

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.10945/2018

WMP No. 12853 & 12854/2018

A.Syed Ashraf Ali .. Petitioner

Versus

1.The Secretary to Government
Housing and Urban Development
Secretariat, Chennai 600 009.

2.The Member Secretary
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Building, No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

3.The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of locking and sealing and Demolition Notice issued by the 2nd respondent in his Letter No.EC/C-126736/1995 dated 01.02.2018, quash the same and consequently, direct the 2nd respondent to remove the seal put by him in the Ground Floor portion of commercial premises bearing Corporation Door No.20, Moors Road, Chennai- wherein petitioner is carrying on the business of Hyderabad Briyani within a short time to be specified by this Court to work out remedy after proper verification of the entire building giving opportunity to the petitioner to submit any regularization scheme.

For Petitioner : Ms.M.Dhivya
For R1 : Mr.A.N.Thambidurai, Spl.GP
For R2 : Mr.K.Raja Srinivas
For R3 : Mr.A.Nagarajan

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent ; Mr.K.Raja Srinivas, learned Standing counsel accepts notice on behalf of the 2nd respondent ; and Mr.A.Nagarajan, learned Standing Counsel appearing for the 3rd respondent.

2 The petitioner would state that he is the owner of a portion in the ground floor of the commercial Apartment, viz., "Park Circle", bearing Door No.20, Moors Road, Chennai-6, and he is running a business of an Eatery, viz., "Hyderabadi Briyani - Hot and Spicy [Family Restaurant]". The petitioner would aver that the superstructure has been put up strictly in accordance with the planning permission / approval dated 16.10.1995 bearing No.B/19951/544/95 in Letter No.B1/15807/1995 and it is also subjected to statutory levies. The petitioner would further aver that since he does not require the car parking, the said space was made into a covered one and it does not affect the FSB or RSB. The petitioner was issued with Locking, Sealing and Demolition Notice dated 01.02.2018 alleging that there is deviation over front set back and rear set back and the parking space. The petitioner has submitted his response dated 06.03.2018 praying for some time to rectify the deviation if any and it was followed by the De-Occupation Notice dated 26.03.2018. However, to the shock and surprise of the petitioner, the 2nd respondent has locked and sealed the said premises on 11.04.2018 and challenging the same, the petitioner had filed the special revision/appeal u/s.80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent on 20.04.2018 and till consideration and disposal of the same, the lock and seal put up on the premises may be removed and prays for appropriate orders.

3 Per contra, Mr.A.Nagarajan, learned standing counsel for the Corporation of Chennai has drawn the attention of this Court to the impugned Locking, Sealing and Demolition Notice dated 01.02.2018 and would submit that admittedly, the petitioner due to additional construction, has violated the planning approval / permission and since the action has been taken strictly in accordance with law, the petitioner cannot express any grievance and prays for dismissal of the writ petition.

4 The Court has considered the rival submissions and also perused the materials placed before it.

5 It is relevant to extract the deviations / violations pointed out in the Locking, Sealing and Demolition Notice dated 01.02.2018 issued by the 2nd respondent:-

Sl.No	Parameter	As per approved plan	As on site	Deviation to approved plan	Remarks
1	Number of Floors	BF+GF+MF+3F	BF+GF+MF+3F+4F [pt]	Unauthorised 4 th floor [pt] and Mezzanine Floor exceeds 1/3 rd area	-----
2	FSI	1.957 [1370.05 sq.m]	2.15 [1503.26 sq.m.]	Excess by 0.193 [133.21 sqm]	Due to additional construction in GF excess MF and unauthorised 4F [pt]
3	FSB [North]	5.18 m @ GF	Nil	Less by 5.18 m	Due to extended construction by Hyderabad Briyani
4	RSB [south]	6.02m @ GF	4.5m @ GF	Less by 1.52 m	Due to extended construction by Hyderabad Briyani
5	Parking	12 Nos.	3 Nos feasible on Ground	Less by 9 Nos	

6 It is also brought to the knowledge of this Court that in respect of other occupants of the building, this Court, vide order dated 05.10.2017 made in WP.No.37175/2016 [J.Abid Ali Vs The Member Secretary, CMDA, Egmore, Chennai-8 and others], has ordered de-sealing of the premises till the disposal of the special revision filed by the petitioner therein and de-sealing has also been done.

7 Though the petitioner has prayed relief, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 1st

respondent or the delegated official to entertain the said special revision/appeal filed by the petitioner dated 20.04.2018, if the papers are otherwise in order and the petitioner is also at liberty to file a petition for stay u/s.80-A [3] of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent or the delegated official shall take up the petition for stay and give a disposal in accordance with law within a period of four weeks from the date of entertainment of the said stay petition and till the disposal of the petition for stay, the 2nd respondent is directed to remove the locking and sealing of the premises in question. It is also open to the 1st respondent / delegated official to take up the main revision/appeal itself and give a disposal on merits and in accordance with law within a period of twelve weeks from the date of entertainment of the same and communicate the decision taken to the petitioner. It is also made clear that till the disposal of the special revision/appeal by the 1st respondent or delegated official, the petitioner shall not create any third party rights in respect of the site and superstructure in question and shall also not alter the physical features also and shall carry on the business, strictly in accordance with law including adherence to FSSAI Standards.

8 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Secretary to Government
Housing and Urban Development
Secretariat, Chennai 600 009.
- 2.The Member Secretary
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3.The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3.

+1cc to Mr.T.K.S.Gandhi, Advocate, sr.no.31619

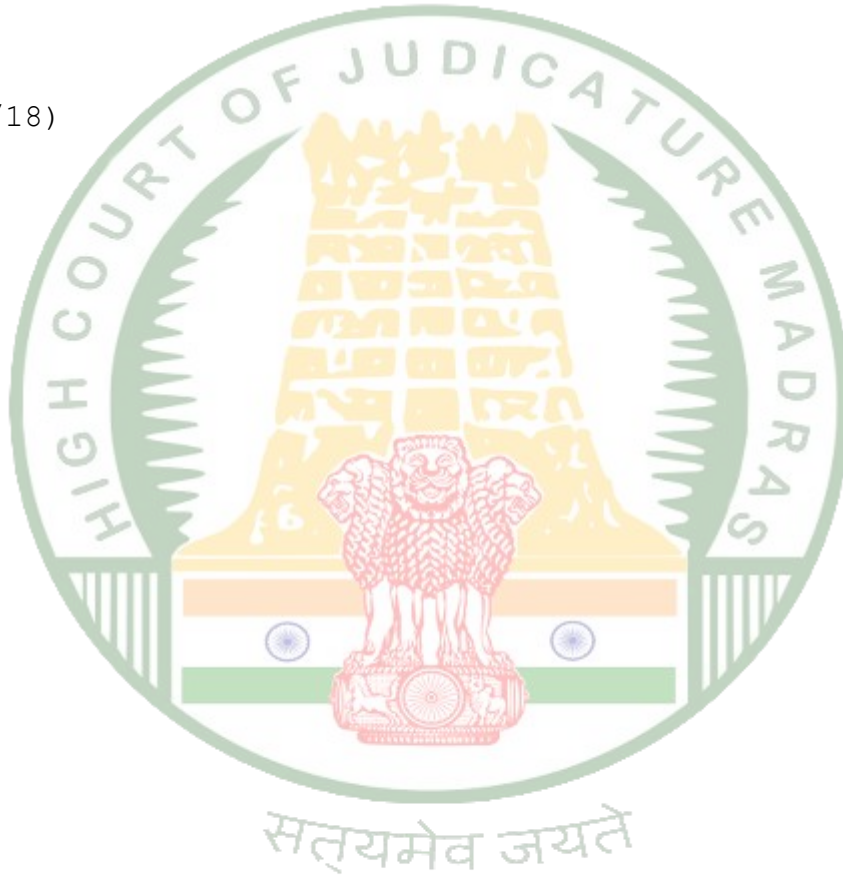
+1cc to Mr.K.Raja Srinivas, Advocate, sr.no.32525

+1cc to the Government Pleader, sr.no.32276

WP.No.10945/2018

SKV(CO)

RRK(30/05/18)



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