

IN THE JUDICATE OF MADRAS HIGH COURT

Dated : 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P.No.4573 of of 2018
and
W.M.P.No.5627 of 2018

Berachah Apostolic Christian Assembly Trust,
rep. by its Managing Trustee,
Ps.M.Maria Singarayar, (M/A 60 years),
No.41, Anna Salai, K.K.Thazai, MMC Post,
Madhavaram, Chennai-600 051. ...Petitioner

Vs.

- 1.State rep. by its The Principal Secretary,
Housing and Urban Development Department,
St.George Fort,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Nataraj Maligai,
Egmore, Chennai-600 008.
- 3.The Commissioner,
Greater Chennai Corporation,
"Ripon Building",
Chennai-600 003.
- 4.The Regional Deputy Commissioner (North),
Greater Chennai Corporation,
No.62, Basin Bridge Road,
Old Washermenpet,
Chennai-600 021.
- 5.The Zonal Officer,
Zone-3, Greater Chennai Corporation,
No.1,Thattankulam Street,
Bazar Road, Madhavaram,
Chennai-600 060.

6.The Assistant Engineer,
Division-28,
Greater Chennai Corporation,
No.1,Thattankulam Street,
Bazar Road, Madhavaram, Chennai-600 060.

..Respondents

Prayer:Writ Petition has been under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus, to call for the records of the 5th and 6th respondents in De-occupation Notice No.Dn.28/U-7/5/2018, dated 22.02.2018 issued under Section 56(2) Sub-Clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act, 35 of 1972 and amended by Act 61 of 2008) and to quash the same as illegal, arbitrary and non-est in law and consequently, to forbear the respondents 3 to 6 from initiating any coercive action of locking and sealing of the petitioner's Trust Property in No.34, Madhavaram Village, comprised in Old S.No.53/1A(Part) and 53/2A, New S.No.37, 38/3, Door NO.96, Kumaran Street, Kudirai Kuthai Thazai, Madhavaram, Chennai-600051, till the disposal of the petitioner's appeal filed under Section 80(A) of the Town and Country Planning Act, dated 20.02.2018 pending before the 1st respondent.

For Petitioner : Mr.C.K.Chandrasekkar

For Respondents: Ms.Thangaradhabalakrishnan, for R1
Mr.C.Johnson, for R2
Mr.A.Nagaraj (For R3 to R6)

* * * *

ORDER

(Order of the Court was made by R. SUBBIAH,J.)

This Writ Petition is filed praying to issue a Writ of Certiorarified Mandamus to call for the records of the 5th and 6th respondents in De-occupation Notice No.Dn.28/U-7/5/2018, dated 22.02.2018 issued under Section 56(2) Sub-Clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act, 35 of 1972 and amended by Act 61 of 2008) and to quash the same as illegal, arbitrary and non-est in law and consequently, to forbear the respondents 3 to 6 from initiating any coercive action of locking and sealing of the petitioner's Trust Property in No.34, Madhavaram Village, Comprised in Old S.No.53/1A(Part) and 53/2A, New S.No.37, 38/3, Door NO.96, Kumaran Street, Kudirai Kuthai Thazai, Madhavaram, Chennai-600 051, till the disposal of the petitioner's appeal filed under Section 80(A) of the Town and Country Planning Act, dated 20.02.2018 pending before the 1st respondent.

2. In the affidavit filed in support of this writ petition, it has been averred by the petitioner as follows_

2-1. that the petitioner-Trust purchased the property measuring 7,360 sq.ft situated at No.34, Madhavaram Village, comprised in Old S.No.52/1A(Part) and 53/2A, New S.No.37, 38/3, Door No.96, Kumaran Street, Kudirai Kuthai Thazai, Madhavaram, Chennai, vide two sale deeds Doc.Nos.7700 & 7731 of 2001 registered on the file of Sub-Registrar, Sembiam, from one Jayaram Naicker represented by his Power of Attorney. Already, there was Christian Assembly ie., Berachah Apostolic Christian Assembly existing in the said premises for more than three decades, which was also maintained and managed by the Petitioner-Trust. After purchasing the said site, the Assembly intended to establish a concrete structure for the Christian Assembly. Therefore, the petitioner-Trust constructed a ground floor measuring 654.45 Sq.mts (7019 sq.ft) concrete building with cement sheet ceiling in the year 2002 itself. After that, no construction had taken place. Meanwhile, the Government of Tamil Nadu, Home Department by virtue of the authority contained in and conferred by Section 9 of the Indian Christian Marriages Act, 1872, granted licence to the petitioner to grant certificates of marriage between Indian Christians in accordance with the provisions of the said Act. Apart from the spiritual program, Christian marriages are also solemnized at the Trust premises. The Trust obtained patta in its name vide S.R.No.56/2014 for the Survey No.53/1A from Special Tahsildar, Natham Land Scheme, Madhavaram. The Trust has also got Settlement Deed vide Doc.No.171/2015, dated 17.07.2013 registered on the file of Sub-Registrar in respect vacant site property measuring to an extent of 1560 sq.ft comprised in S.No.53/1(Part), 53/2(Part) presently S.No.53/1B, 2B, Ward A, Block No.40, Town Survey No.36/8 in Kudirai Kuthai Thazai, Madhavaram, for the Trust. The said property will be used for the welfare of the Trust.

2-2. The above said Assembly constructed the structure in the year 2002 itself. At that time, the approval has to be obtained from Madhavaram Municipality. It was only in the year 2011, Madhavaram Municipality merged with Greater Chennai Corporation. The Trust took several measures for obtaining proper planning permission. Section 113-C of the Tamil Nadu Town and Country Planning Act, 1974, speaks of 'Exemption in respect of Development of Certain Buildings'. Section 113-C was inserted by the Tamil Nadu Town and Country Planning (Amendment) Act, 2012 (T.N. Act 36 of 2012) with effect from 16.07.2012. As per Section 113 of the Act, the Government framed the Guidelines for the Exemption of Buildings-2017 and the Tamil Nadu Assessment and Collection of Amount for Exemption of Buildings Rules, 2017 (Vide G.O.Ms.No.110 & 111, dated 22.06.2017). In order to avail the benefit of exemption under Section 113 and 113-A of the Act and to get planning permission,

the Trust applied for regularisation along with necessary forms and paid prescribed fees. The said application filed on 07.02.2018 and it is was received vide Receipt No.CMDA/Reg-113C/265/2018 before the 2nd respondent.

2-3.Meanwhile, the respondents 5 & 6 issued a Lock and Seal notice dated 22.01.2018 under Section 56 read with Section 85 of the Town and Country Planning Act, 1917, as amended by Act 61 of 2008 in respect of the building constructed in ground floor measuring about 654.46 sq.mte (7019 sq.ft) in Old S.No.53/1A(Part) and 53/2A, New S.No.37, 38/3, Door No.96, Kumaran Street, Kudirai Kuthai Thazai, Madhavaram, Chennai. Immediately, the petitioner-Trust filed the statutory appeal under Section 80-A of the Act before the 1st respondent on 20.02.2018 within one month from the date of the receipt of the notice and acknowledgement also obtained. The said appeal was filed along with a stay application.

2-4.Thereafter, the Trust had given representation dated 21.02.2018 requesting the respondents 5 & 6 not to take any coercive action pending the plan approval and disposal of the statutory appeal. After receiving the representation, on the next day itself, ie., on 22.02.2018 the respondents 5 & 6 issued the impugned De-occupation Notice No.Dn.28/U-7/5/2018, issued under Section 56(2) Sub-Clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act, 35 of 1972 as amended by Act 61 of 2008). Hence, the petitioner has come forward with the present writ petition for the relief as stated supra.

3.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the 1st respondent and the learned Standing Counsel for the other official respondents in this writ petition.

4.Though very many contentions have been raised on either side, We find that the statutory appeal filed by the petitioner under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 is pending before the 1st respondent. Hence, We deem it fit to direct the 1st respondent to dispose of the said appeal within a time limit.

5.Accordingly, the 1st respondent is directed to consider the statutory appeal filed by the petitioner and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within three months from the date of receipt of a copy of this order. Till the disposal of the appeal, no coercive steps shall be taken by the respondents authorities.

With the above directions, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

(ssv)

To,

- 1.The Principal Secretary,
Housing and Urban Development Department,
St.George Fort,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Nataraj Maligai,
Egmore, Chennai-600 008.
- 3.The Commissioner,
Greater Chennai Corporation,
"Ripon Building",
Chennai-600 003.
- 4.The Regional Deputy Commissioner (North),
Greater Chennai Corporation,
No.62, Basin Bridge Road,
Old Washermenpet,
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- 5.The Zonal Officer,
Zone-3, Greater Chennai Corporation,
No.1,Thattankulam Street,
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- 6.The Assistant Engineer,
Division-28,
Greater Chennai Corporation,
No.1,Thattankulam Street,
Bazar Road, Madhavaram, Chennai-600 060.

+ 1 cc to Mr.C.K.Chandrasekhar Advocate,SR.21052

+ 1 cc to Mr.A.Nagarajan Advocate,SR.20743

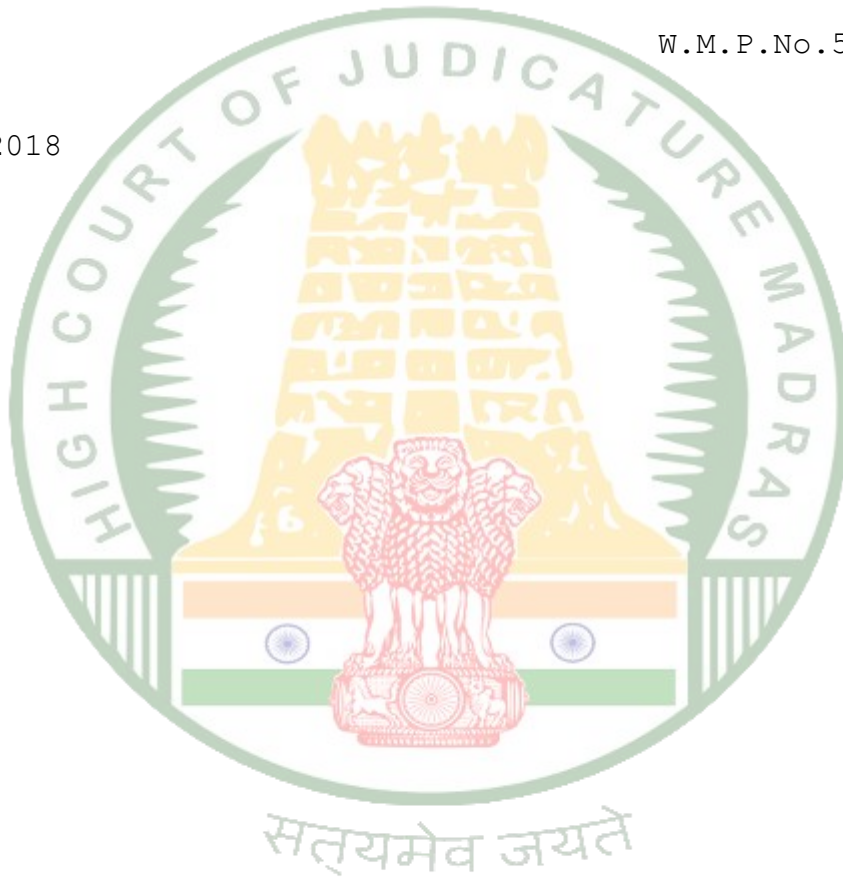
+ 1 cc to M/s.C.Johnson, Advocate,SR.20050

+ 1 cc to The Govt.Pleader, SR.20461

W.P.No.4573 of of 2018
and

W.M.P.No.5627 of 2018

sj (co)
nr 12/04/2018



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