

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

W.P.Nos.11290 to 11292 of 2018

and

W.M.P.Nos.13188 to 13190

Sanjay Kumar ..Petitioner in WP.No.11290/2018
S.Dinesh Kumar ..Petitioner in WP.No.11291/2018
Chandra Singh ..Petitioner in WP.No.11292/2018

Versus

1.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

2.The Zonal Officer,
Zone 5
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

3.Assistant Revenue Officer,
Zone 5
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

4.The Member Secretary,
Chennai Metropolitan
Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai-600 008.

5.Rajendra Singh

..Respondents in all WP.s

COMMON PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus forbearing the respondents 1 to 4 their men, agent, servants, attorney representatives or any other persons from in any manner interfering in the peaceful possession and enjoyment of the petitioner premises for carrying the trade of Electrical shop at Ground Floor, Shop in Old Door No.126, New No.253, Govindappa Naicken Street, George Town, Chennai-600 001.

For Petitioners in all WPs.:M/s.P.Bagayalakshmi

For Respondents in all WPs.:Mr.A.Nagarajan,
Additional Government Pleader
for R1 to R3
Mr.K.Rajasrinivas for R4

COMMON ORDER

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

By consent, all these writ petitions are taken up for final disposal and are disposed of by this common order, as the issue to be adjudicated is one and the same.

WP.No.11290/2018:

2. The petitioner claims to be a Tenant of a portion of the premises bearing Old No.126, New No.253, Govindappa Naicken Street, George Town, Chennai under the 5th respondent and revision proceedings are also pending at the instance of the 5th respondent and the petitioner has also invoked the jurisdiction under Section 8 (5) of the Tamil Nadu Rent Control Act in RCOP No.1039/2017 on the file of XII Small Causes Court, Chennai. The petitioner would further state that to his shock and surprise, without putting him on any notice and without affording any opportunity, portion of the shop as well as rest of the portions were locked and sealed by the officials of the Corporation of Chennai. Challenging the same, he came forward to file this writ petition.

3. The learned counsel would further submit that since the requisition for trade license of the shop is rejected, he filed W.P.No.10547 of 2018 and at that time, the petitioner became aware of the fact that the premises in which, they are in occupation as Tenant, are unauthorised and in pursuance to the rejection of application for trade license, vide order dated 23.03.2018, now the present writ petition is filed.

WP.No.11291/2018:

4. The petitioner claims to be a Tenant of a portion of the premises bearing Old No.126, New No.253, Govindappa Naicken Street, George Town, Chennai under the 5th respondent and the revision proceedings are also pending at the instance of the 5th respondent and the petitioner has also invoked the jurisdiction under Section 8 (5) of Tamil Nadu Rent Control Act in RCOP No.10/2018 on the file of XV Small Causes Court, Chennai. The petitioner would further state that to his shock and surprise, without putting him on any notice and without affording any opportunity, portion of the shop as well as rest of the portions were locked and sealed by the officials of the Corporation of Chennai. Challenging the same, he came forward to file this writ petition.

5. The learned counsel would further submit that since request for trade license of the shop has been rejected, he filed WP.No.8709 of 2018 and at that time, the petitioner became aware of the fact that the premises in which, they are in occupation as Tenant are unauthorised and in pursuance to the rejection of application for trade license, vide order dated 23.03.2018, now the present writ petition is filed.

WP.No.11292/2018:

6. The petitioner claims to be a Tenant of a portion of the premises bearing Old No.126, New No.253, Govindappa Naicken Street, George Town, Chennai under the 5th respondent and the revision proceedings are also pending at the instance of the 5th respondent. The petitioner would further state that to his shock and surprise, without putting him on any notice and without affording any opportunity, portion of the shop as well as the rest of the portions were locked and sealed by the officials of the Corporation of Chennai. Challenging the same, he came forward to file this writ petition.

7. The learned counsel would further submit that since request for trade license of the shop has been rejected, he filed WP.No.8307/2018 of 2018 and at that time, the petitioner became aware of the fact that the premises in which, they are in occupation as Tenant are unauthorised and in pursuance to the rejection of application for trade license, vide order dated 23.03.2018, now the present writ petition is filed.

8. The learned counsel appearing for the petitioners by inviting the attention of this Court to Section 56 of the Town and Country Planning Act, 1971 and would submit that before putting lock and seal, the petitioners have not been put on notice and if notices were given, they would have got reasonable opportunity to put forth their stand and since it has not been

done and that the portion of the premises in their occupation have been put on lock and seal, their business activities have come to a halt and on account of the same, they are suffering very much and prays for appropriate orders.

9. Per contra, learned standing counsel appearing for the Chennai Metropolitan Development Authority would submit that the 5th respondent was accorded time to set right the deviation and since, it has not been done, lock and seal has been put up and the 5th respondent / Landlord is in occupation of the Second Floor of the premises in question and further steps would be taken against him also for putting up unauthorised construction.

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

11. It is not in dispute that the petitioners are in occupation of the Shops which also forms part of the premises in question and it was put on lock and seal and they have not been put on notice.

12. It is relevant to extract Section 56 of the Town and Country Planning Act, 1971:

56. Power to require removal of unauthorised development-

(1) Where any development of land or building has been carried out-

(a) without permission required under this Act; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may, within (1 *) serve on the owner, a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice-

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.

(2) In particular, any such notice may, for the purposes aforesaid, require-

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building:

Provided that, in case the notice requires the discontinuance of any use of land or building, the appropriate planning authority shall serve a notice on the occupier also.

1 "(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under subsection (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before a court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.";

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates.

In the light of the said statutory provision, the petitioners, who are occupiers of the shops in question, are entitled to notice and admittedly, they have not been issued with notices.

13. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners, grants liberty to the Executive Engineer, Zone-5, Corporation of Chennai to cause individual

notices to the petitioners, in terms of the provision of the Town and Country Planning Act, 1971 within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the petitioners are at liberty to submit their response by enclosing relevant and authenticated documents within a further period of two weeks thereafter and upon receipt of the same, the Executive Engineer, Zone 5, Corporation of Chennai, is directed to consider the said representation/response on merits and in accordance with law and pass appropriate direction within a further period of three weeks thereafter.

14. In the light of the said directions, the respondents are directed to remove the lock and seal put up on the respective shops in occupation of the petitioners within a period of two days from the date of receipt of a copy of this order. It is also made clear that till the disposal of the petitioners' representation/response, by the said official, the petitioners shall not create any third party rights in respect of the shops said to be in their occupation.

15. With the above observation, the writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

2.The Zonal Officer,
Zone 5
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

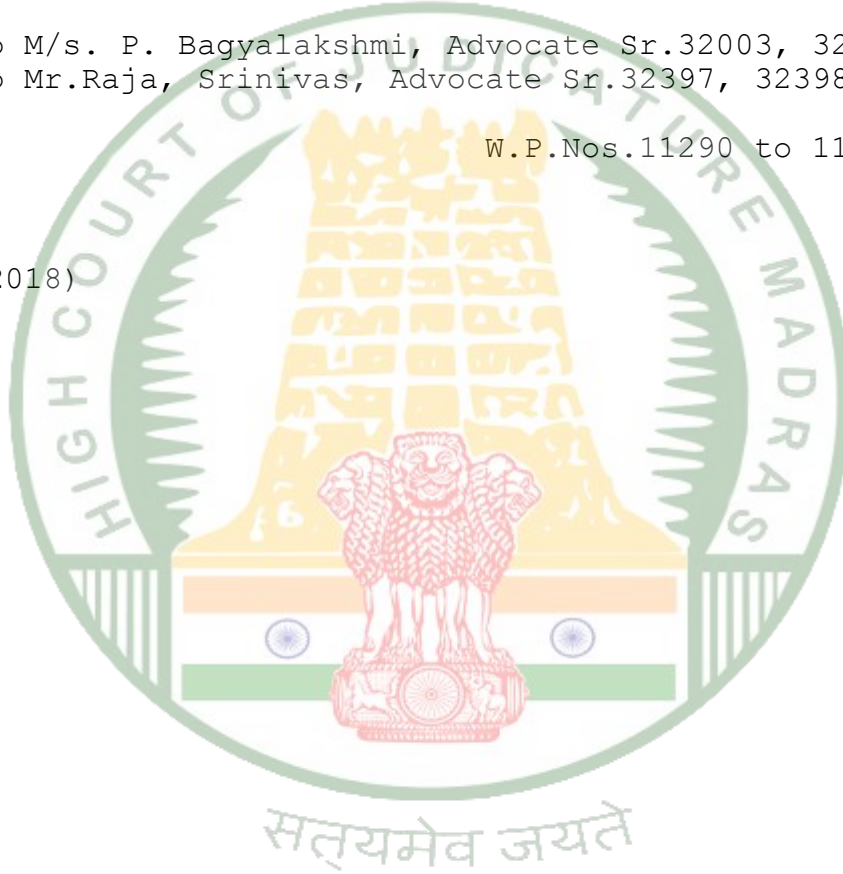
3.Assistant Revenue Officer,
Zone 5
Greater Chennai Corporation,
Rippon Buildings
Chennai-600 009.

4.The Member Secretary,
Chennai Metropolitan
Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai-600 008.

+ 3 ccs to M/s. P. Bagyalakshmi, Advocate Sr.32003, 32001, 32003
+ 3 ccs to Mr.Raja, Srinivas, Advocate Sr.32397, 32398, 32526

W.P.Nos.11290 to 11292 of 2018

GMR (CO)
EU (07/05/2018)



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