

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8162 of 2017
and
W.M.P.No.8939 of 2017

Golden Enclave Owners Association,
Pammal (Sl.No.236/2016),
Rep. by its Secretary Anand Thiliban,
D.No.104, Nallathambi Road,
Anna Nagar, Pammal, Chennai-600 075.

... Petitioner

Vs.

1. Commissioner,
Pammal Municipality,
Pammal, Chennai-600 075.
2. C.Sunitha Susan
3. G.D.Constructions,
Rep. by its partner A.Chitra,
A9, Nallathambi Road, Anna Nagar,
Pammal, Chennai-600 075.

... 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 herein to demolish the unauthorised structure in the stilt/ground floor of the two combined flats constructed in deviation of the planning permission and approval under L.Nos.1146, 1147 of 2012, dated 12.04.2012 and in planning permits Nos.16 and 17/2012-2013 of the first respondent herein, in respect of the premises and flats in Door No.104, Plot Nos.5 and 6, Golden Enclave, Nallathambi Road, Anna Nagar, Pammal, Chennai-600 075.

For petitioner : Mr.M.Sekar

For respondents: Mr.P.Srinivas for R-1

R-2 - Notice served - No appearance

R-3 - newspaper publication effected -
No appearance

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent herein to demolish the unauthorised structure in the stilt/ground floor of the two combined flats constructed in deviation of the planning permission and approval under L.Nos.1146, 1147 of 2012, dated 12.04.2012 and in planning permits Nos.16 and 17/2012-2013 of the first respondent herein, in respect of the premises and flats in Door No.104, Plot Nos.5 and 6, Golden Enclave, Nallathambi Road, Anna Nagar, Pammal, Chennai-600 075.

2. Though notice is served on the second respondent and her name having been printed in the cause list, there is no representation for her either in person or through counsel. In respect of the third respondent, though even the newspaper publication has been effected, inspite of the same, there is no representation for the third respondent either in person or through counsel.

3. The writ petitioner-Association has come forward with this Writ Petition for the relief stated supra, stating that unauthorised construction has been made in the stilt and ground floor of the two combined flats constructed in deviation of the planning permission and approval in respect of the premises and flats in Door No.104, Plot Nos.5 and 6, Golden Enclave, Nallathambi Road, Anna Nagar, Pammal, Chennai. According to the petitioner-Association, its members have purchased the flats in question and that the entire layout was duly approved by the Pammal Municipality on 12.04.2012. There was construction agreement dated 28.06.2012 and the building has been constructed in deviation of the sanctioned plan and that the respondents 2 and 3 have constructed the unauthorised superstructure of 400 Sq.Ft. on the North-Eastern portion of the combined stilt consisting of a hall and a kitchen encroaching the space of two car parking area, besides the movement space for the parked cars had been drastically reduced, resulting in a difficult situation to park and pull back all the cars from the parking lot. According to the petitioner-Association, the unauthorised structure has got to be demolished, as the same is not in conformity with the sanctioned plan.

4. The official respondent, namely the first respondent-Commissioner of Pammal Municipality has filed counter affidavit stating that on the complaint dated 08.11.2014, from one Mrs.Latha, the building in question was inspected and it is found that the building has no set back space which is only 2 feet instead of 5 feet. Apart from the set back violation, there

is unauthorised construction even in the stilt floor. A show cause notice, dated 15.07.2014 was issued to the third respondent under Section 205(1) and (2) of the Tamil Nadu District Municipalities Act and as there was no response from the third respondent, final orders had been passed under Section 205(3) of the said Act on 15.12.2015, confirming the said show cause notice and called upon the third respondent to remove the deviated portion in the construction. According to the learned counsel for the first respondent, it is not only the third respondent, but also there is violation of construction even in the petitioner's flat.

5. Heard both sides and perused the materials available on record.

6. It is not in dispute that the petitioner-Association has come forward with this Writ Petition for removal of unauthorised construction made by the second respondent, which was done by the third respondent-builder for having duly constructed the structure. The first respondent-Municipality has filed detailed counter stating that there is violation of the set back as well as unauthorised construction in the stilt floor and final orders have been passed under Section 205(3) of the said Act on 15.12.2015 on the show cause notice issued.

7. When there is violation of the construction and that final orders had also been passed on the said show cause notice issued to the third respondent, it is needless to mention that the unauthorised construction/structure has got to be demolished. The unauthorised structure has got to be removed in respect of the deviation and the stilt portion that is said to have been occupied, has got to be removed forthwith, within 15 days from the date of receipt of a copy of this order.

8. If there are any violations in any one of the flats of the third respondent-builder, it is also needless to mention that it is open for the authorities to issue notice to those persons so that they can rectify the defects pointed out by the authorities, failing which the same yardstick applicable to the second respondent, is also applicable to those violators including the petitioner. Further, we are of the view that if any construction has been made in violation of the sanctioned plan and that there is loss either to the second respondent or to any one of the members of the petitioner-Association, it is open for them to collect even necessary charges for damage and other charges, if any, from the third respondent including attachment of the third respondent-G.D.Constructions' property or any of its partner's property.

9. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

CS
To

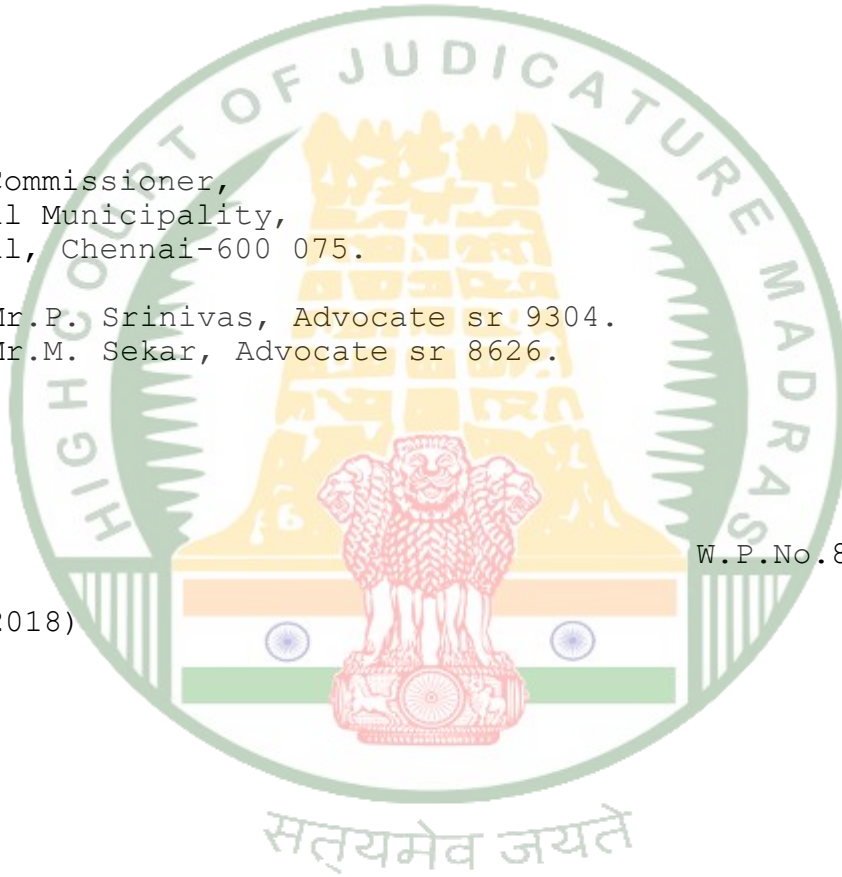
The Commissioner,
Pammal Municipality,
Pammal, Chennai-600 075.

+1 CC to Mr.P. Srinivas, Advocate sr 9304.

+1 CC to Mr.M. Sekar, Advocate sr 8626.

W.P.No.8162 of 2017

SP(20/02/2018)



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