

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

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

W.P.No.10720 of 2017
and
W.M.P.No.11671 of 2017

E.M.PR.Muthappan ... Petitioner
Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development,
Fort St.George, Chennai-9.
2. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings, Chennai-600 003.
3. The Executive Engineer,
Enforcement-Region (Central),
Corporation of Chennai,
2nd Cross Street, Shenoy Nagar,
Chennai-600 030. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent G.O.(3D).No.68, dated 04.04.2017 in rejecting the petitioner's Section 80-A appeal filed under Town and Country Planning Act as against locking and sealing decision of Corporation of Chennai for the building premises at Door No.82/22, North Mada Street, Mylapore, Chennai-600 004 and quash the same and consequently direct the respondents to regularise the building in the aforementioned property.

For petitioner : Mr.G.Ramakrishnan
For respondents : Mr.A.N.Thambidurai, Spl.G.P. for R-1
Mr.R.Arun Mozhi for RR-2 and 3

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 Certiorarified Mandamus to call for the records relating to the order of the first respondent G.O.(3D).No.68, dated 04.04.2017 in rejecting the petitioner's Section 80-A appeal filed under the Tamil Nadu Town and Country Planning Act as against locking and sealing decision of Corporation of Chennai for the building premises at Door No.82/22, North Mada Street, Mylapore, Chennai-600 004 and quash the same and consequently direct the respondents to regularise the building in the aforementioned property.

2. It is seen that the Corporation of Chennai has issued locking, sealing and demolition notice on 01.09.2015 under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act against the petitioner. The petitioner has preferred appeal under Section 80-A of the said Act and by petition filed under Section 80-A(3) of the said Act, dated 12.09.2015, the petitioner also sought for interim order of stay of all further proceedings with regard to the said demolition notice, dated 01.09.2015. Fearing that the building will be demolished, the petitioner has earlier approached this Court by filing W.P.No.32564 of 2015 and a Division Bench of this Court, by order dated 13.10.2015, directed the third respondent therein, i.e. the first respondent herein, to consider the petitioner's application for interim relief within two weeks and also to consider the petitioner's appeal within the statutory period prescribed under the provisions of law, on its own merits and in accordance with law, in the light of the order dated 29.09.2015 passed by the Division Bench in Lalithkumar C.Soni Vs. Government of Tamil Nadu and others. It was made clear by the Division Bench that for a period of two weeks from the date of the order dated 13.10.2015, status quo as obtained on the order date in respect of the property in question, shall be maintained by both the parties and the petitioner was restrained from making any further construction in the property in question.

3. It is seen from the impugned G.O. that there is unauthorised construction and that there was no approved plan for ground plus two floors and the same is reflected in the impugned order dated 04.04.2017, and the same is extracted below:

"5. Now, the appellant has again preferred an appeal and has stated as follows:-

--> To consider his rear portion of his own building, where rear servant quarters have been demolished and re-constructed G+2 Total area of 3500 Sq.Ft., attached with the main front wing at the rear side, in which, they have a sanctioned plan of 1936/83-84 for the old building, only the rear deviated and alteration has been made, has attached as Service Area for the Main building provided (Addition to the Main Building).

- A) Ground Floor - For scooter, Covered parking --814 Sq.Ft.
- B) Mezzanine Floor - For Generator Room for the full building --941 Sq.Ft.
- C) 1st floor - For Gents and Ladies Toilets for the full building (for hygienic purpose, it has been separated from the main building) --941 Sq.Ft.
- D) 2nd Floor - Open Smoking Area with Pantry, Accessible fire exit Staircase and Lift -- 941 Sq.Ft.

4. In the earlier appeal against the demolition notice, the Government, after affording personal hearing while disposing of the appeal, vide letter dated 09.12.2015, directed the petitioner to stop all construction and demolish the illegal construction within one month. If he fails to do so, it is stated that the Corporation should lock and seal the premises.

5. Earlier, by letter dated 30.12.2015, the petitioner sought for some more time to do necessary alterations in the building for revision and regularisation. The Government, after examination, granted three months' time to the petitioner to do necessary alteration/rectification in the building subject to furnishing of undertaking to that effect. Unfortunately, the petitioner has not adhered to the above direction and the authorities found that there are total violations of an extent of 3500 sq.Ft. and the said violations are reflected in paragraph 5 of the impugned G.O., as extracted supra. After giving personal hearing to the petitioner along with the officials of CMDA and Corporation of Chennai, and as additional unauthorised construction made in the second and third floors are in total violation of the approved plan and that sufficient set-backs have also not been provided in the building and there is also violation of the Development Regulations in respect of Floor Space Index, car parking etc. The petitioner was earlier

given one month time to rectify the defects, as stated supra. Thereafter, based on W.P.No.18100 of 2016, the petitioner was granted another three months' time to rectify the defects. However, instead of rectifying the defects, the petitioner has again approached the Government to regularize the building. The first respondent was of the view that due to large scale violations in the building, the question of regularisation of the building does not arise.

6. Taking into consideration the above facts, the Government, by the impugned order dated 04.04.2017, rejected the appeal (second appeal) of the petitioner filed under Section 80-A of the said Act, which was filed against the locking, sealing and demolition notice issued by the Corporation of Chennai. It was also observed by the first respondent in the impugned G.O. that the order passed in the appeal is final and no further appeal shall lie to the Government. Ultimately, the Member-Secretary of the CMDA and the Commissioner of the Corporation of Chennai were directed to pursue the action accordingly.

7. Without rectifying the defects, the petitioner has come forward before this Court challenging the said G.O. dated 04.04.2017. As there is categorical finding by the respondents/authorities that there are large scale violations in the building, the question of regularisation of the building in question could not be done.

8. This Court, in a catena of cases, held that there shall be set back in the building, which cannot be regularised at all. That apart, when the building is constructed in violation of the approved/sanctioned building plan and initially, in this case, there was no plan at all, this Court cannot show any mercy to the petitioner/violator who has been given ample opportunities to rectify the defects.

9. In view of the above facts, we find no irregularity in the impugned G.O., dated 04.04.2017. Hence, the Writ Petition is dismissed. The respondents/authorities are directed to take steps to demolish the building in question and raze it to the ground within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, W.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

CS

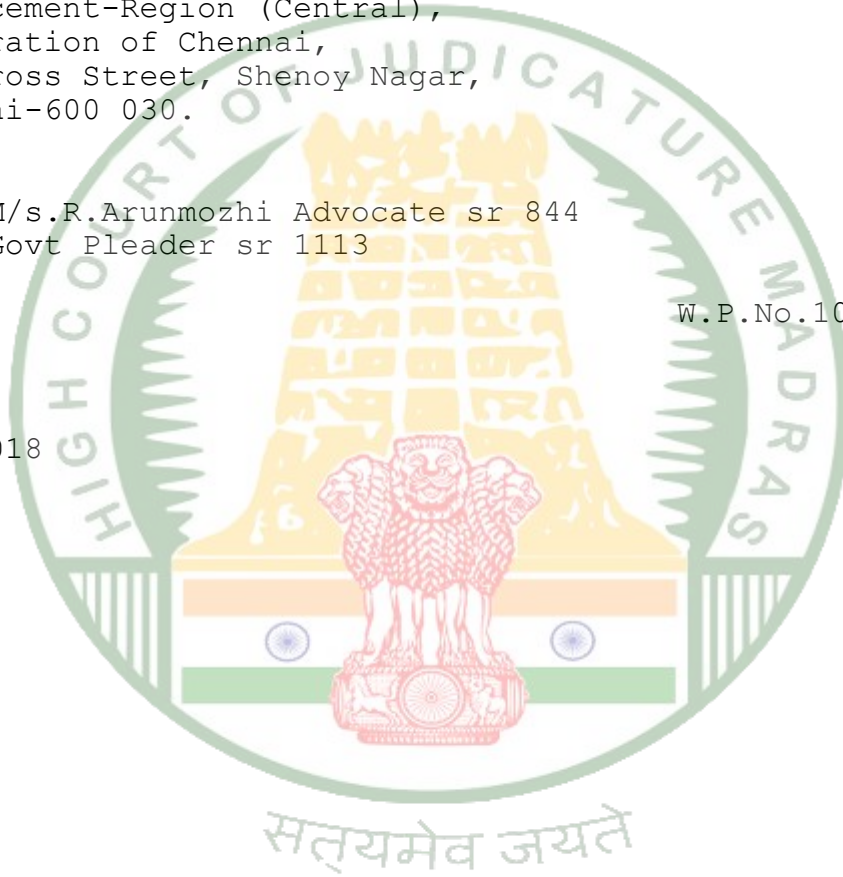
To

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Enforcement-Region (Central),
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Chennai-600 030.

+1 cc to M/s.R.Arunmozhi Advocate sr 844
+1 cc to Govt Pleader sr 1113

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