

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4211 of 2018

and

W.M.P.Nos.5157 and 5158 of 2018

M.Justin Rajan .. Petitioner

versus

- 1.The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai - 600 003
- 2.The Executive Engineer
Zone - VII, Corporation of Chennai
Ambattur, Chennai - 600 053
- 3.The Assistant Executive Engineer/U-20
Zone - VII, Corporation of Chennai
Ambattur, Chennai - 600 053
- 4.The Assistant Engineer
Division - 91, Corporation of Chennai
Ambattur, Chennai - 600 053
- 5.The Secretary to Government
Housing and Urban Development Department
Government of Tamil Nadu
Secretariat, Chennai - 600 009 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in respect of de-occupation notice dated 15.02.2018 bearing Notice No.ZONE-7/DIVISION-91/140/2017 issued by the respondents 2 to 4 to the petitioner and quash the same.

For Petitioner : Mr.M.Stalin

For Respondents: Mr.K.Soundararajan

ORDER
(Made by S.MANIKUMAR, J.)

Challenge in this writ petition is to the de-occupation notice dated 15.02.2018, bearing Notice No.ZONE-7/DIVISION-91/140/2017, issued by the respondents 2 to 4, to the petitioner to quash the same.

2. Petitioner has claimed that, he is the owner of the property bearing Plot No.32, AIBEA Nagar, Mogappair West, Chennai - 600 037 comprised in S. No.603/1A11 (Old S. No.603 Part) of Mogappair Village, Ambattur Taluk, Tiruvallur District, measuring 1500 sq.ft. in PPD/LO No.18/97 - CMDA and PP No.677 of 1997 of Ambattur Municipality. He has purchased the same from one Mrs. Renuka Jayakumar under a Sale Deed dated 21.04.2008, registered as Document No.1722 of 2008 on the file of SRO, Konnur, as vacant house site. Thereafter, he applied for necessary planning permission and obtained the same, in BP No.991/2011 dated 12.09.2011 from Ambattur Municipality. Based on the planning permission, he has commenced construction of a building, in the said property.

3. Material on record further discloses that, one C.Dhanasekaran, son of Mr.R.Sengalvarayan, has claimed to be the owner of a vacant house site on the eastern side of petitioner's property. He has approached the petitioner, with an offer to purchase the property of the petitioner, with an intention to annex the same, with his vacant land. According to the petitioner, since the petitioner did not agree for the same, the said Dhanasekaran started giving trouble to the petitioner in the construction of building, on the property belonged to him. He has further stated that the said Dhanasekaran filed a suit in O.S. No.346 of 2012 on the file of learned District Munsif, Ambattur against the petitioner for a permanent injunction. Petitioner entered appearance and contested the suit. He has also filed a separate suit in O.S. No.413 of 2012 on the file of the said court against the said Dhanasekaran, for a permanent injunction from interfering with the petitioner's construction in the property. Suit filed by the petitioner was decreed ex-parte on 23.11.2014. In spite of the same, the said Dhanasekaran has harassed the petitioner, and given false complaints to the respondents.

4. It is the further case of the petitioner that, based on such false complaints, respondents have issued a notice dated 20.5.2017, calling upon the petitioner to produce the approved plan. On receipt of the said notice, the petitioner has submitted a copy of the approved plan to the respondents. In spite of the same, due to the pressure exerted by the said Dhanasekaran, respondents have issued a lock and seal and demolition notice dated 31.07.2017. The respondents have

declared petitioner's construction as unauthorised. Being aggrieved, the petitioner has preferred a statutory appeal before the Secretary to the Government, Housing and Urban Department, Government of Tamil Nadu on 22.08.2017. The said appeal is pending. In the meanwhile, petitioner has completed the construction of his building and occupied the same on 03.08.2017. As on date, the petitioner is residing in the said building.

5. Subsequently, the said Dhanasekaran, has filed a writ petition in W.P. No.19676 of 2017, with false and baseless facts, seeking for a writ of mandamus to direct the respondents to take action against the petitioner for the alleged unauthorised construction put up by the petitioner in the property. Petitioner has filed a counter affidavit in the said writ petition and contended that the said Dhanasekaran has approached this court with unclean hands with malafide intention for ulterior reasons.

6. Writ court, disposed of the same, by holding that, writ court would not render any finding on the merits of the writ petition, since the appeal filed by the petitioner was pending before the appellate authority under Section 80A of the Tamil Nadu Town and Country Planning Act, except to the extent that the appellate authority will not condone any alleged setback violations committed by the petitioner. Writ court further held that the issue involved in the writ petition, in particular, lock and seal notice, should be decided by only the appellate authority, without condoning the setback violations, if any committed by the petitioner.

7. Petitioner has further submitted that while things stood thus, to his shock and surprise, the respondents have issued a de-occupation notice dated 15.02.2018 bearing Notice No:ZONE-7/DIVISION-91/40/2017, based on the lock and seal and demolition notice, subject, matter of appeal, within 7 days from the date of receipt of the said notice, failing which necessary action would be taken under the relevant sections of the Town and Country Planning Act, 1971, without any further notice. Responding to the above, on 20.02.2018, petitioner has given a representation to the respondents stating that his appeal against lock and seal notice is pending before the appellate authority and that the said fact has also been recorded writ court, in W.P. No.19676 of 2017, based on which, writ court has disposed of the writ petition, as stated supra.

8. On the above facts, instant writ petition has been filed, for a writ of certiorari, to call for the records, of the de-occupation notice dated 15.02.2018 bearing Notice No.ZONE-7/DIVISION-91/140/2017 issued by the respondents 2 to 4 and to quash the same.

9. When the matter came up for admission, in the forenoon, by inviting the attention to the contents of the impugned notice dated 15.02.2018, issued under Sections 56 and 57 r/w Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, as amended by Act 61 of 2018, for de-occupation of the construction, Mr.K.Soundararajan, learned counsel for Greater Chennai Corporation, was posed with a question that, as to whether, when the statutory appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, against locking & sealing and demolition notice dated 31.07.2017, is pending with the Secretary to the Government, Housing and Urban Development Department, whether the Executive Engineer/Z-VII, is empowered to pass the impugned notice thereby, making the appeal, nugatory. Going through the order impugned, it was also brought to the notice of the learned counsel that the impugned notice dated 15.02.2018, does not refer either to the appeal dated 22.08.2017 filed under Section 80-A of the Act or the order of this court in W.P. No.19667 of 2017 dated 04.01.2018. On the above observation and query of this court, learned counsel for the Greater Chennai Corporation sought time till afternoon, to reply on the authority of the Zonal Officer in issuing de-occupation notice dated 15.02.2018.

10. On the above queries, the matter is taken up after lunch. Mr.K.Soundararajan, learned counsel for the Greater Chennai Corporation, submitted that when there was no stay of the order of locking and sealing dated 31.07.2017, of the Executive Engineer/Z-VII, the said authority has proceeded to issue the de-occupation notice. He further submitted that there is a deviation in OSR area and setback and that the same cannot be regularised. Submission of the learned counsel for the Corporation of Greater Chennai, makes it clear that when there was no stay of the order of locking and sealing, issued by the Executive Engineer/Z-VII, the said authority has issued de-occupation notice dated 15.02.2018.

11. Firstly, as per sub-section (3) of Section 80-A of the Act, empowers the Government to pass an interim order, as the case may be, as may deem fit pending exercise under sub-section (1) in respect thereof. Power to grant stay is inherent. Appellate authority, no matter, whether prayed for, or not, is conferred with a power to grant stay of the order impugned, and as per sub section (3) of Section 80-A of the Tamil Nadu Town and Country Planning Act, the appellate authority, has a duty to consider as to whether, on the facts and circumstances, order impugned before the appellate authority, requires to be stayed, pending appeal. Secondly, when appeal is pending, before the appellate authority, it is not open to the subordinate authority to say that, deviation if any, cannot be regularised.

12. Mr.K.Soundararajan, learned counsel for the Grater Chennai Corporation, further submitted that the impugned notice dated 15.02.2018, would be withdrawn. The submission is placed on record.

13. There are no materials to indicate as to whether, the appellate authority, has exercised his inherent jurisdiction. On the above aspect, we deem it fit to extract Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, which reads thus:

80-A. Special Powers of Government.- (1) Notwithstanding anything contained in section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2- A) of section 56 or under section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing.

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they deem fit, pending the exercise of the powers under sub-section (1) in respect thereof.

Sub-section (3) of Section 80-A, empowers the Government to pass an interim order, as the case may be, as may deem fit pending exercise under sub-section 1 in respect thereof.

14. Though Mr.M.Stalin, learned counsel for the petitioner contended that a stay petition has been filed along with the appeal dated 22.08.2017, we do not find any petition, enclosed in the typed set of papers filed along with the writ petition to substantiate the same. However under sub-section 3 of Section 80-A, Government have the inherent powers to grant stay.

15. Secretary to the Government, Housing and Urban Development Department, against whom directions have to be issued, is not a party respondent in this writ petition. As per the statute, he is the appellate authority and therefore we are

of the view that, the presence of the appellate authority is necessary and proper, for the disposal of this writ petition. Therefore, in exercise of powers conferred under Article 226 of the Constitution of India, we suo motu implead Secretary to the Government, Housing and Urban Development Department, as party respondent. Registry is directed to implead the Secretary to the Government, Housing and Urban Development Department, Chennai, as respondent No.5 to the instant writ petition.

16. Secretary to the Government, Housing and Urban Development Department, Chennai, is directed to dispose of the appeal dated 22.08.2017, submitted under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, within a period of four weeks from the date of receipt of a copy of this order.

17. In the meanwhile, Executive Engineer/Z-VII, Corporation of Chennai, Ambattur, Chennai, is directed to withdraw the notice dated 15.02.2018 forthwith. It is also open to the petitioner to seek for appropriate interim orders in the statutory appeal filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

18. With the above directions, writ petition is disposed of. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

asr

To

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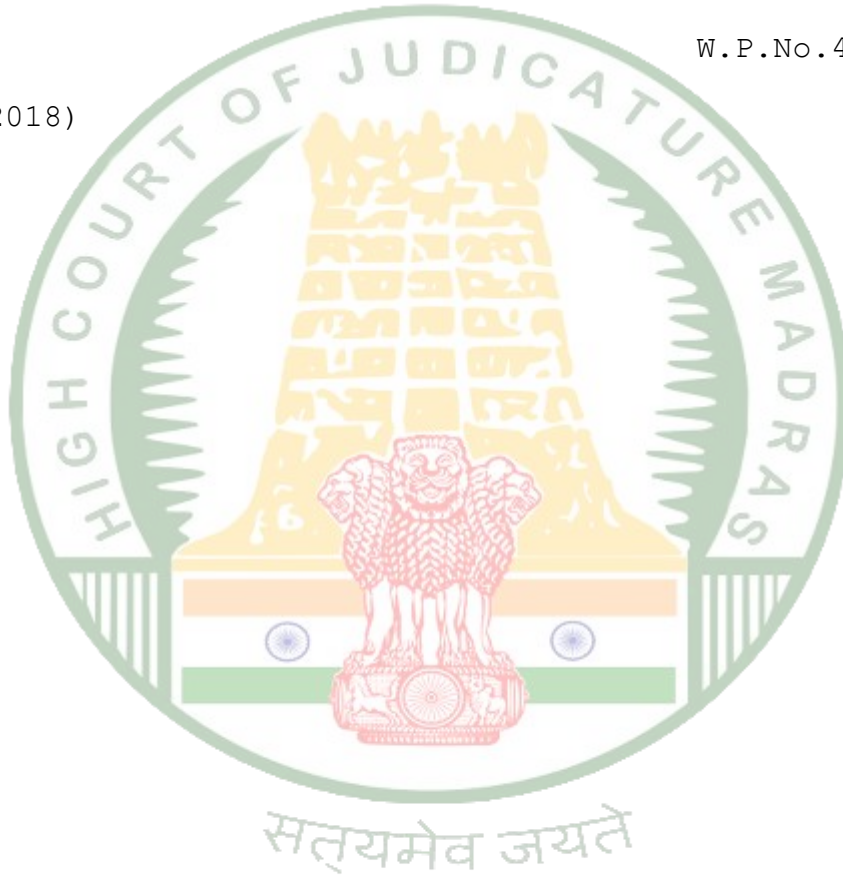
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5.The Secretary to Government
Housing and Urban Development Department
Government of Tamil Nadu
Secretariat, Chennai - 600 009

+lcc to Mr.M.Stalin, Advocate SR.No.14666

W.P.No.4211 of 2018

GN(02/04/2018)



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