

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

WP.No.3869 of 2018 and WMP.Nos.4747 & 4748 of 2018

D.Hari .. Petitioner
Versus

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.
 2. The Commissioner,
Corporation of Chennai,
Rippon Building,
Park Town,
Chennai-600 003.
 3. The Executive Engineer,
(Enforcement-Region Central),
2nd Cross Street (East),
Pulla Avenue,
Shenoy Nagar,
Chennai-600 030.
 4. P.Sambandham,
Plot No.2, Old Door No.47, New No.46,
West Namachivayapuram,
Choolaimedu,
Chennai-600 090.
 5. The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai. .. Respondents
- **R5 impleaded as per order made in
WPMP.No.5573/2018 dated 12.03.2018.

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent to remove the lock and seal of the petitioner's house at Plot No.3, Old Door No.46, New Door No.48, West Namachivayapuram, Choolaimedu, Chennai-600 090 consequently

and direct the 2nd and the 4th respondents to pay a sum of Rs.25,00,000/- as compensation for causing wrongful loss to the petitioner.

For Petitioner : Mr.D.Geetha
For Respondents : Mr.R.Shivakumar for R1
Mr.K.Soundarajan for R2 & R3
Mr.C.Johnson for R5
Mr.A.Edwin Prabhakar for R4

ORDER

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

By consent, the writ petition is taken up for final disposal.

2. Mr.R.Sivakumar, learned counsel appears for 1st respondent, Mr.K.Soundarajan, learned Standing counsel appears for respondents 2 and 3 ; Mr.A.Edwin Prabhakar, learned counsel appears for 4th respondent and Mr.C.Johnson, learned counsel appears for the 5th respondent.

3. The petitioner is a practicing Advocate and is a permanent resident of Plot No.3, Old Door No.46, New Door No.48, West Namachivayapuram, Choolaimedu, Chennai-600 090. He had purchased some extent of land through registered Sale Deed in Document No.1168 of 2012 dated 17.12.2012 registered on the file of the Sub-Registrar, Thousand Lights, Chennai and the said land measures 79 square Metres and 850 sq.ft. The petitioner would further aver that West Namachivayapuram, Choolaimedu area comes under economically weaker section and accordingly, the 1st respondent has developed plots and Plot No.3 was allotted to Mr.Selvaraj and three others by the 1st respondent and Mr.Selvaraj, had purchased the said land through the above said Sale Deed. It is a case of the petitioner that the area falls under Continuous Building Area as per the Development Regulations of CMDA and therefore, there is no need to provide set back.

4. The 4th respondent, on an earlier occasion filed WP.No.26236/2017, praying for disposal of the appeal / special revision filed under Section 79 read with Section 80-A of the Town and Country Planning Act, 1971 with regard to his property bearing Door No.46/47, Plot No.2 of the very same area and the petitioner had intervened and brought to the knowledge of this Court that the writ petitioner therein/4th respondent herein, is also guilty of putting up unauthorized construction. This Court vide order dated 09.10.2017, disposed of the said writ petition based on the undertaking of the learned counsel for the

petitioner that the offending construction / superstructure put up by the petitioner therein, became old and hence, the petitioner therein has to carry out demolition of the same and after obtaining necessary planning permission, put up a new construction strictly in accordance with the planning permission. This Court has also observed that till the disposal of the appeal/revision by the Government, the petitioner therein shall not alter the physical features and shall not create any third party rights in respect of the superstructure.

5. A perusal of the materials placed before this Court would indicate that Regional Deputy Commissioner, Corporation of Chennai, Shenoy Nagar, Chennai-30 has sent a notice dated 08.10.2015, pointing out the following deviation:

S. No	Description	As per Plan	As per Site	Deviated/unauthorised
1	Ground Floor	Front Set Back-1.50 M Side set back(1)- 0.00 M Side set back(2)- 0.29 M Rear side set back- 1.51 M	Front set back- Nil Side set back(1)- nil Side set back(2)- Nil Rear side set back- 1.51 M	Deviation Nil Deviation Deviation
2	First Floor	Front Set Back-1.50 M Side set back(1)- 0.00 M Side set back(2)- 0.29 M Rear side set back- 1.51 M	Front set back- Nil Side set back(1)- nil Side set back(2)- Nil Rear side set back- 1.51 M	Deviation Nil Deviation Deviation
3	Second Floor	Nil	Second Floor Construction	unauthorised

6. The petitioner herein challenging the said notice, filed an appeal before the Government and the said appeal was disposed of on 21.12.2015, granting 30 days time to the petitioner to rectify the defects mentioned in the above cited premises. The petitioner also filed WP.No.25818/2017 against the official respondents as well as against Mr.P.Sampandham / petitioner in WP.No.26236/2017, praying for issuance of a writ of Mandamus, directing the respondents 2 and 3 and their men to stop all further demolition works and this Court vide order dated 27.09.2017 has disposed of the same, by directing joint inspection to be conducted in respect of Plot nos.1 to 5 by officials of Corporation of Chennai and Tamil Nadu Slum Clearance Board and further observed that if it is found that

any building(s) had been constructed without sanctioned plan or violation of the sanctioned plan, suitable action to be taken against the violators, irrespective of the fact as to whether any complaint has been lodged and the construction made in violation of the plan should be demolished. It was also made clear in the said order that if any set back violations are regularised by the authorities viz., CMDA, Corporation of Chennai as well as Housing and Urban Development Department or such other authority, they should be taken into task and they should be posed in a non-sensitive post.

7. The petitioner voluntarily came forward to demolish the alleged offending construction in the form of Second Floor and also demolished the same. In compliance of the order, the joint inspection was also undertaken and Plot Nos.1 to 5 were inspected which includes Plot No.3 of the writ petitioner and all superstructures are found to be violative and owners of Plot Nos.2,4 and 5 had filed Special Revision / appeal under Section 80-A of the TCP Act before the Government and it is said to be pending. The grievance now expressed by the petitioner is that since the area is Continuous House Zone, there is no necessity to leave the set back and in the light of filing of contempt petition by the 4th respondent in CP.No.1269/2016, the 2nd respondent without informing the factual position, had demolished the Second Floor of the Plot and also damaged the other superstructures and also put up lock and seal and thereafter, it was removed and on account of the said fact, entire building is in damage condition especially ground+First Floor and as such, he is entitled to the damages of Rs.25 lakhs. It is also brought to the notice of this Court that in pursuant to the interim order passed in this writ petition, lock and seal has been removed. The petitioner has carried out the repairs.

8. Mrs.D.Geetha, learned counsel appearing for the petitioner would vehemently contend that if the relevant aspects of the Development Control Rules with regard to the Continuous House Zone of the area in question have been brought to the knowledge of this Court, there would not have been a positive direction to put up a lock and seal and proceed and further on account of unscientific method of demolition, the entire superstructure got damaged and it is extremely difficult for the petitioner even to carry out the repairs and would further add that on account of the said fact, there is no necessity for providing set back and therefore, this Court may order appropriate compensation to be payable to the petitioner by the official respondents.

9. Per contra, learned standing counsel appearing for the 1st respondent would submit that even for the sake of arguments, in respect of continuous house zone, the petitioner is under obligation to leave ground for rear set back and admittedly, he

has not done so. His earlier stand was that he has put up construction in accordance with the sanctioned plan and admittedly, the Second Floor has been put up unauthorizedly and that apart, no front and rear set back has been left out and taking into consideration of the said fact and appropriate action has been taken in accordance with law.

10. Mr C.D. Johnson, learned counsel appearing for the 5th respondent would submit that superstructure put up by the petitioner is not complying with the relevant norms and depending upon the result of the appeal, he will definitely adhere to and the undertaking was also recorded in Paragraph No.10 of the order dated 09.10.2017 made in WP.No.26236/2017 filed by the 4th respondent and the Tamil Nadu Housing and Urban Development Department, Secretariat, Chennai-9 is likely to pass orders on the said petition very soon.

11. This Court has carefully considered the rival submissions and also perused the materials placed before it.

12. As rightly pointed out by the learned standing counsel for Chennai Corporation, the petitioner in his communication dated 31.07.2014 addressed to the Regional Office, Chennai, took a stand that he did not violate any rules and regulations of the Corporation of Chennai and there is no deviation ; but there is deviation in the form of Second Floor and there is also front and rear set back violation. In the light of the interim order passed in WP.No.25818/2017, the Corporation has carried out the inspection of Plot Nos.1 to 5 which includes Plot No.3 of the writ petitioner and all that the superstructures appears to be in violation and the owners of Plot nos.2,3 and 4 had already filed Special Revision under Section 80-A of TCP Act and the same are pending. Depending upon the result of the same, the CMDA, Corporation of Chennai are directed to take appropriate action. It is also brought to the knowledge of this Court that the entire area consists of unauthorized superstructures. The Executive Engineer, Zone-9, Corporation of Chennai, after putting the owners / occupants on notice shall carryout the inspection of the superstructures put up by them. If any infraction or violation is noted, shall take appropriate action in accordance with law at the earliest. Insofar as the claim made by the petitioner is concerned, this Court is of the prima facie view that since unauthorized construction has been put up, it has been demolished and the points urged by the learned counsel appearing for the petitioner, in the considered opinion of this Court would revolve around the adjudication of disputed question of fact and this Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot adjudicate the same.

13. In the result, the writ petition is dismissed and if the petitioner is so advised, it is open to him under law and he is at liberty to avail the appropriate remedy in accordance with law before the competent forum. No costs. Consequently connected miscellaneous petition are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
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No.5, Kamarajar Salai,
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2nd Cross Street (East),
Pulla Avenue,
Shenoy Nagar,
Chennai-600 030.
5. The Member Secretary
Chennai Metropolitan Development Authorities,
Egmore, Chennai.

- +1 CC to Mr.R. Sivakumar, advocate sr 25893.
+1 CC to Mr.K. Sundararajan, Advocate sr 25667.
+1 CC to M/s.D. Geetha, Advocate sr 25518.
+1 CC to Mr.C.D. Johnson, Advocate sr 25259.
+1 CC to Mr. Edwin Prabakar, Advocate sr 25053.

WP.No.3869 of 2018

VGII(CO)
SP(03/05/2018)