

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.01.2018

Coram:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.9390 of 2017 and
WMP.No.10357 of 2017

Mrs.J.Louis Esther Rani .. Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

2.The Executive Engineer,
Zone-XI, Corporation of Chennai,
No.123, Arcot Road, Chennai - 87. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd Respondent dated 15.2.2017 in notice No.87/2017 and quash the same and permit the petitioner to continue the construction activities as per the approved building plan dated 31.10.2016 in building plan approval No.BA/WDCN11/04629/2016.

For Petitioner : Mr.T.Easwaradhas

For Respondents : Mr.V.C.Selvasekaran

O R D E R

[Order of the Court was made by S.VAIDYANATHAN J.]

The petitioner has come forward with this writ petition to call for the records pertaining to the order passed by the 2nd Respondent dated 15.2.2017 in notice No.87/2017 and quash the same and permit him to continue the construction activities as per the approved building plan dated 31.10.2016 in Building Plan Approval No.BA/WDCN11/04629/2016.

2. The case of the petitioner is that she obtained permission for demolition of the old structure in the land in question and demolished the same. After getting building plan approval, she started constructing the new building in the said land, as per the sanctioned building plan, without any deviation. While the construction activities were going on, the respondents, without any prior notice or intimation, affixed a notice dated 15.02.2017 in the construction site, asking her to stop the construction work within three days from the date of receipt of notice. According to the petitioner, the said notice is allegedly issued under Sections 56(1), 57 and 85 of the Tamil Nadu Town and Country Planning Act, 1971, without following the principles of natural justice and no reason is assigned in the said notice.

3. Heard the learned counsel on either side.

4. It is an admitted case that a Plan has been sanctioned. But, however, in the counter, it has been stated that there is a suppression of fact and that the Will has not been produced along with necessary application. For better understanding, paragraphs 12 and 14 of the counter affidavit filed by the 2nd respondent, reads as follows:

"12. Further it is also stated that the petitioner has suppressed the fact that her brother Thiru Clement Silkin John is also one of the legal heir of the John Ponniah and has omitted from the application the name Thiru Clement Silkin John s/o John Ponniah.

14. It is also humbly stated that the stop work notice has issued only because of the deviations of the building in construction by way of set back violation in stilt floor."

In paragraph 14, it has been stated that the building has been constructed in violation, without leaving setback.

5. With regard to set back, the First Bench of this Court, in W.P.No.18777 of 2014, by an order dated 08.11.2016, has held as under:

"8. ... We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/ violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable

of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

6. It is pertinent to note that the First Bench of this Court in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

7. Therefore, if there is no set back, the building has got to be razed to ground. But, in this case, the petitioner has stated that she will ensure that the building is constructed in

accordance with the Plan, with proper setback.

8. In view of the same, the petitioner is permitted to go-ahead with the construction, provided there is proper setback. Unless and until, it is approved by the competent authorities stating that there is a proper set back, permanent electricity connection shall not be granted. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. It is made clear that if there are any complaints, the Complainant should also be heard.

9. It is represented by Mr.V.C.Selvasekaran, learned Standing Counsel appearing for the respondent/Corporation, that the building has been inspected and it cannot be rectified at all. In such an event, the building has got to be demolished. This Court makes it clear that unless the building is constructed in accordance with the Plan, the petitioner shall not be permitted to occupy the building. The respondent/Corporation is directed to inform the Electricity Department of the concerned area with regard to non-effecting of permanent electricity connection, in case of construction in violation of the sanctioned plan.

With the above observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Sgl/aeb

To:

1.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

2.The Executive Engineer,
Zone-XI, Corporation of Chennai,
No.123, Arcot Road, Chennai - 87.

+1cc to Mr.T.EASWARADHAS, Advocate, S.R.No. 493

Order in
W.P.No.9390 of 2017

SS (CO)
TR(06/02/2018)