

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.3.2018

CORAM

The HON'BLE MR.JUSTICE M.VENUGOPAL

AND

The HON'BLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.31943 of 2017

J.Suresh Kumar, rep.by his
power agent R.C.MiniPetitioner

Vs

- 1.The Member Secretary, Chennai
Metropolitan Development
Authority, Thalamuthu Natarajan
Buildings, No.1, Gandhi Irwin
Road, Egmore, Chennai-8.
- 2.The Commissioner, Greater Chennai
Corporation, 1131, EVR Periyar
Salai, Park Town, Ripon Buildings,
Chennai-20.
- 3.The Joint Commissioner, Chennai
Region, HR & CE, Nungambakkam,
Chennai-34.

- 4.K.Vinoth Kumar
(R4 impleaded as per order of Court
dated 19.12.2017 in WMP.No.35974
of 2017by MSNJ & PRMJ) ...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Mandamus directing 1st and
2nd Respondents herein to consider the petitioner's
representation dated 20.10.2017 as per order No.26801/UD-VII(2)/
2017-4 dated 16.10.2017 and take action for locking sealing and
execution of demolishing the unauthorized construction made in
Door No.7/15, Survey No.129, Karunambigai Colony, Velachery,
Chennai-42.

For Petitioner : Mr.M.Guruprasad
For Respondent-1 : Mr.K.Raja Srinivas
For Respondent-2 : Mr.A.Nagarajan
For Respondent-3 : Mr.M.Maharaja, SGP
For Respondent-4 : Mr.L.Chandrakumar

Order of the Court was made by M.VENUGOPAL,J

Heard the Learned Counsel for the Petitioner and the respective Learned Counsel appearing for the Respondents.

2. According to the Second Respondent/Commissioner, Greater Chennai Corporation, a letter was addressed to the Inspector of Police, Velachery to provide protection to the officials of the Corporation for sealing the premises at door No.7/15, Survey No.129, Karunambigai Colony, Velachery, Chennai-42 on 19.3.2018 and that the building would be locked and sealed at the earliest.

3. In this connection, the Learned Counsel for the Fourth Respondent submits that a Review Petition is filed before the Secretary to Government of Tamil Nadu, Housing and Urban Development Department on 10.1.2018 and that the same is pending as on date.

4. In this connection, it may not be out of place for this Court to make a pertinent mention that in W.P.No.3546 of 2018, this Court, by means of an Order dated 19.2.2018 with reference to the provisions of the Tamilnadu Land Encroachment Act, 1905, had observed the following:

"7. Before parting with the case, this Court points out that where the impugned order assails the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act (Act-III) of 1905, the petitioner has a right to furnish the reply to the said notice and after hearing the parties and the complainant, if any, necessary orders will have to be passed by the competent authority under Section 6 of the said Act. Against this order passed under Section 6, an appeal is provided under the said Act. Also that, if the appeal under

Section 10 of the Act, 1905, is not filed by the aggrieved person, then, the filing of the Writ Petition without exhausting effective, efficacious, viable and alternative remedy, is a premature and otiose one, in the considered opinion of this Court. Further, if the reply is given, the petitioner must file necessary proof. If the said reply is not referred to in the order passed under Section 6 of the Act, or if there is no reference to the fact that no reply was filed by the petitioner, or if any proof for sending the reply or acknowledgement is not filed, the Office of the Registry of this Court may ask for necessary details from the petitioner prior to the numbering of the Writ Petition. Further, the authorities must ensure that the final order passed by them refers to the reply, if any filed by the person who received the notice under Section 7 of the Act, and if the same is not adverted to in the order passed by the authority, then as against the erring/deviant authority, necessary departmental action may be taken against him for his lapse/derelection in regard to the discharge of his duties. The Registry is directed to comply with these directions in future, when the Writ Petitions are filed challenging the notices/orders passed under the provisions of the Tamil Nadu Land Encroachment Act."

5. Besides the above, in W.P.No.21239 of 2005, etc., batch, by an order dated 18.12.2017, in which, one of us [S.Vaidyanathan,J], is a Member had observed the following, as regards the procedures to be followed by the Authorities, who conduct summary proceedings:-

"6. This Court makes it further clear that the regularisation proceedings shall be conducted by the respondents after hearing necessary parties who are likely to be affected and if there are complainants, they should also be heard. Whenever parties appear, the applicant(s) as well as the complainant(s) shall be heard and the conduct of the proceedings should be written down by the officer concerned who is hearing

the matter, and he shall obtain signatures in the proceedings after recording the submissions if any made. It is like summary proceedings. The documents filed by the parties need to be given Exhibit numbers. A copy of the proceedings shall be furnished immediately thereafter to the parties concerned to avoid unnecessary allegation against the officials that the records have been manipulated. The authority concerned shall seek for written submissions from the petitioner(s)/ applicant(s)/complainant(s) within a time frame and thereafter, the authority shall pass appropriate orders within thirty days in accordance with law. "

6. Notwithstanding the fact that one of us (SVNJ) in W.P. No.21239 of 2005 etc., batch dated 18.12.2017, as stated supra, had passed an order in the context of the authorities, who deal with the provisions of the Tamil Nadu Town and Country Planning Act, 1971, yet this Court is of the view that the very same procedure may also be followed by the Authorities as far as practicable even under the Tamil Nadu Encroachment Act, 1905.

7. In as much as a Review Petition is filed by the Fourth Respondent on 10.1.2018 and in view of the fact that the same is pending on the file of the Secretary to Government of Tamil Nadu, Housing and Urban Development Department, this Court directs the said Authority to dispose of the Review Petition preferred by the Fourth Respondent within a period of three months from the date of receipt of a copy of this order after hearing the Petitioner, the Fourth Respondent and others concerned. It is made clear that till the disposal of the Review Petition by the said Authority in regard to the unauthorized portion made in No.7/15, Survey No.129, Karunambigai Colony, Velachery, Chennai-42, the electricity connection shall be disconnected.

8. With the above directions, the Writ Petition is disposed of. No costs.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

To:

- 1.The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Buildings, No.1, Gandhi Irwin Road, Egmore, Chennai-8.
- 2.The Commissioner, Greater Chennai Corporation, 1131, EVR Periyar Salai, Park Town, Ripon Buildings, Chennai-20.
- 3.The Joint Commissioner, Chennai Region, HR & CE, Nungambakkam, Chennai-34.

+1 CC to Mr.M.Guruprasad, Advocate Sr.No.23610

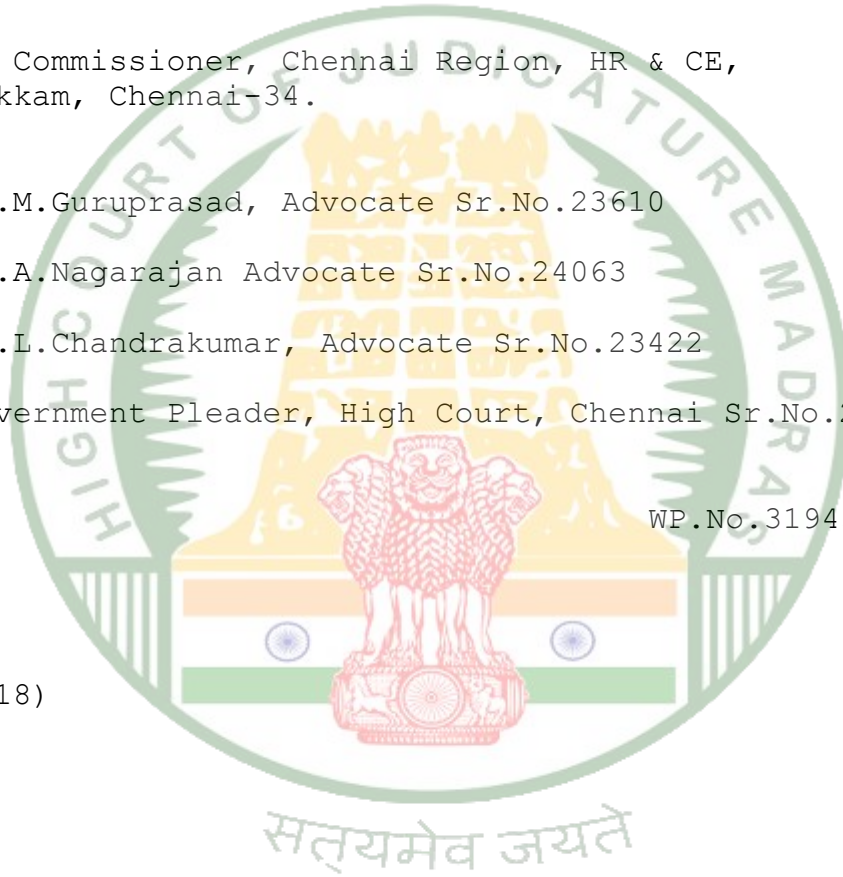
+1 CC to Mr.A.Nagarajan Advocate Sr.No.24063

+1 CC to Mr.L.Chandrakumar, Advocate Sr.No.23422

+1 CC to Government Pleader, High Court, Chennai Sr.No.24109

WP.No.31943 of 2017

KP(10/04/2018)



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