

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.6214 of 2018

and

W.M.P.No.7698 of 2018

S.Ganesan

S/o.Late Saminatha Mudaliar

... Petitioner

Vs

- 1.Chennai Metropolitan Development Authority,
represented by its Member Secretary,
Thalamuthu Natarajar Maligai,
No.3, Gandhu Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.
- 3.The Zonal Executive Engineer (Enforcement),
Corporation of Chennai,
Zone V,
No.61, Basin Bridge Road,
RDC North (Enforcement),
Chennai - 600 021.
- 4.The Assistant Executive Engineer,
Unit 13,
Corporation of Chennai,
Seven Wells,
Chennai - 600 001.
- 5.The Assistant Engineer,
Division No.055,
Corporation of Chennai,
Seven Wells,
Chennai - 600 001.

6.The Government of Tamil Nadu,
Housing Urban Development,
Secretariat, Fort St.George,
Chennai - 600 009.

(sixth respondent impleaded as per
order in W.M.P.No.12522 of 2018
in W.P.No.6214 of 2018 dated 25.04.2018)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the order passed in Notice No.05/00680/2017 dated 02.02.2018 on the file of respondents 3 to 5 herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents: Mr.Rajasrinivas, Senior Counsel [R1]
Mr.A.Nagarajan, Senior Counsel
[R2 to R5]
Mr.A.N.Thambidurai,
Special Government Pleader [R6]

O R D E R

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

By consent, the writ petition is taken up for final disposal. Mr.Rajasrinivas, learned Senior Counsel, accepts notice for first respondent, Mr.A.Nagarajan, learned Senior Counsel, accepts notice for the respondents 2 to 5 and Mr.A.N.Thambidurai, learned Special Government Pleader, accepts notice for sixth respondent.

2. The petitioner claims to have purchased property bearing No.57/29, Paramanandha Street, Seven Wells, Chennai - 600 001, on 17.06.1982 and at the time of purchase, it was very old and in a dilapidated condition. Therefore, the petitioner has applied for planning permission to the office of second respondent on 23.05.2008 and as per the approval of the plan granted by the third respondent on 29.05.2008, he can put up construction upto second floors. However, without his knowledge, the builder who has been entrusted with construction has also built up additional floors without the approval of the Corporation of Chennai. When the petitioner made an enquiry, the promoter as well as the Ward Councilor had also assured him that they will get proper approval from the Corporation of Chennai and accordingly 2nd and 3rd floors superstructure came into being there from 2009. Though the additional construction is without

approval, it is also subjected to statutory levies and water and electricity connections have also been given and necessary construction charges have also been paid. However, to the shock and surprise of the petitioner, the third respondent has issued a notice calling for production of approval plan. In this regard, petitioner has submitted a representation dated 25.04.2015 to the second respondent and to consider and dispose of the same, petitioner has also filed W.P.No.16437 of 2015 before this Court. This Court, vide order dated 10.06.2015, recording the submission of the respondents that orders would be passed on the reply dated 25.04.2015, considering the averments made in the reply as well as the documents appended thereto, disposed of the writ petition. However, a locking, sealing and demolition notice and de-occupation notice dated 29.04.2016 has been issued by the third respondent. Petitioner immediately submitted his response dated 07.06.2016 by taking a stand that at the time of purchase, it was in dilapidated condition and repairs have been carried out and neither modification nor additional floors have been constructed and the construction is in accordance with the planning approval and therefore, building is in order and hence, prayed for dropping of further proceedings. However, the said representation was not considered in proper perspective and it was followed by a de-occupation notice dated 02.02.2018.

3. Learned counsel for the petitioner would submit that challenging the de-occupation notice dated 02.02.2018, petitioner has filed an appeal u/s.80-A of the Town and Country Planning Act, 1970 and pending disposal of the same, also prayed for dropping of further proceedings u/s.80-A (3) of the Town and Country Planning Act, 1974.

4. This Court heard the submissions of learned Special Government Pleader, who would submit that the superstructure put up by the petitioner is totally an unauthorized one and therefore, action is taken strictly in conformity with law.

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

6. The matter was listed on 13.04.2018 and on that date, learned counsel for petitioner undertook to produce photographs of the alleged offending superstructure and also seeks to implead 'Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai - 600 009' as party in the writ petition for the reason that a Special Revision is pending. Accordingly, the matter was adjourned today, impleading petition has been filed and it was also ordered.

7. A perusal of the photographs submitted by learned counsel for petitioner would reveal that a huge unauthorised construction has come into being and the locking, sealing, demolition and de-occupation notice dated 29.04.2016 in Lr.No./Dn.55/LSDD/79/2016, prima facie disclose that the entire superstructure appears to be unauthorised. Though it is the submission of learned counsel for petitioner that the payment of statutory levies in respect of the offending construction would cloth him with a right, in the considered opinion of this Court, it is not so for the reason that a Full Bench of this Court in Ramaraju v. The State of Tamil Nadu [2005 (2) CTC 741] has held in paragraph 38(3) that 'payment of property tax, provisions of water connection or electricity by themselves cannot construed as conferring any independent right, if encroachment is otherwise unauthorised.' Be that as it may, petitioner has invoked the alternative remedy u/s.80-A of the Town and Country Planning Act for redressal of his grievance.

8. This Court, taking into consideration the facts and circumstances of the case and without going into the merits of the claim projected by the petitioner, directs the sixth respondent to entertain the Special Revision Petition, if the papers are otherwise in order and without putting the issue of limitation, either the 6th respondent or the delegated authority shall take up the petition for stay initially and thereafter, give a disposal in accordance with law within a period of four weeks from the date of entertainment of the same and till such time, respondents shall defer further decision in terms of the de-occupation notice dated 02.02.2018. The sixth respondent or the delegated authority are also at liberty to take up the main revision itself and dispose of the same in accordance with law within twelve weeks from the date of receipt of this order and communicate the decision to the writ petitioner.

The Writ Petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
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Housing Urban Development,
Secretariat, Fort St.George,
Chennai - 600 009.

+1cc to Mr.A.Nagarajan, Advocate Sr.30654
+1cc to the Government Pleader Sr.31341
+1cc to Mr.M.Chidambaram, Advocate Sr.30612

W.P.No.6214 of 2018

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srg 6/7/2018