

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

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

W.P.No.22058 of 2017
and
W.M.P.Nos.23110 and 23111 of 2017

1. D.Rajappa
2. Tmt.R.Jayalakshmi .. Petitioners
Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, St.Fort George, Chennai-600 009.
2. The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, St.Fort George, Chennai-600 009.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi-Irwin Road, Egmore, Chennai-600 008.
4. The Executive Officer,
Naravarikuppam Town Panchayat,
Red Hills, Chennai-600 052.
5. B.Dayalan
(The fifth respondent impleaded as per order
dated 13.10.2017 in W.M.P.No.24667 of 2017
in W.P.No.22058 of 2017)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relevant to the order in G.O.(3D). No.133, Housing and Urban Development (UD-VII(1)) Department, dated 31.07.2017 passed by the second respondent and consequential order passed by the fourth respondent through his proceedings in Na.Ka.No.258/2004/A1, dated 12.08.2017 and quash the same as illegal, improper, unreasonable, arbitrary and principles of natural justice and thereby direct the respondents to remove the lock and seal put up in the petitioner's shop,

namely D.R.Super Market and Furniture, situated at Survey No.86/2, Naravarikuppam Village, G.N.T.Road, Red Hills, Chennai-600 056 and hand over the same to the petitioners to enable them to get regularisation of their building pursuant to the Hon'ble Justice Rajeswaran Committee recommendation regarding regularisation of unauthorised construction put up before the year 2007 in Tamil Nadu.

For petitioner : Mr.S.Prabakaran,
Senior Counsel for
M/s.B.Gopakakrishnan
For respondents : Mr.A.N.Thambidurai,
Spl.G.P. for RR-1 and 2
Mr.N.Sampath for R-3
Mr.P.S.Siva Shanmuga Sundaram for R-4
Mr.C.V.Shailandran for R-5

ORDER

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

"Land encroachments are like Cancer. It slowly eats the lung space of the land and definitely, there will be no breathing space for anyone, much less the Earth, to survive in the Orbit."

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relevant to the order in G.O.(3D).No.133, Housing and Urban Development (UD-VII(1)) Department, dated 31.07.2017 passed by the second respondent and consequential order passed by the fourth respondent through his proceedings in Na.Ka.No.258/2004/A1, dated 12.08.2017 and quash the same as illegal, improper, unreasonable, arbitrary and principles of natural justice and thereby direct the respondents to remove the lock and seal put up in the petitioner's shop, namely D.R.Super Market and Furniture, situated at Survey No.86/2, Naravarikuppam Village, G.N.T.Road, Red Hills, Chennai-600 056 and hand over the same to the petitioners to enable them to get regularisation of their building pursuant to the Hon'ble Justice Rajeswaran Committee recommendation regarding regularisation of unauthorised construction put up before the year 2007 in Tamil Nadu.

2. The petitioners having been unsuccessful in several rounds of litigations, are trying to take every one for a ride including this Court, as could be seen from the facts narrated below and this Court will not perpetuate the illegality and is of the view that there should be a finality to the litigations, in the light of the observations of the Supreme Court with regard to the illegal and unauthorised constructions, more particularly, when these petitioners have faced adverse orders

passed by the Apex Court and are trying to wriggle out of the decision of the Supreme Court discussed in this order by reopening the settled issue that has already been settled as early as on 02.03.2012 by the Supreme Court.

3. It is the case of the petitioner that planning permission was received by the CMDA for the existing building Ground Floor + First Floor + 2 Floors (part) Departmental Store, (Supermarket Hall) at Old S.No.86/2, S.No.86/100A1B and 100A1C (as per patta) of Naravarikuppam Village, G.N.T. Road, Redhills, Chennai. The authorities have dealt with the said planing permission and found the following violations/deviations, which is evident from the impugned G.O.(3D).No.133, Housing and Urban Development (UD-VII(1)) Department, dated 31.07.2017:

Sl. No.	Rule	Description	Required	Provided	Extent of violation
1	Table 26(4)	Floor Space Index	1.50	1.907	Excess by 0.407
2	Table 26(4)	Front Set back	6.0m	2.10m	Less by 4.60m (Due to staircase)
3	Annexure (XV) part-I(2)	Car parking	10 cars	1 car feasible	Less by 9 cars
4	Annexure (XV) part-I(2)	Two wheeler parking	10 Two wheeler	Nil	Less by 10 Two wheelers
5	Annexure (XVI) part-II(c)	Driveway	3.0m	Nil	Less by 3.0m
6	Annexure (XVI) part-II(E)	Turning Radius	4.0m	Nil	Less by 4.0m
7	Annexure XVII	Corridor Width	2.0m	0.97m	Less by 1.03m
8	Proportionate OSR charges to be remitted				
9	Electrical Room (as) officer Transformer yard is not provided as per DR.				
10	Special provisions for physically challenged persons 10% parking, reservation of Toilet, Handrail provisions for staircase, list and toilet ramp not provided as per DR.				

Sl. No.	Rule	Description	Required	Provided	Extent of violation
11		The plans do not reflect as per site conditions in respect of shape and dimensions of the building set back, usage of the building, structure in the second floor etc., Hence, the Planning Parameters viz., floor space index, set back, parking etc., computed may vary. As column raised up to 2.8m height in 2nd Floors, if this area is also added FSI would violate still more. Hence, it has to be clamalished. Further as parking is shown in stilt floor and as the floor is enclosed by walls the conformity of usage could not be confirmed and this floor is to be added as ground floor.			
12		Set backs measurement not shown in crucial points.			
13		Correct road width not mentioned in the site plan.			
14		The site boundary as per FMB and as on site condition not shown correctly and difference not hatched in the site plan.			
15		Rainwater harvestings pecculation trench 1m vide not shown in the site plan and details also not shown.			
16		1/3rd area for solar photo voltaic system not shown in the terrace floor plan.			
17		Column size and distance between the columns not shown in stilt floor/ground floor plan.			
18		The septic tank design calculation and drawing not furnished.			
19		In the title of the plan "site-cum-Stilt/Ground floor" plan to be renamed site cum-ground floor plan and "Terrace Floor Plan" to be renamed as "Second Floor Plan/part" Terrance floor plans not furnished separately.			
20		Area calculation needs correction.			
21		In the title of the plan "Old Door No.183, New Door No.229, not mentioned.			
22		3 Nos. sump (domestic, sullage and rain water) not shown in the site plan & 3 Nos. of OH + not shown in terrace floor plan.			
23		Stilt floor height from bottom of beam and ground floor, first floor & second floor height, total height of structure not shown in section.			
24		The cross section viz. second floor plan (Part) not shown.			

Sl. No.	Rule	Description	Required	Provided	Extent of violation
25	Rs.28.50/-	stamp paper notarized reconstruction deed not furnished (only Rs.20/- stamp paper furnished)			
26		Proposed staircase size, landing width, lift size in meters not shown in all floor plan.			
27		Correct usage for ground floor plan not shown and title to be mentioned.			
28		In PP1 and PP2 and CC1 and CC3, E.mail ID for structural Engineer, Licensed Surveyor and site Engineer with qualification not mentioned and these formats are not in orders.			
29		Affidavit for land acquisition and Land ceiling to be furnished.			
30	Rs.20/-	notarized undertaking for septic tank not furnished.			
31	' A'	Register extract attested by Deputy Tahsildar, concerned Taluk for the site under reference not furnished.			
32		Renewal of License of Licensed Surveyor self attested not furnished.			
33		FMB for the site under reference furnished is not clear. Hence division of the site could not be confirmed.			
34		Residuary plot details along with sketch including structures thereon evidenced by documents not furnished to confirm feasibility of regularisation of unauthorized subdivision made.			
35		Proposed violated corridor width less by 1.03m			
36		Title of the plan elevation and section floor plan requires correction			
37		There is no demarcation of site boundary on South during inspection it was observed that the roof titles of adjacent property cum failing on the site under reference. Hence this needs clarification.			

4. It is stated that thereafter, the petitioners have furnished a revised plan under the provisions of the Tamil Nadu Town and Country Planning Act. The petitioners were heard and it was found that the entire building is in violation and that earlier, the appellate authority has rejected the appeal, vide G.O.(3D).No.111, Housing and Urban Development (UD-VII(1)) Department, dated 28.07.2016. The violations pointed out by the CMDA shows that the violations/deviations have not been fully

rectified. Writ Petitions have been filed questioning the unauthorised construction and one of the Writ Petitions was filed by the neighbour of the petitioners and even the petitioners have also sought for the benefit of regularisation. A Division Bench of this Court, by order dated 14.09.2016, dismissed the Writ Petition filed by the present writ petitioners in W.P.No.27623 of 2005. Further, in W.P.No.3248 of 2006, filed by the fifth respondent, a Division Bench of this Court, by order dated 22.09.2006, directed that the unauthorised construction put up by the present writ petitioners shall be demolished. The matter was taken up to the Supreme Court and the Supreme Court in Petitions(s) for Special Leave to Appeal (Civil) Nos.14415-14416 of 2008, by order dated 02.03.2012, rejected the request of the present petitioners and has categorically observed as follows:

"In our considered view, the special leave petitions are wholly meritless and deserve to be dismissed because the finding recorded by the competent authority and the State Government that the petitioners had not completed the structural construction till 31.03.2002 is based on correct evaluation of the documents produced by the first authority. The very fact that the petitioners had made application on 31.10.2000 for regularisation of the building despite the fact that as on that date the construction had not even commenced shows that by taking advantage of the Rules framed by the State Government under Section 122(2) of the Act (The Tamil Nadu Town and Country Planning Act), they wanted to have an advance certificate for future illegal construction of the commercial building and we have no hesitation to hold that the competent authority and the State Government did not commit any illegality by rejecting their application and the appeal and the High Court rightly declined their prayer for issue of a mandamus to the respondents to regularize the illegal construction of commercial building.

The special leave petitions are accordingly dismissed.

We hope and trust that in future the State Government will refrain from changing cut off date specified in Rule 3 (the Application, Assessment and Collection of Regularization Fee, Chennai Metropolitan Area) Rules) because that will only encourage those who make illegal/unauthorised constructions with the hope that in future they will succeed in persuading the Government to regularise the illegal constructions. Such an exercise has the pernicious effect of destroying the concept of planned development of the urban area which is the

primary object of the Act."

5. It is seen that the subsequent appeal by the petitioners was rejected by the impugned G.O.(3D).No.133, Housing and Urban Development (UD-VII(1)) Department, dated 31.07.2017. After this order, the fourth respondent has passed the consequential order dated 12.08.2017 stating that the premises in question would be demolished on 16.08.2017. Challenging these two orders, the present Writ Petition is filed by the petitioners.

6. The appellate authority has rejected the earlier appeal of the petitioners, by G.O.(3D).No.111, Housing and Urban Development (UD-VII(1)) Department, dated 28.07.2016. After unsuccessful litigation by the petitioners, the petitioners have sought for regularisation based on G.O.(Ms).No.111, Housing and Urban Development (UD4(3)) Department, dated 22.06.2017. Admittedly, there is violation in the construction of the building in question. In this case, even though there is a plan and if there is minor violation/deviation, as prior to the issuance of the said G.O. dated 22.06.2017, the issue has already been concluded and in terms of the observations made by the Supreme Court extracted supra, the petitioners are not entitled to seek indulgence of this Court by permitting the petitioner to invoke the said G.O., dated 22.06.2017. Since the order has attained finality and that the building is constructed in violation of the norms, the same has got to be razed to the ground. It is very unfortunate that after the observations made by the Supreme Court in the said order, the petitioners are trying to set at naught the order of the Supreme Court by invoking G.O.(Ms).No.111, Housing and Urban Development (UD4(3)) Department, dated 22.06.2017 mentioned supra and no one shall be entitled to the benefit, much less the petitioners. It is very unfortunate that the Government being a party to the Civil Appeal mentioned supra, is trying to give a go-by to the order of the Supreme Court. Strictly speaking, any cut-off date extended by the Government, would amount to disobedience of the order of the Apex Court and the person who is responsible to extend the cut-off date, is liable for contempt. In view of the observations of the Supreme Court, dated 02.03.2012, discussed supra, if any cut-off date is extended by means of an amendment of the relevant Act/Rules/Regulations, or by passing G.O., the said amendment/G.O. is bad in law and cannot be enforced by any individual or Authorities.

7. Be that as it may, as the issue insofar as the present writ petitioners had attained finality and the petitioners cannot seek any indulgence to invoke the said G.O.(Ms).No.111, dated 22.06.2017 and therefore, the building in question shall be razed to the ground and the authorities concerned must ensure that the order of the Apex Court, confirming the order of this Court, is implemented forthwith. Moreover, the entire building in question has got to be razed to the ground within a period of

one month from the date of receipt of a copy of this order. This Court makes it clear that if the officials/authorities who are responsible for demolition of the building in question, is not going to take effective steps with the assistance of the Police, the officials/respondents shall be proceeded with and disciplinary action and imposed with major penalty. The Commissioner of Police is expected to send Police force for protection in order to enable the Authorities to demolish the illegal structure to give effect to the order of the Apex Court.

8. At this juncture, it is represented by the learned Senior Counsel appearing for the petitioners that the petitioners had paid money for regularisation to the tune of Rs.18 lakhs (approximately) under Section 113-C of the Tamil Nadu Town and Country Planning Act. In reply, it is represented by the learned counsel appearing for the third respondent/CMDA that the said amount had been paid based on self-assessment and it is not the demand made by the third respondent/CMDA. Any payment so received by the CMDA, if any, shall be returned by the CMDA, within a period of one month from the date of demolition, unless and otherwise there is legal impediment. The demolition charges shall be borne by the petitioners. If any amount is payable to the petitioners by the Authorities, the demolition charges can be adjusted and the balance may be paid. If it is excess, it can be collected from the petitioners.

9. Before parting with the case, we observe that the Government, instead of regularising the illegal constructions, must attempt to remove the illegal constructions and also the encroachments in the public place like roads, parks, Open Space Reserve (OSR), etc. As observed by the Supreme Court in many cases, the authorities cannot and shall not regularise the Open Space Reserve (OSR) and set-backs, as they are like lung space of the area, which needs to be protected and restored.

10. With the above observations and directions, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

CS

To

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

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4. The Executive Officer,
Naravarikuppam Town Panchayat,
Red Hills, Chennai-600 052.

+1 cc to Mr.B.Gopalakrishnan Advocate sr 375

+1 cc to Mr.N.Sampath Advocate sr 408

+1 cc to Mr.P.S.Sivashanmugasundaram Advocate sr 774

+1 cc to Govt Pleader sr 448

W.P.No.22058 of 2017

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