

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

W.P.No.7907 of 2018
and WMP.No.9861 of 2018

Mr.Dilip Kumar

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Department of Housing and Urban Development,
Rep. By its Secretary to Government,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Corporation of Chennai,
Greater Chennai Corporation,
Chennai-600 003.

3.The Executive Engineer,
Greater Chennai Corporation,
Zone-V, Chennai.

4.Mangal Chand Jain

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to dispose of the appeal dated 28.03.2018 filed against the notice issued by the 3rd respondent in Letter No./Dn.58/025/2018 dated 06.03.2018 within the time specified by this Court.

For Petitioner : Mr.Kaviyanathan
for M/s.Nathan and Associates

For Respondents : Mr.R.Udhayakumar
Special Government Pleader for R1

Mr.A.Nagarajan,
Standing Counsel for R2 and R3

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

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

2. The petitioner claims to be a resident of the apartment, namely "Pavapuri", situated at Door No.92, Kariappa Street, Purasaiwalkam, Chennai-600 007 and it consists of 21 flats/dwelling units comprised in six floors and it was developed and sold by the fourth respondent/builder. The occupants of the said units, to their shock and surprise, received notices dated 06.03.2018, alleging unauthorised construction of the entire building and the petitioner, being the Secretary of the Association, has also submitted a response/objection dated 21.03.2018 to the third respondent.

3. The learned counsel appearing for the petitioner would submit that challenging the legality of the notice dated 06.03.2018, purported to have been issued under Section 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 [in short "TCP Act"], the petitioner has filed a statutory Appeal under Section 80-A of the TCP Act before the first respondent on 28.03.2018 along with a petition for Stay under Section 80-A(3) of the TCP Act and despite pendency of the same, attempts are being made to demolish the superstructure and therefore, the present writ petition is filed.

4. Mr.R.Udayakumar, learned Special Government Pleader, who accepts notice on behalf of the first respondent, would submit that admittedly the apartment consist of 6 floors and the entire superstructure is unauthorised and in the light of the same, the petitioner association/individual owners of the flats cannot go for regularization of the unauthorised superstructure and prays for dismissal of this writ petition.

5. Heard the submissions of Mr.A.Nagarajan, learned Standing Counsel, who accepts notice on behalf of the respondents 2 and 3 also.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. It is relevant to extract the details of violation as indicated in the Locking and Sealing Notice issued by the third respondent in Lr.No./Dn.58/025/2018 dated 06.03.2018:

Sl.No.	Description	Area (Sq.m)
1	Ground Floor	156.00 Sq.m
2	First Floor	286.80 Sq.m

Sl.No.	Description	Area (Sq.m)
3	Second Floor	286.80 Sq.m
4	Third Floor	286.80 Sq.m
5	Fourth Floor	286.80 Sq.m
6	Fifth Floor	286.80 Sq.m
7	Sixth Floor	286.80 Sq.m
8	Terrace	54.10 Sq.m

A perusal of the above said notice would prima facie indicate that the entire superstructure in question is unauthorised and the explanation offered by the learned counsel appearing for the petitioner that the owners of the flats were not aware as to the said fact while it was sold by the fourth respondent and when they attempted to contact the fourth respondent, he was not available.

8. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the first respondent or his delegated official to entertain the appeal filed by the petitioner under Section 80-A of the TCP Act along with the petition for stay under Section 80-A(3) of the TCP Act, if the papers are otherwise in order and shall take up the stay petition initially and give disposal on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order and till such time, the respondents 2 and 3 shall defer further decision with regard to locking, sealing and demolition of the superstructure. It is also open to the first respondent or his delegated official to take up the main appeal itself and give disposal on merits and in accordance with law within a period of ten weeks from the date of entertainment of the appeal. The occupants/owners of the dwelling units/apartments, till the disposal of the appeal by the first respondent or his delegated official, shall not create any third party rights in respect of the superstructure in question and shall not alter it's physical features also.

9. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jvm

1.The Secretary to Government,
The Government of Tamil Nadu,
Department of Housing and Urban Development,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Corporation of Chennai,
Greater Chennai Corporation,
Chennai-600 003.

3.The Executive Engineer,
Greater Chennai Corporation, Zone-V, Chennai.

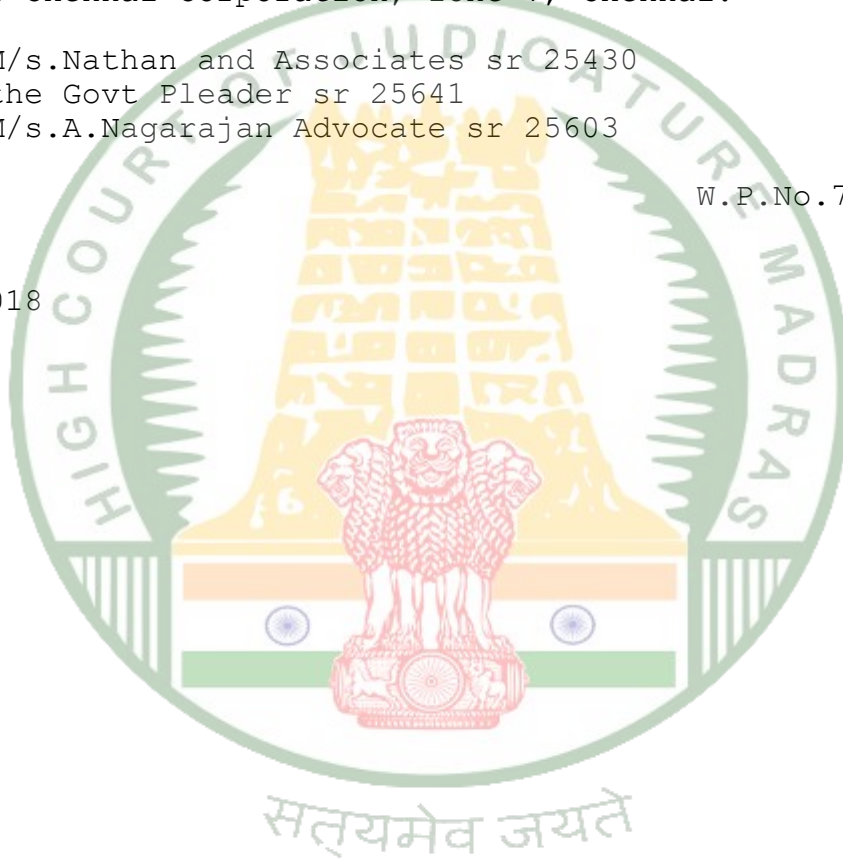
+1 cc to M/s.Nathan and Associates sr 25430

+1 cc to the Govt Pleader sr 25641

+1 cc to M/s.A.Nagarajan Advocate sr 25603

W.P.No.7907 of 2018

aa12/04/2018



WEB COPY