

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.Nos.20728 of 2017 and 4014 of 2018
and WMP.Nos.4949 and 4950 of 2018

W.P.No.20728 of 2017

S.Sampath

S/o.N.A.Subramaniam

... Petitioner

Vs

1.The Member Secretary,
The Chennai Metropolitan Development
Authority (CMDA),
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin road,
Egmore, Chennai - 600 008.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai - 600 003.

3.The Executive Engineer,
TP Enforcement - Region Central,
Corporation of Chennai,
2nd Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

4.The Executive Engineer,
Zone-10, Corporation of Chennai,
Zonal Office No.117, N.S.K.Salai,
Kodambakkam, Chennai - 600 024.

5.A.V.Sudha

6.G.Lakshmana Rao

7.Viswanathan

8.Ratna Sekari

C/o.G.Lakshmana Rao

9.The Assistant Engineer,
Tamil Nadu Electricity Board,
Basulla Road, T.Nagar,
Chennai - 600 018.

10.Suthanthira Gandhi

[R9 - Suo motu impleaded as per order
dt.9.1.2018 by MVJ and SVNJ

R10 - Impleaded as per order of
this Court dated 13.04.2018]

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 1 to 4 to demolish the deviated and unauthorised portion of the building at Door No.1, Vigneshwara Apartments, Varadharajapuram Street, T.Nagar, Chennai - 600 017, in compliance of fourth respondent notice No.Zonal Office/TPENF/00022/2016 dated 08.09.2016 within the prescribed time.

For Petitioner : Mr.K.Sakthivel

For Respondents: Mr.N.Sampath [R1]
Mr.V.C.Selvasekaran [R2 to R4]
Mr.D.Thirumoorthy for S.P.Arthi [R5]

W.P.No.4014 of 2018

A.V.Subha

D/o.A.R.Venkatesan

.. Petitioner

Vs

1.The Member Secretary,
The Chennai Metropolitan Development
Authority (CMDA),
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin road,
Egmore, Chennai - 600 008.

2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

3.The Chairman cum Managing Director,
TANGEDCO,
10th Floor, NPKRR Maligai,
114, Anna Salai, Chennai - 600 002.

4.K.Saradha
W/o.K.R.Durai Babu

5.S.Sumathi
W/o.M.R.Mohan

6.S.Sampath

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent herein to take appropriate action and demolish the unauthorised and deviated constructions in the first floor of the property bearing Door No.1, Varadharajan Street, T.Nagar, Chennai - 600017, based on the petitioner's representation dated 06.08.2016.

For Petitioner : Mr.S.P.Arthi

For Respondents: Mr.C.Johnson [R1]
Mr.C.Selvasekaran [R2]
Mr.P.R.Dhilip Kumar [R3]
Mr.Wesly Issac [R4]
Mr.K.Sakthivel [R5 & R6]

COMMON ORDER

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

By consent, both the writ petitions are taken up for final disposal and by way of common order as the action sought to be taken/sought to be deferred in respect of property at No.1, Varatharajan, Street, T.Nagar, Chennai-600 017.

W.P.No.20728 of 2017

1.1. Petitioner claims that fifth respondent along with her mother originally owned the said property and it was promoted by one M/s.Sanguine Construction Pvt. Ltd. in which respondents 6 and 7 were Directors. A building plan was also sanctioned by Corporation of Chennai on 26.06.1999. As per the said permission, one flat in the rear portion of the ground floor and three flats in the first floor have to be constructed after leaving the set back. The grievance expressed by the petitioner is that in utter violation and disregard to the sanction plan, unauthorised construction has been put up and the fifth respondent in-turn had sold a portion of the same. Respondents 6 to 8 and tenth respondent claim to be tenants under the seventh respondent. Repeated representations were also given in this regard and the respondents 3 and 4 had issued a notice calling for production of approval plan from the petitioner and it was

followed by locking, sealing and demolition notice dated 08.09.2016 alleging deviation/unauthorised construction and it is relevant to extract the same:

S.No.	Description	As per Plan	As per Site	Deviated/ Unauthorised
1.	Ground Floor	119.10 m ²	130.65 m ²	11.55 m ²
2.	First Floor	127.50 m ²	130.65 m ²	3.15 m ²
3.	Second Floor	-	130.65 m ²	130.65 m ²

1.2. Petitioner came forward to file the present writ petition praying for implementation of the said notice and it was entertained and this Court, vide order dated 09.01.2018, made it clear that if no consent is given by any one of the co-owners, electricity supply will be disconnected and accordingly, electricity service connection granted to the portion in occupation of the tenth respondent has been disconnected.

1.3. Fourth respondent has filed counter affidavit stating among other things that the fifth respondent aggrieved by the notice dated 08.09.2016, filed W.P.No.36135 of 2016 praying for issuance of a writ of mandamus forbearing the respondents 1 and 2 therein from initiating any coercive action of locking, sealing and demolition in respect of the said premises and when the writ petition was listed for final disposal, this Court, taking note of the pendency of the special revision before the appellate authority as well as interlocutory application, closed the petition. It is further averred that the fifth respondent has not furnished any order of the revisional authority and in the mean while, the Additional Secretary, Housing and Urban Development Department, has passed an order on 01.09.2017 granting liberty to the petitioner therein to file an application u/s.113(C) within a period of one month with a further direction directing the Member Secretary, CMDA, to pursue action accordingly.

1.4. First respondent has filed counter affidavit wherein he took a stand that the representation of the petitioner has been forwarded to the Regional Deputy Commissioner (Greater Chennai) Corporation for taking appropriate action.

1.5. The tenth respondent, pendency of the writ petition, has filed W.M.P.No.11573 of 2018 for restoration of electricity service connection and it has been ordered.

W.P.No.4014 of 2018

2.1. Petitioner's father Late A.R.Venkatesan owned a land admeasuring an extent of 2100 sq.ft. at No.1, Varadarajan Street, T.Nagar, Chennai - 600017 and after his demise, it

devolved upon him and his mother and they decided to develop the property into apartments and both of them were unaware of the procedures involved and did not possess enough expertise and they solely depend upon a builder and a superstructure was constructed which includes ground + 2 floors and a partially constructed third floor and the respondents 4 to 6 herein have purchased various portions in the first floor of the said property and second and third floors have been retained by the developer and his associates and her writ petition pertains only to the ground floor.

2.2. Learned counsel for the petitioner would submit that without putting the petitioner on notice and without following due procedure, locking, sealing and demolition notice has been issued pointing out deviation in the ground floor and invited the attention of this Court to the photographs produced by him and submitted that side set back has not been provided and the petitioner in W.P.No.20728 of 2017 himself is in occupation of the portion of the premises which has been constructed unauthorisedly and if an Advocate Commissioner is appointed and if he measures the property with the assistance of a qualified Civil Engineer, it would be definitely made known whether any unauthorised structure exists or not and even assuming if there is an unauthorised construction, it is well within the condonable limit.

2.3. Per contra, learned counsel appearing for official respondents would submit that the remedy open to the petitioner, if any, is to invoke Section 80-A of the Town and Country Planning Act, 1971 and admittedly, it has not been availed and on account of the pendency of the writ petition, the officials of the Corporation as well as CMDA are not proceeding further to take action against the unauthorised portion of the construction.

3. This Court has carefully considered the rival submissions and also perused the materials placed on record.

4. This Court, in the light of the above facts and circumstances, permits the officials of the Corporation of Chennai to issue locking, sealing and demolition notice, to occupants, if those notices were not already issued and it shall be followed by de-occupation notices and upon receipt of the same, it is open to the persons, who are in occupation of the respective portions either as owners/tenants, to avail the remedy available u/s.80-A of the Town and Country Planning Act.

5. In the light of the reasons assigned, W.P.No.20728 of 2017 stands disposed of accordingly. No costs.

6. As regards petitioner in W.P.No.4014 of 2018 is concerned, she has already been issued with locking, sealing and demolition notice dated 08.09.2016 and in the light of the availability of the alternative remedy, it is open to her to file a special revision petition u/s.80-A of the Town and Country Planning Act along with a petition for stay by enclosing relevant and authenticated documents to the Secretary to Government, Housing and Urban development, Secretariat, Chennai - 600009, within four weeks from the date of receipt of this order and upon receipt of the same, the revisional authority or his delegated official shall entertain the revision along with a stay petition without putting the issue of limitation and thereafter, shall take up the petition for stay and dispose of the same in accordance with law within four weeks thereafter and till such time, the officials of CMDA and Corporation shall defer further action in terms of locking, sealing and demolition notice. It is also open to the revisional authority or the delegated official to take up the main revision and give a disposal on merits in accordance with law, within twelve weeks from the date of entertainment of the revision.

W.P.No.4014 of 2018 stands disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Member Secretary,
The Chennai Metropolitan Development
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Basulla Road, T.Nagar, Chennai - 600 018.

6.The Chariman cum Managing Director
TANGEDCO,
10th Floor, NPKRR Maligai,
114, Anna Salai, Chennai 600 002

+1cc to Mr.C.Johnson, Advocate Sr.No.30123
+1cc to M/s.N.Sampath, Advocate Sr.No.29891
+1cc to Mr.P.R.Dhlip Kumar, Advocate Sr.No.30235
+2cc to M/s.S.P.Arthi, Advocate Sr.No.30248,30249
+3cc to M/s.K.Sakthivel, Advocate Sr.No.29865,29866

KJ(CO)
sm:27.4.2018

W.P.Nos.20728 of 2017 and 4014 of 2018

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