

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE S. BASKARAN

WP.No.11077 of 2018

&

W.M.P. Nos. 12983 to 12985 & 14279 of 2018

R. Saravanan

..Petitioner

Vs.

1. State Government of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development
Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.
3. The Executive Engineer,
Greater Chennai Corporation,
Zonal Office X,
No.117, NSK Salai,
Kodambakkam, Chennai - 600 024.
4. Mr.N. Ratnakumar
5. The Chennai Metropolitan Development
Authority, rep. by its
Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai -1.

(R5 suo motu impleaded as per order
dated 09.07.2018 by NKKJ & KRJ)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorarified Mandamus to call
for the entire records in connection with the impugned orders of
the 1st respondent in Letter No.23713/UD-VI (1)/2016-3 dated

17.4.2017 extending the time vide No.22794/UD6(1)/2017 dated 11.10.2017 and quash the same insofar as it relates to ground and first floors which are in conformity with the building regulations and planning approval granted in the year 1981 and consequently forbear the respondents from in any way interfering with the rights of the petitioner to carry on his hotel business in the Ground and First Floor of the premises at "Ratna Complex", B-55, I Sector, I Street, K.K. Nagar, Chennai - 600 078.

For Petitioner :: Mr.Sivanandaraj for
Mr.M. Sriram

For Respondents:: Mr.R. Udayakumar,
Addl.Govt. Pleader for R1
Mr.K. Soundararajan for
R2 & R3
Mr.K. Elangoo for R4
Mr.Karthik Rajan for R5

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

The Petitioner is a tenant in respect of the building called "Ratna Complex", B55, Ist Sector, Ist Street, K.K.nagar Chennai-600 078 under the 4th respondent. The petitioner is carrying on hotel business in the said rented premises. When things stand so, the 4th respondent, who is the owner of the said premises, sent a complaint on 22.06.2016 to the Zonal Officer, Zone X, Corporation of Chennai against the petitioner about running the hotel without licence.

2. Based on the complaint, the place of business of the petitioner was inspected on 02.08.2016 and thereafter, a notice calling for the approved plan was issued to the owner of the building, namely, the 4th respondent on 13.08.2016. The 4th respondent owner had not submitted any approved plan and therefore, a notice for locking and sealing the premises was issued on 01.09.2016. Thereafter, a de-occupation notice was issued on 19.10.2016 to the 4th respondent as well as the tenants including the petitioner.

3. The petitioner filed a revision before the Government challenging the de-occupation notice issued to them and the Government, by order dated 17.04.2017, granted six months time to correct the deviation and to modify the building or shift his business to alternate location, subject to the furnishing of an undertaking to that effect. Again, extension of time petition was filed by the petitioner before the Government and by an

order dated 11.10.2017, the Government granted further period of two months on condition that the petitioner should shift the business to an alternate place, which is approved for hotel purpose.

4. Even after getting extension of time, it seems that the petitioner had not done anything except removing the Airconditioned hall located in the first floor, as directed by the Government within the time granted. After getting approval from the 2nd respondent, the 3rd respondent locked and sealed the premises on 19.12.2017 as the deviations in the building were not rectified.

5. The 4th respondent landlord approached the Government for de-sealing the premises in order to demolish the building and to reconstruct same. The Government, by order dated 09.03.2018, had directed the Corporation to de-seal building for a period of three months subject to the condition that the owner should obtain approval from the Corporation for demolition before de-sealing. It seems the 4th respondent also obtained an order for demolishing the building on 11.04.2018 and necessary planning permission was also obtained. Since the construction was unauthorisedly made, a separate order granting permission to demolish the said construction was also issued on 11.04.2018.

6. The petitioner tenant is now challenging the original order dated 17.04.2017 passed in the revision filed by him challenging the de-occupation notice by which he was granted six months time to correct the deviation and subsequent extension of time granted by order dated 11.10.2017.

7. Heard the submissions made on behalf of the petitioner, originally, by Mr. Venkatachalapathy, learned senior counsel assisted by Mr. M. Sriram and today, by Mr. Sivanandaraj, learned counsel and also the submissions of Mr. R. Udhayakumar, learned Additional Government Pleader for the 1st respondent, Mr. K. Soundararajan, learned Standing Counsel for 2nd and 3rd respondents, Mr. K. Elango, learned counsel for the 4th respondent and M. Karthik Rajan, learned counsel for the 5th respondent.

8. Originally, Mr. Venkatachalapathy, learned Senior Counsel, who appeared for the petitioner submitted that the business of the petitioner had been shifted to a nearby place and the 3rd floor alone is unauthorised and therefore, after demolishing the unauthorised portion, the petitioner is entitled to occupy the property. He further submitted that rent control proceedings with regard to fixation of fair rent are pending before this Court and it has not attained finality. Therefore, he would submit that the impugned orders are not sustainable as

the petitioner, as a tenant, is entitled to occupy the portion, which are all authorised. Mr.Sivanandaraj, learned counsel, who appears for the petitioner, on change of vakalath, would submit that the petitioner is entitled to possession of the premises as he is a statutory tenant and he has to be evicted as per law. Therefore, he seeks an order of injunction restraining the 4th respondent from demolishing the building as well as seek a direction to the official respondents to demolish only the encroached portion and put the petitioner in possession of the construction, which is lawful.

9. On the other hand, Mr.K.Elango, learned counsel for the 4th respondent would vehemently oppose the contention of the petitioner. He would submit that lock and seal notice was already given since there was unauthorized construction both by the petitioner as well as by the 4th respondent. The petitioner had also filed a revision before the Government and got time to vacate the premises and having obtained an order, it is not open to the petitioner to question the same, he would submit. He would further submit that when the matter was argued before this court on various occasions and lastly on 01.08.2018, an undertaking was given by the learned counsel for the petitioner, on instruction from the representative of the petitioner who was present on that day in Court, that the writ petition will be withdrawn on 06.08.2018 and three days' time was sought to remove the left out airconditioners and interiors. Therefore, he would submit that the petitioner is not entitled to any relief. Moreover, the demolition has already started and it cannot be stopped.

10. Mr.K. Soundararajan, the learned counsel appearing for the Corporation of Chennai would submit that the construction, which has been lawfully made and the encroachment and deviation cannot be separated and as a whole, the building has to be demolished relying upon the details given in paragraph No. 7 of the status report and also on getting instructions from the official, who is present before the Court.

11.A perusal of the status report would show that in the building in question, there are very many deviations, unauthorized portions and encroachments and the building has got all the characteristics, that are required for demolition immediately namely deviations, unauthorized constructions and encroachments. The details given in paragraph No.7 of the status report dated 11.07.2018, filed by the 3rd respondent, are extracted as follows:

S.No .	Floor	As per plan	As per site	Deviation	Unauthorised	Encroachment
1.	Ground Floor	190.60m ²	565.50m ²	142.10m ²	168.78m ²	64.02m ²

S.No .	Floor	As per plan	As per site	Deviation	Unauthorised	Encroachment
2.	First Floor	190.60m ²	346.80m ²	61.11m ²	95.09m ²	---
3.	Second Floor	190.60m ²	346.80m ²	61.11m ²	95.09m ²	---
4.	Third Floor	---	346.80m ²	---	346.80m ²	---
5.	Head Room	---	10.05m ²	---	10.05m ²	---
	Total	571.80m ²	1615.95m ²	264.32m ²	715.81m ²	64.02m ²

Though as per plan, the approved construction is only 571.80 sq.m, as per site, the construction made is to an extent of 1615.95sq.m. of which the deviation is to an extent of 264.32 sq.m, unauthorized portion is to an extent of 715.81 sq.m and encroachment measures to an extent of 64.02 sq.m. The deviations and unauthorised portion constitute more than 100 percent of the authorised construction, which would only go to show that not only the petitioner, but also the 4th respondent, had knowingly constructed the building consisting of deviations, unauthorized portions and also by making encroachment. It would also further prove that the official respondents turned a blind eye to all these developments. The very purpose of having Corporation and CMDA is defeated, which could be understood from the unauthorized construction, construction with deviation and encroachment. This is not the first case or the only case where the building has been constructed contrary to the approved plan. Rather, it has become the order of the day for most of the buildings are constructed with deviations, encroachment and without any approved plan and the officials, for extraneous reasons, are keeping guarded silence without taking any action to prevent or control the same.

12. As rightly pointed out Mr.K. Soundararajan, learned counsel by the Corporation of Chennai well as by Mr.K. Elangoo, learned counsel for the 4th respondent, the extent of deviation, unauthorized construction and construction by encroachment is more than the approved construction. It seems that the owner as well as the tenant, got the approved plan, only as an eye wash, for mere compliance of the provisions of law and it has to be stated that compliance has been done in breach only. Right from ground floor to the 3rd floor and the head room, the construction is tainted with deviation, unauthorized construction and encroachment on a large scale and it is impossible to demolish those portions alone as evident from the above details.

Therefore, the building is liable to be demolished as a whole.

13. The 4th respondent landlord is not an angel either to complain at this point of time against the petitioner/tenant. He has taken advantage of his own violation and also the wrong committed by the petitioner. In any event, non compliance of the approved plan, either by the petitioner or by fourth respondent or jointly, cannot be tolerated.

14. It may look as if the fourth respondent has got a favourable order. However, for making unauthorized construction, he should also be imposed with cost as that of the petitioner tenant as both are equally placed, being guilty of violation of provisions of law as well as the approved plan.

15. It is seen that the main grievance of the 4th respondent in his complaint dated 22.06.2016 is that the hotel business was run by the petitioner without any licence, based on which the business place of the petitioner was inspected on 02.08.2016 and thereafter, he was called upon to produce the required licence. It seems the petitioner got only the licence under Food Safety and Standards Act, 2006 from the Tamil Nadu Food Safety and Drug Administration Department and that too, it was valid only upto 19.8.2017 and other licence, like NOC issued by Pollution Control Board, Fire Safety Department, CMWSSB, etc, have not been produced before this Court. When there is a requirement to get licence from other departments, to run the hotel business, the very fact that except the Food Safety licence, no other licence has been produced, would go to show that the petitioner does not have those licences, which are required for running hotel business.

16. The lock and seal notice was issued on 01.09.2016 and de-occupation notice was issued on 19.10.2016. Aggrieved by that, the petitioner challenged the de-occupation notice and obtained an order on 17.04.2017 which is one of the impugned orders before this Court by which the petitioner was granted six months time to correct the deviation and to modify the building or shift his business to an alternate location subject to furnishing an undertaking to that effect. Paragraph No. 5 of the order dated 17.04.2017 is extracted as follows:

"5. After careful consideration of the submission made by the petitioner, the Government have decided to accept the request of the petitioner. Accordingly, the Government hereby grant six months time to the petitioner to correct deviations and to modify the building or shift his business to an alternate location, subject to furnishing an undertaking to the same effect."

Thereafter, again, the petitioner had approached the Government by representation dated 09.10.2017 requesting to

extend the time for shifting the business to an alternate site for a further period of three months since, the building owner was not co-operating to carry out the necessary rectification. By order dated 11.10.2017, the Government granted a further period of two months to the petitioner to shift his business to an alternative place which is approved for hotel purpose. Paragraph No.4 of the order dated 11.10.2017 is extracted hereunder:

"4. After careful consideration on the above representation, the Government grant a further period of two months in continuation of already granted time of six months, subject to the condition that, within the time period, the appellant must shift their business to an alternative place which is approved for the hotel purpose and no further extension will be given."

Even after getting extension of time, except removing the airconditioned hall in the first floor, nothing was done by the petitioner within the time granted and only by end of December, 2017, the petitioner had shifted his business to a nearby place. In the meanwhile, on 19.12.2017, the 3rd respondent again sealed the entire premises. The 4th respondent approached the Government for de-sealing the premises in order to demolish the building and to re-construct the same. By order dated 09.03.2018, the Government directed the Corporation to de-seal the building for a period of three months subject to the condition that the owner should obtain approval for demolition from the Corporation before de-sealing. Accordingly, on 11.04.2018, the 4th respondent had obtained permission to demolish the construction and while so, the petitioner has come forward with the present writ petition.

17. Having obtained an order from the Government and enjoyed the time limit granted by the Government, it is not open to the petitioner to challenge the very same order which has been acted upon, as he is estopped from challenging the same. Moreover, pursuant to the orders passed by the Government, the petitioner had also shifted his business to a nearby place. As already observed, the authorised construction cannot be separated from the unauthorised portion, deviated portion and encroached portion as the deviation, unauthorised construction and encroachment dominate the entire building other than the authorised construction, which is comparatively very less. Even if the authorised portion is permitted to be retained, it will not serve any purpose either to the petitioner or to the 4th respondent. Therefore, the plea of the petitioner to reoccupy the authorised portion alone as a tenant is not sustainable. Since the petitioner and the 4th respondent joined hands in violation, they should also suffer together. Therefore, the impugned order cannot be quashed. As already stated, the major

portion of construction is without any approved plan and it would not be out of place to mention that the 4th respondent already obtained an order from the Government for demolition. The writ petition fails and the same is dismissed.

18. Though the learned counsel for the petitioner sought suspension of the impugned orders in order to approach the Honourable Supreme Court, the said request is declined as there is no substantial question of law to be decided by the Hon'ble Supreme Court as to the interpretation of the constitution.

19. While dismissing the writ petition filed by the petitioner, as already stated, for having made the construction with deviations, unauthorised constructions and by encroachment, the 4th respondent has to be imposed with costs. Accordingly, a sum of Rs.1,00,000/- (Rupees One Lakh only) is imposed on the 4th respondent as costs to be paid to Adyar Cancer Institute, within two weeks from the date of receipt of a copy of this order. Connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Secretary,
Housing and Urban Development
Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.
3. The Executive Engineer,
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Zonal Office X,
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Kodambakkam, Chennai - 600 024.

4. The Member Secretary,
CMDA,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai -1.

+1cc to Mr.K.Soundararajan, Advocate, S.R.No. 54274
+1cc to Mr.K.Elango, Advocate, S.R.No.53838
+1cc to the Government Pleader, S.R.No. 54274

W.P. No. 11077 of 2018

SJ(CO)
GN(19/09/2018)



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