

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.20952 of 2017

E.Palani

... Petitioner

vs.

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Principal Secretary to Government,
Department of Local Administration,
Secretariat,
Fort St. George, Chennai - 600 009.

3. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
Thalamuthu Natarasan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

4. The Commissioner,
Greater Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

5. The Regional Deputy Commissioner,
Greater Corporation of Chennai - North,
Zone-5,
No.61, Basin Bridge Road,
Chennai - 600 021.

6. The Zonal Officer,
Greater Corporation of Chennai,
Zone-5,
No.61, Basin Bridge Road, Chennai - 600 021.

7. The Executive Engineer,
Greater Corporation of Chennai,
Zone-5,
No.61, Basin Bridge Road,
Chennai - 600 021.

8. The Junior Engineer,
Greater Corporation of Chennai,
Ward No.59, Zone-5,
Memorial Road, George Town,
Chennai - 600 003.

9. Ramesh.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1 to 7, more particularly the 3rd respondent to take disciplinary action stringently against the 8th respondent for violating or allowing the 9th respondent's buildings which have violated the rule and acted in connivance with the law breakers.

For Petitioner : Mr.E.Palani
Party-in-person

For Respondents: Mr.S.Kamalesh Kannan (for R1 & R2)
Government Advocate
Mr.Karthik Rajan (for R3)

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Contending inter alia that unauthorised constructions have come into existence near Old George Town, Chennai, causing inconvenience to the general public and that Junior Engineer, Greater Chennai Corporation, Chennai, being a Government servant, had miserably failed to control or curtail the activities of law breakers and further making a general allegation that government employees collect money and allow unauthorised constructions, without adhering to the rules, petitioner has sought for a mandamus directing the respondents 1 to 7, morefully, the Member Secretary, Chennai Metropolitan Development Authority (CMDA), Chennai, 3rd respondent to take stringent disciplinary action against the Junior Engineer, Greater Chennai Corporation, Ward No.59, Zone-5, Chennai, 8th respondent, for violating the rule and allowing the 9th respondent, to put up a building.

2. Upon notice, District Revenue Officer / Zonal Officer, Zone-V, Greater Chennai Corporation has filed a detailed counter affidavit setting out the action taken against 9th respondent for violations noticed. For brevity, paragraph Nos.7 and 8 of the counter affidavit, are extracted herein.

"7. I submit that the petitioner's prayer of taking action against the unauthorized buildings in the George Town area was already done by this respondent and the reports were filed in the Writ Petition No.16555 of 2014. I submit that the writ petition in W.P.No.16555 of 2015, is not closed and it

is to be listed for further compliance. I further submit that the petitioner herein has mentioned one of the buildings in the George Town area at Door No.96, Rasappa Chetty Street, Chennai-3, had violated the Rules. I submit that as already informed the following enforcement action has been taken in respect of the building mentioned in the writ petition.

(a) A notice calling for approved plan was issued on 28.03.2016;

(b) A stop work notice was issued on 09.07.2015; and

(c) A locking and sealing notice was issued on 03.03.2017

8. I submit that the 9th respondent had challenged the locking and sealing notice dated 03.03.2017 and filed an appeal before the Government thereafter, filed a Writ Petition in W.P.No.7905 of 2017 forbearing the Corporation from initiating any coercive action of locking and sealing and demolition of the building till the disposal of the Appeal filed before the Government on 16.03.2017. This Hon'ble Court passed an order on 04.04.2017 as follows:

"4. Considering the facts and circumstances of the case, we direct the first respondent to consider the revision filed by the petitioner on 16.03.2017 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 revision no coercive steps shall be taken by the respondent authorities. All the contentions raised in this writ petition are left open to be urged by the petitioner before the appellate authority."

3. Zonal Officer, Zone-5, Greater Chennai Corporation, has also submitted that this Court has constituted a committee headed by Hon'ble Mr.Justice S.Rajeswaran (Retired), in order to monitor and issue suitable suggestions to the Government for framing Rules, in order to regularise the buildings, wherever, deviation is noticed. The Zonal officer has also contended that Section 113 (C) of Tamil Nadu Town and Country Planning Act, provides for regularising the buildings, based on the year of construction, which stipulates certain conditions.

4. Heard Mr.E.Palani, party-in-person and perused the materials available on record.

5. First of all, averment made in paragraph No.6 of the supporting affidavit that Government employees collect money, from the law breakers and allow to put up constructions,

without adhering to building norms and Rules, is general.

6. Secondly, the contention that the 8th respondent ought to have exercised his control over the unpleasant violation of constructions in the Old George Town area and that he had miserably failed to control or curtail the law breakers and therefore, respondents 1 to 7, should be directed by issuance of a mandamus, to take disciplinary action, is not supported by any evidence.

7. Thirdly, the prayer to take disciplinary action against the 1st respondent falls within the ambit "service matter". No Public Interest Litigation, is maintainable in service matter and reference can be made to the decision of Hon'ble Supreme Court in Hari Bansh Lal vs. Sahodar Prasad Mahto and others, reported in 2010 (9) SCC 655.

8. In the light of the above discussion and having regard to the averments made in the counter affidavit, prayer for issuance of mandamus is not maintainable. Accordingly, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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Fort St. George,
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Ward No.59, Zone-5,
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Chennai - 600 003.

+1cc to Mr.E.Palani, (Party in person) SR.NO.55951
+1cc to MR.Karthik Rajan, Advocate SR.NO.56209
+1cc to Mr.K.Soundararajan, Advocate SR.NO.56144

VD(CO)
sm:11.9.2018

WP.No.20952 of 2017

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