Zone XI, Greater Chennai Corporation
Arcot Road, Chennai 600 087.

3.The Assistant Executive Engineer
Unit-34, Greater Chennai Corporation
Arcot Road, Chennai 600087.

4.The Assistant Engineer
Division 151, Greater Chennai Corporation
Arcot Road, Chennai 600087.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to consider and pass orders on the petitioner's Appeal dated 27.03.2018 and further directing the respondents 2 to 4 not to take any coercive action pertaining to the stop work notice under Notice No.64/2017 dated 16.08.2017, including locking, sealing and demolition of the house property bearing Door No.4, Thiru Murugan Nagar, 2nd Cross Street, Porur, Chennai 600 116, till the disposal of the Appeal.

For Petitioner : Mr.L.Chandrakumar
For R1 : Mrs.M.Lalitha, GA
For RR 2 to 4 : Mr.K.Soundararajan

ORDER

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

By consent, the writ petition is taken up for final disposal. Mrs.M.Lalitha, learned Government Advocate accepts notice on behalf of the 1st respondent and Mr.K.Soundararajan, learned Standing counsel accepts notice on behalf of the respondents 2 to 4.

2 The petitioner claims that by virtue of a Registered Gift Settlement Deed bearing Doc.No.17945/2013 dated 30.12.2013, her husband, viz., Mr.C.Kaliyaperumal, settled the site admeasuring to an extent of 2365 sq.ft., along with 400 sq.ft., of tiled superstructure, comprised in S.No.170/2 at Porur Village, Ambattur Taluk, Tiruvallur District and she has decided to demolish the same and put up a new superstructure and accordingly, she has started constructing a house, having plinth area of 675 sq.ft. However, to the shock and surprise of the petitioner, she was issued with a notice dated 09.05.2017 by the 3rd respondent u/s.56[1] and 57 read with 85 of the Town and Country Planning Act, 1971, calling upon her to produce the approved plan in original for verification and also indicated that in the event of her failure to do so, further action will be taken including locking and sealing of the premises and it was also followed by the Locking and Sealing Notice dated 16.08.2017 bearing No.64/2018. The petitioner, aggrieved by the same filed an appeal/special revision under section 80-A of the Town and Country Planning Act, 1971 dated 27.03.2018 to the 1st respondent along with a petition for stay u/s.80-A [iii] of the said Act and though it has been received, no further progress is taking place and taking advantage of the same, the 3rd respondent is making an attempt to demolish the superstructure and hence, the petitioner is constrained to approach this Court by filing the present writ petition.

3 Learned counsel for the petitioner would submit that the appeal/special revision may be directed to be disposed of within the stipulated time to be fixed by this Court and till such time, further proceedings as to the demolition of the superstructure may be deferred.

4 Per contra, Mr.K.Soundararajan, learned Standing Counsel appearing for the respondents 2 and 3 has drawn the attention of this Court to the contents of the registered Gift Settlement Deed dated 30.12.2013 and would submit that even as per the recitals of the Deed, the title of the petitioner to the site in question, is not clear and without any planning permission, the petitioner is bold enough to put up the superstructure having plinth area of 695 sq.ft., and therefore,

action is taken strictly in accordance with law and prays for dismissal of the same.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 A perusal of the photographs available at page No.28 of the typed set of documents would disclose that it is in semi-finished stage. This Court, taking into consideration, the apprehension expressed by the learned counsel for the petitioner and without going into the merits and claim projected by the petitioner, directs the 1st respondent to entertain the appeal/special revision dated 27.03.2018, if the papers are otherwise in order and take up the petition for stay initially and either the said official or the delegated official, shall dispose of the petition for stay in accordance with law, within a period of four weeks from the date of entertainment of the appeal/special revision and the 1st respondent or the delegated official, is also at liberty, to take up the main appeal/special revision itself and give a disposal on merits and in accordance with law within a period of ten weeks from the date of entertainment of the appeal/special revision.

7 The respondents 2 and 3, till the disposal of the petition for stay either by the 1st respondent or by the delegated official, shall defer further decision as to the demolition of the superstructure. The writ petitioner, till the disposal of the appeal/special revision by the 1st respondent or by the delegated official, shall not create any third party rights in respect of the site and superstructure in question and shall not alter the physical features also, as indicated in the photographs available at page No.28 of the typed set of documents.

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

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ap

To

1.The Secretary to Government
Housing and Urban Development
Department, Fort St George
Chennai 600 009.

2.The Executive Engineer
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Arcot Road, Chennai 600 087.

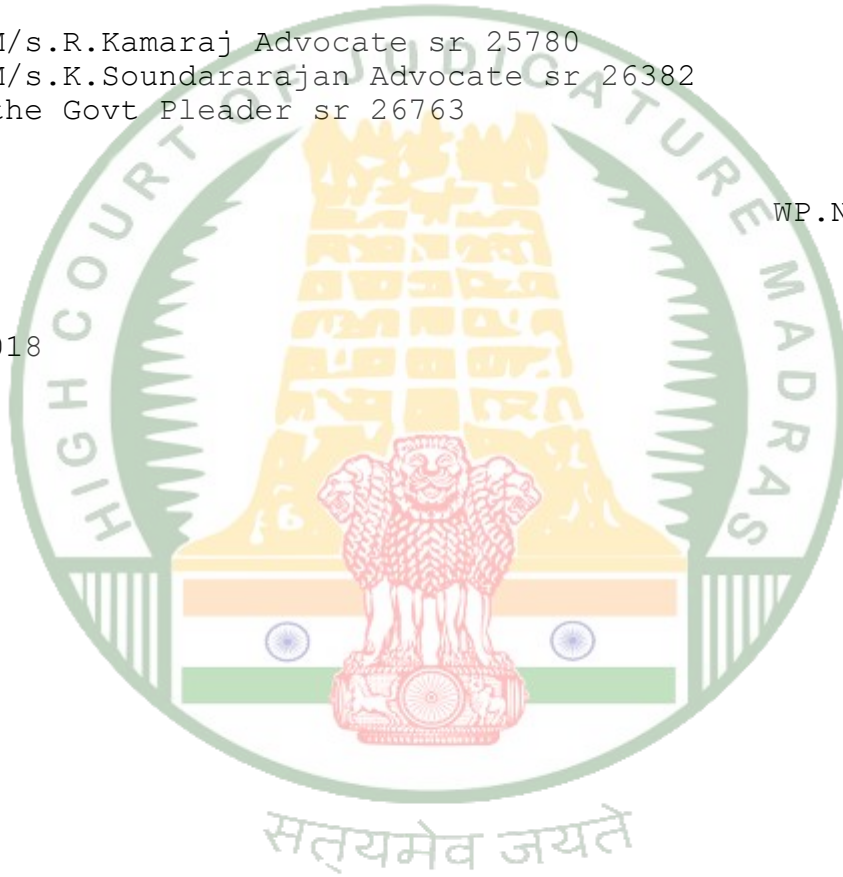
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+1 cc to M/s.R.Kamaraj Advocate sr 25780
+1 cc to M/s.K.Soundararajan Advocate sr 26382
+1 cc to the Govt Pleader sr 26763

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