

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

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

W.P.No.375 of 2018
and
W.M.P.Nos.431 and 1520 of 2018

P.Selvarajan

.. Petitioner

Vs.

1. The Commissioner,
Directorate of Town and Country Planning,
Chengalvarayan Building,
4th and 5th Floor, 807, Anna Salai,
Chennai-600 002.
 2. The Zonal Director,
Directorate of Town and Country Planning,
Salem Region,
6, Sannathi Street, Subramaniaya Nagar,
Suramangalam,
Salem-636 005.
 3. The Commissioner,
Attur Municipality, Municipality Office,
Attur-636 102, Salem District.
 4. A.Mohammed Ibrahim
 5. S.Umal Bazhir
 6. The Executive Engineer (Operation and Maintenance),
Tamil Nadu Generation and Distribution Ltd.,
Attur Town,
Salem District, Tamil Nadu 636 102.
- (Sixth respondent suo motu impleaded as
per order dated 09.01.2018 in W.P.No.375 of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second and third respondents herein to comply the order dated

24.02.2017 made in Na.Ka.No.20/F1 passed by the third respondent and to take appropriate action for demolition of the huge unauthorised construction of the fourth and fifth respondent premises which is situated in D.No.654/636 Ranipet Bazar, Attur Municipality and Town, Salem District.

For petitioner : Mr.A.Rajakumar

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for RR-1 to 3
Mr.K.Mohana Murali for RR-4 and 5
Mr.S.K.Rameshwar for R-6

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 Mandamus to direct the second and third respondents herein to comply with the order dated 24.02.2017 made in Na.Ka.No.20/F1 passed by the third respondent and to take appropriate action for demolition of the huge unauthorised construction of the fourth and fifth respondents' premises which is situated in D.No.654/636 Ranipet Bazar, Attur Municipality and Town, Salem District.

2. By order dated 09.01.2018, this Court has granted interim direction to the respondents 2 and 3 to lock and seal the unauthorised construction of four floors (commercial building premises) by the respondents 4 and 5 in respect of the said premises. By the said order dated 09.01.2018, this Court also directed the sixth respondent to disconnect the electricity supply forthwith in respect of the said property and also directed the respondents 4 and 5 not to open the shop in question by using Generator in the place of electricity.

3. Now, the respondents 4 and 5 have come forward with W.M.P.No.1520 of 2018 to suspend the said order dated 09.01.2018. According to the respondents 4 and 5, the building approval was obtained and the construction of the ground and first floor was made in the year 1991 and after purchase of the property, the second and third floors were constructed in the year 1997. According to them, even though there was no plan for the additional construction, the respondents 4 and 5 have been paying property tax and also obtained electricity service connection. It is further submitted by them that they have made application for regularisation of the building, which is pending before the authority and the same has not been disposed of.

4. Admittedly, there is no plan for the second and third floors. As the said application is pending before the authority, even though strong objection has been made for modifying the said order dated 09.01.2018 passed by this Court, we are of the view that no harm is going to be caused to the petitioner, if the said order is modified, in view of the fact

that the said application is pending before the authority. Therefore, instead of disconnecting the electricity supply to the entire building, we direct the sixth respondent to give electricity supply in respect of the ground and first floors of the building and the authorities concerned are directed to keep the second and third floors of the building under lock and seal without electricity supply till the application for regularisation is decided by the authority. We hope that the authority concerned shall decide the said application with regard to sanction/regularisation, within a period of two months from the date of receipt of a copy of this order, after hearing the petitioner, respondents 4 and 5 and the complainant, if any. The Authority concerned must ensure that the set-back violations are not regularised as laid down by the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), and the relevant portion of the same 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;"

5. In this regard, it is useful to refer a decision of the First Bench of this Court in the case of "Consumer Action Group Vs. State of Tamil Nadu", reported in 2006 (4) CTC 483, wherein, the First Bench of this Court has taken serious note of the violations relating to set back, car parking, FSI, etc., and held as under in paragraph 26 :

"26. ... Regularising the constructions erected in violation of the regulations has serious consequences. Regularisation in many cases for the violation of the front setback, will not make it easily feasible for the Corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirement of side set back will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight fire

in a high-rise building. The violation of the floor space index, will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire stair case and other fire prevention and fire fighting measures would seriously endanger the occupants resulting in the building becoming a very veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens. The Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. If the laws are not enforced and the orders of the Court to enforce and implement the laws are ignored, the result can only be total lawlessness."

6. In the above context, it is also worthwhile to refer a decision of a Division Bench of this Court in the case of M.P.Aravinda Vs. The Commissioner, Corporation of Chennai and others, W.P.No.28311 of 2016, dated 04.10.2016, wherein the Division Bench held as follows in paragraph 7:

"7. However, before parting with this case, it would be useful to refer to the direction of this Court, in W.P.38432 of 2015, etc., wherein, by order dated 07.09.2016, this Court has observed that very many encroachments are found throughout the city of Chennai, which requires to be dealt with sternly, but for the ineffective steps taken by the authorities concerned, such encroachments would not have continued. It is high time that dynamic action needs to be taken by the authorities concerned so as to avoid public lands being usurped by unscrupulous elements. This Court, in the abovesaid writ petition, has given certain guidelines for the authorities to follow in respect of any encroachments being brought to its notice. The relevant portion of the order, for better clarity is extracted hereunder:

"12. Whenever it is brought to notice that there is land encroachment on the roads or in any other place or violation of construction, it is

open to the authorities concerned to call for the following details from the violator by issuing appropriate notice:

- (a) Registered Deed based on which the property has devolved upon the person;
- (b) Extent of square feet mentioned in the Schedule property;
- (c) Width of the road;
- (d) Actual constructed area;
- (e) Approved plan;
- (f) Whether set back space has been provided as per the Plan/Rules."

7. As the relief sought for by the petitioner is to direct the respondents 2 and 3 to take appropriate action for demolition of the unauthorised construction made by the respondents 4 and 5, in view of the fact that the said application for regularisation is pending and as this Court has directed to dispose of the said application within two months, as directed supra, we do not find that the relief sought for by the petitioner as such has got to be granted.

8. With the above observations and direction, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Assistant Registrar
Dt.15.2.18

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
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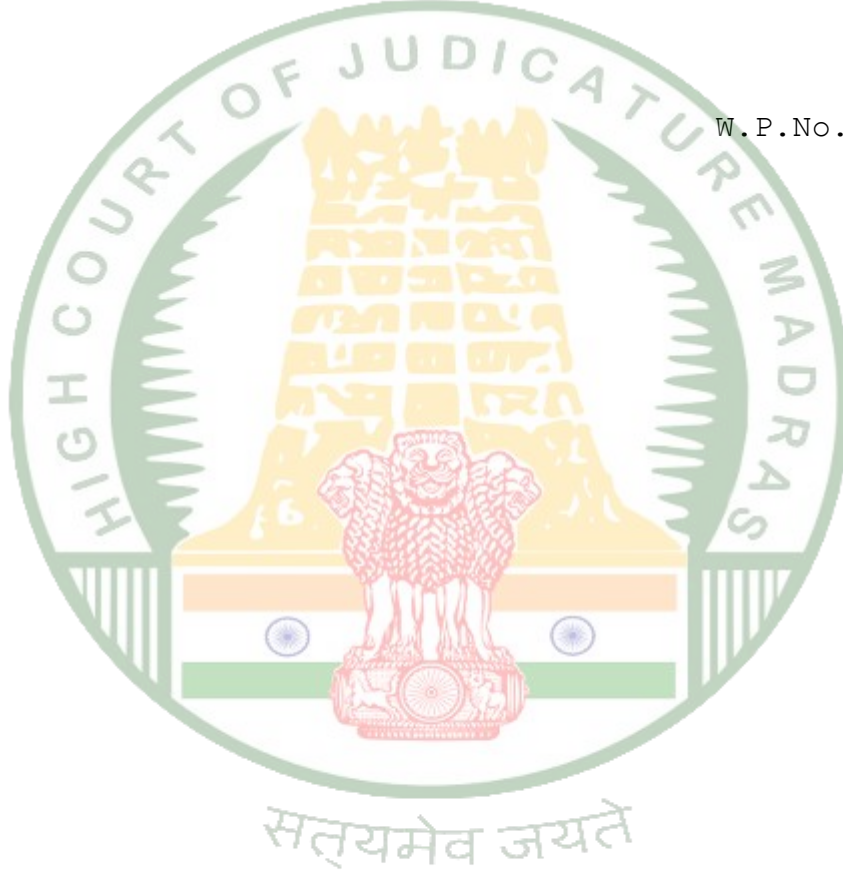
3. The Commissioner,
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4. The Executive Engineer (Operation and Maintenance),
Tamil Nadu Generation and Distribution Ltd.,
Attur Town,
Salem District, Tamil Nadu 636 102.

+1 cc to Mr.A.Rajakumar,advocate,sr.5794

+1 cc to Govt.Pleader,sr.6191.

Krd 20/2

W.P.No.375 of 2018



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