

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.997 of 2018
and
W.M.P.No.1188 of 2018

M/s.M.P.T.Educational and Welfare Trust,
Rep. by its Managing Trustee V.Harikrishnan,
C.Thandeswaranallur Village,
Chidambarm-608 001,
Cuddalore District.

... Petitioner

Vs.

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

2. The Assistant Director of Town and Country Planning,
Villupuram Division,
Villupuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent herein to consider and dispose of the petitioner's Appeal dated 03.01.2018 filed against the proceedings dated 27.12.2017 of the second respondent herein in Na.Ka.No.798/2017/Villupuram in respect of the petitioner's building at Re-Survey No.1/1 of C.Thandeswaranallur Village, Chidambaram.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.AL.Ganthimathi

For Respondents : Mr.A.N.Thambidurai, Spl.G.P.

ORDER

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

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent herein to consider and dispose of the petitioner's Appeal dated 03.01.2018 filed against the proceedings dated 27.12.2017 of the second respondent herein in Na.Ka.No.798/2017/Villupuram in respect of the petitioner's building at Re-Survey No.1/1 of C.Thandeswaranallur Village, Chidambaram.

2. Based on the complaint given by one Kumar, who has not been made as a party to this Writ Petition, the authorities have inspected the place in question and found that there are violations. Admittedly, there is violation with regard to the third floor and that there is stilt floor, which has been disputed by the petitioner stating that in view of the rains and flooding in the area, the ground floor has been raised by 7 feet, which has been considered by the authorities as the stilt floor. Admittedly, no one can enter into the place and it is fully covered and it is only foundation. It is further submitted that there are no violations and if there are any violations, the same could be rectified by the petitioner. The petitioner has also stated that the plan has been granted only for ground and two floors.

3. It is further submitted that approval has been granted by the second respondent, but unfortunately, lock and seal notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, has been issued by the second respondent. It is further stated that the petitioner has preferred Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act on 03.01.2018, which is pending.

4. This Court has repeatedly pointed out that when there is a complaint, the complainant also has to be made as a party to the proceedings. The complainant shall also be heard, as he is a person who can bring to the attention of the authorities about the violation of the Plan. In this case, the order that is now going to be passed directing the Appeal to be disposed of, is not going to prejudice the complainant and when he is made as a party, a direction will be given to dispose of the Appeal within a period of 30 days from the date of receipt of a copy of this order.

5. One of us (S.Vaidyanathan,J.) had an occasion to consider the procedures to be followed by the authorities while deciding the Appeal under the Town and Country Planning Act, 1971, in a

decision rendered in W.P.No.21239 of 2005, etc. batch (B.Ramesh vs. Secretary to Government), by an order dated 18.12.2017, relevant portion of which, is extracted below:

"6. This Court makes it clear that 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. This Court makes it clear that the authority shall not advise any of the parties with regard to the issue that is being heard and that if there are no set-backs, and if there is violation with regard to the construction, the request of the applicants/petitioners has got to be rejected. It is further made clear that the set-backs shall not be regularised. It is open for the authorities concerned to go and inspect the sites in question and also take photographs and videographs in order to safeguard their interest. It is also open for the parties to submit the photographs and videographs in order to substantiate their respective stand. The party seeking an order under Section 80-A or Section 113-C or any of the provisions of the Tamil Nadu Town and Country Planning Act, needs to file an affidavit/statement to the effect that the building is constructed in accordance with the plan and there are set-backs provided as per the plan. If the averment is false based on record or on inspection, the person is deemed to have approached the authority with unclean

hands and no indulgence shall be shown to him. Last but not the least, the new 2017 Scheme is applicable only to unapproved layouts and unapproved plots. The cut-off date, if any, fixed earlier needs to be taken into account. As there should be lung space, the Open Space Reserve (OSR) and set-backs cannot be regularised or used for a different purpose.

7. The Chief Secretary to Government (Secretariat, Chennai) is directed to issue necessary instructions to the authorities to conduct summary proceedings in the manner mentioned above. "

6. In view of the above, the first respondent shall dispose of the said Appeal within a period of 30 days from the date of receipt of a copy of this order, after hearing the complainant, the writ petitioner and the authorities, apart from any interested person. It is open for the petitioner to raise all factual and legal pleas in the said Appeal before the Appellate Authority, who shall take note of the same, which shall be adverted to one way or the other on merits, at the time of passing final order in the said Appeal.

7. Till the said Appeal is disposed of, the authorities are empowered to remove the lock and seal of the building and permit the petitioner to take out the files/records and other belongings from the violated portions and keep that violated portion alone under lock and seal once again.

8. As the petitioner Trust is an educational institution, we expect the petitioner to comply with the mandatory provisions of law and construct the building in accordance with the sanctioned Plan, with proper setbacks as required, as we do not want to witness yet another Kumbakonam School fire incident. If the building is not constructed in accordance with the Plan, it is open to the authorities to take appropriate action in accordance with law.

9. The procedures stipulated in the order dated 18.12.2017 passed in W.P.No.21239 of 2005 etc. batch, will have to be followed by the authorities, if a decision to be taken by them falls under any of the provisions of the Town and Country Planning Act, 1971.

10. Before parting with the case, this Court observes that there cannot be any smoke without fire. There must be a complaint and in the present days, we cannot expect the authorities on their own, to go and inspect the place and point

out mistakes and ask the violators to rectify the same, unless the visit is beneficial to them. Hence, if there is any complaint, the writ petitioner shall make the complainant as party-respondent or shall make an averment in the petition that there is no complainant. At a later date, if it is found that there is a complaint and that the writ petitioner, being aware of the same, has not impleaded the complainant as a party, then it should be construed that the writ petitioner has approached the Court with unclean hands. In matters pertaining to encroachment, the encroacher will not be entitled to any regularisation of the building and for making a false averment, apart from perjury, the building has to be razed to the ground. Till the issue is resolved, the electricity connection to the entire building will be disconnected, for making false statement before this Court.

11. Registry is directed to ensure that the writ petitioner makes an averment in the affidavit with regard to complaint, if any made by the complainant and if the complainant is available, but not made a party, the writ petitions pertaining to encroachment/unauthorised construction/illegal constructions/regularisation, etc., shall not be numbered, be it Single Bench or Division Bench matters.

With the above directions and observations, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
2. The Assistant Director of Town and Country Planning,
Villupuram Division, Villupuram.

Copy to

- 1.The Registrar General, High Court Madras.
- 2.The Registrar Judicial, High Court Madras.

3.The Sub Assistant Registrar, Writ Section, High Court Madras.

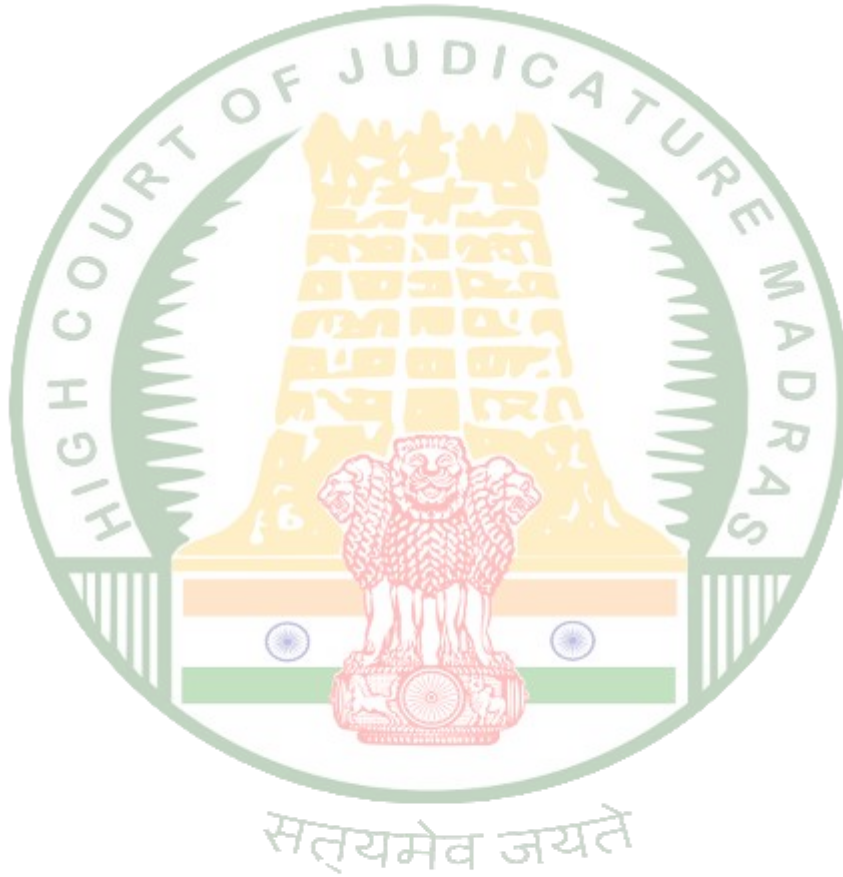
4. The Section Officer, 'F' Section, High Court Madras.

+1cc to Mr.Al.Ganthimathi, Advocate, S.R.No.3460

+1cc to the Government Pleader, S.R.No.3676

W.P.No.997 of 2018

GJ(CO)
RRK(12/02/2018)



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