

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Writ Petition No.10240 of 2018

A.Lakshathipathy
S/o.R.Arjunapillai

.. Petitioner

Vs

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu - Natarajan Building,
No.1, Gandhi-Irwin Road,
Chennai - 600 008.

2.The Regional Deputy Commissioner,
Zone - Central, VI to X,
No.12B, Pulla Avenue,
Thiru Vi Ka Park,
Shenoy Nagar, Chennai - 600 030.

3.T.Jain Jaya Gnana Malar
W/o.M.Gunaseelan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 1 and 2 to take immediate steps to demolish the portion of unauthorized, deviated construction put up by the third respondent herein in Plot No.39/3, Sarangapani Street, Mehtha Nagar, Chennai - 600 029.

For Petitioner : Mr.A.Govindasamy

For Respondents: Mrs.Veena Suresh [R1]
Mr.A.Nagarajan [R2]
Mr.S.L.Sudarsanam [R3]

O R D E R

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

The petitioner, alleging unauthorized construction in the

form of balcony put up by the third respondent in his premises, bearing Plot No.45 at No.38/2, Sarangapani Street, Mehta Nagar, Chennai - 600 029, came forward to file this Writ Petition.

2. The Writ Petition was listed for admission on 24.04.2018 and this Court, taking into consideration the averments/allegations made, directed the Zonal Officer, Zone VIII, Greater Corporation of Chennai, Door No.368, 2nd Cross Street, Pulla Avenue, Shenoy Nagar, Chennai - 600 030, to put the petitioner as well as the third respondent on notice and cause inspection of their respective premises and file a status report as to whether the superstructures put up by them are authorised/deviated/unauthorised.

3. The matter is listed today and the Zonal Officer, Zone VIII, Greater Corporation of Chennai, Door No.368, 2nd Cross Street, Pulla Avenue, Shenoy Nagar, Chennai - 600 030, has filed a Status Report dated 20.06.2018. It is relevant to extract paragraph Nos.6 and 7 of the said Status Report:

'6. I respectfully submit that on 28.05.2018 the petitioner premises has been inspected and at the time of inspection the petitioner has submitted the approved plan copy in planning permit No.PPA/D5/1701/2006 and building approval vide BA No.D5/2305/2006 dated 20.04.2006 for constructing ground floor and first floor. I further submit that on scrutinizing the same it was found that the petitioner herein has put up his building by deviating the approved plan and also put up unauthorized construction in the second floor of his building, further he has converted 7 rooms in the ground floor of the premises for commercial purpose/paying guest accommodation. The measurements taken are as follows:-

S. No.	Description	As per Plan	As per Site	Deviated/ Unauthorized
1.	Ground Floor	96.70 SQ.M	105.91 SQ.M	Front Side - 5.86m x 0.07m
				Rear Side - 8.25m x 0.60m
				West Side - 12.85m x 0.30m

2.	First Floor	102.30 SQ.M	150.14 SQ.M	Front Side - 7.75m x 1.65m
				Rear Side - 9.20m x 1.52m
				West Side - 12.85m x 0.45m
				East Side - 6.95m x 1.80m - 6.20m x 0.45m
3.	Second Floor	-	33.60 SQ.M	Second Floor = 7.00m x 4.80m

7. I respectfully submit that the third respondent building was inspected on 30.05.2018 and at the time of inspection the third respondent has produced the approved plan copy in planning permit No.PPA/D5/3926/2009 and building approval vide BA.No.D5/3820/2009 dated 27.08.2009 for constructing ground floor and first floor. I further submit that on scrutinizing the same it was found that the third respondent herein has put up his building by deviating the approved plan. The measurements taken are as follows:-

S. No.	Description	As per Plan	As per Site	Deviated/ Unauthorized
1.	Ground Floor	96.65 SQ.M	113.52 SQ.M	Rear Side - 5.25m x 0.44m - 3.55m x 1.06m
				East Side - 9.60m x 0.65m
				West Side - 12.90m x 0.35m
2.	First Floor	110.10 SQ.M	136.17 SQ.M	Front Side - 4.40m x 1.13m - 3.90m x 1.13m
				Rear Side - 3.38m x 0.90m
				East Side - 3.39m x 0.90m
				West Side - 5.45m x 1.08m - 4.37m x 1.08m

4. Learned counsel appearing for the petitioner as well as the learned counsel appearing for the third respondent would submit that in the light of the Status Report, they may be permitted to work out their remedy in accordance with law.

5. Learned Standing Counsel appearing for the Corporation of Chennai would submit that only after issuing notice to the petitioner and the third respondent, inspection was made and both of them are guilty of committing violations, in the form of deviation and action would be taken in terms of the Tamil Nadu Town and Country Planning Act, 1971.

6. This Court has considered the rival submissions and also perused the materials placed before it. This Court also heard the submission of the learned Standing Counsel for CMDA.

7. This Court repeatedly pointed out that when the petitioner files a writ petition alleging unauthorised development in the form of deviation/unauthorised construction, he or she is in equal obligation to state in the affidavit that they did not commit such a mislead or violation. In the case on hand, the Status Report of the Zonal Officer would reveal that the petitioner is equally guilty of carrying out unauthorized construction and unfortunately, the said fact has not been disclosed in the affidavit.

8. At this juncture, it is to be pointed out that, but for the interim direction of this Court dated 24.04.2018, the alleged violation/unauthorised construction put up by the petitioner would not have come into light. Be that as it may, in the light of the stand taken by the second respondent in the Status Report dated 20.06.2018, he is at liberty to proceed further in terms of the Tamil Nadu Town and Country Planning Act, 1971, as expeditiously as possible within a period of eight weeks from the date of receipt of a copy of this order and upon receipt of the notice, the petitioner as well as the third respondent are at liberty to work out their remedy in accordance with law.

The Writ Petition is disposed of accordingly. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IX)

//True Copy//

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Sub Assistant Registrar

gm
To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu - Natarajan Building,
No.1, Gandhi-Irwin Road,
Chennai - 600 008.

2.The Regional Deputy Commissioner,
Zone - Central, VI to X,
No.12B, Pulla Avenue,
Thiru Vi Ka Park,
Shenoy Nagar, Chennai - 600 030.

+1cc to Mr.A.Govindasamy, Advocate, S.R.No.42081
+1cc to Mr.A.Nagarajan, Advocate, S.R.No.41532
+1cc to Mr.S.L.Sudarsanam, Advocate, S.R.No.41259

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GSP(09/07/2018)



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