

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.33925 of 2017 and

WMP.No.37629 of 2017

V.Subramani

.. Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
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,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

4.The Executive Engineer, Zone XII,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

5.The Assistant Executive Engineer,
Unit - 36, Zone XII,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to letter No.10680/UD-VII(2)/2016/1 dated 11.07.2016 passed by the first respondent and to quash the same as illegal, arbitrary and non est in law and consequentially direct the respondents to consider the petitioners revised plan application bearing reference No.COC/9039/17 dated 20.05.2017.

For Petitioner : Mr.S.Santhan
For RR 1 : Mr.A.N.Thambidurai
Special Government Pleader
For RR 2 : Mr.C.Johnson
For RR 3 to 5 : Mr.V.C.Selvasekaran

O R D E R

[Order of the Court was made by S.VAIDYANATHAN J.]

The petitioner has come forward with this writ petition to call for the records of the 1st respondent pertaining to letter No.10680/ UD-VII(2)/2016/1 dated 11.07.2016 and to quash the same as illegal, arbitrary and non-est in law and consequentially, to direct the respondents to consider the petitioner's revised plan application bearing Reference No.COC/9039/17 dated 20.05.2017.

2.Heard both sides.

3.According to the petitioner, one Mathew Joseph originally purchased a land measuring an extent of 4263 sq. ft. comprised in S.No.19/2, T.S.No.2 Adambakkam Village, Audco Colony, by registered sale deed dated 10.05.1989. Thereafter, the Highways Department had acquired the land measuring an extent of 3424.5 sq.ft. out of 4263 sq.ft. for laying of a public road. The petitioner has purchased the remaining portion of the land to an extent of 838.5 sq.ft. for putting up a building. According to him, unless there is an extent of 868 sq.ft., the plan would not have been sanctioned.

4.In this case, there is a circular dated 27.09.2012 and also another circular dated 07.04.2015, stating that if the total extent of the land falls short of 80 sq.mtr., the planning permission can be extended to the plot. According to him, he has applied for planning permission and constructed the building, but it is in half stage.

5.Mr.V.C.Selvasekaran, learned Standing Counsel appearing for the respondent-Corporation and Mr.C.Johnson, learned Standing Counsel appearing for the C.M.D.A. and Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the State submits that if the petitioner applies for a fresh plan and construct a building, providing proper setback in accordance with the plan, the same may be approved by the authorities. It is open

to the Petitioner to proceed with the construction and rectify/demolish the portions, which have been constructed beyond the permission.

6.Though it has been mentioned in the circular dated 07.04.2015, this Court is of the view that set back cannot be regularised, in view of the decision of the First Bench of this Court in W.P.No.18777 of 2014, by an order dated 08.11.2016 and in Contempt Petition Nos.1769 & 2166 of 2015 (Suo Motu).

7.In view of the same, the petitioner shall leave appropriate set back and construct a building, as per the plan sanctioned by the authorities, on an application that may be made by the petitioner, within a period of one month from the date of receipt of a copy of this order. The respondents shall take steps to accord planning permission and also inspect the building in question and ensure that the building has been constructed in accordance with the plan, that may be sanctioned by the authorities. This Court makes it very clear that the building in question is meant for dwelling purpose and not for any other purpose. If the building is constructed in accordance with the plan, permanent electricity connection can be effected by the Tamil Nadu Electricity Board.

8.With the above observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

1.The Secretary to Government,
Housing and Urban Development Department,
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,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

4.The Executive Engineer, Zone XII,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

5.The Assistant Executive Engineer,
Unit - 36, Zone XII,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

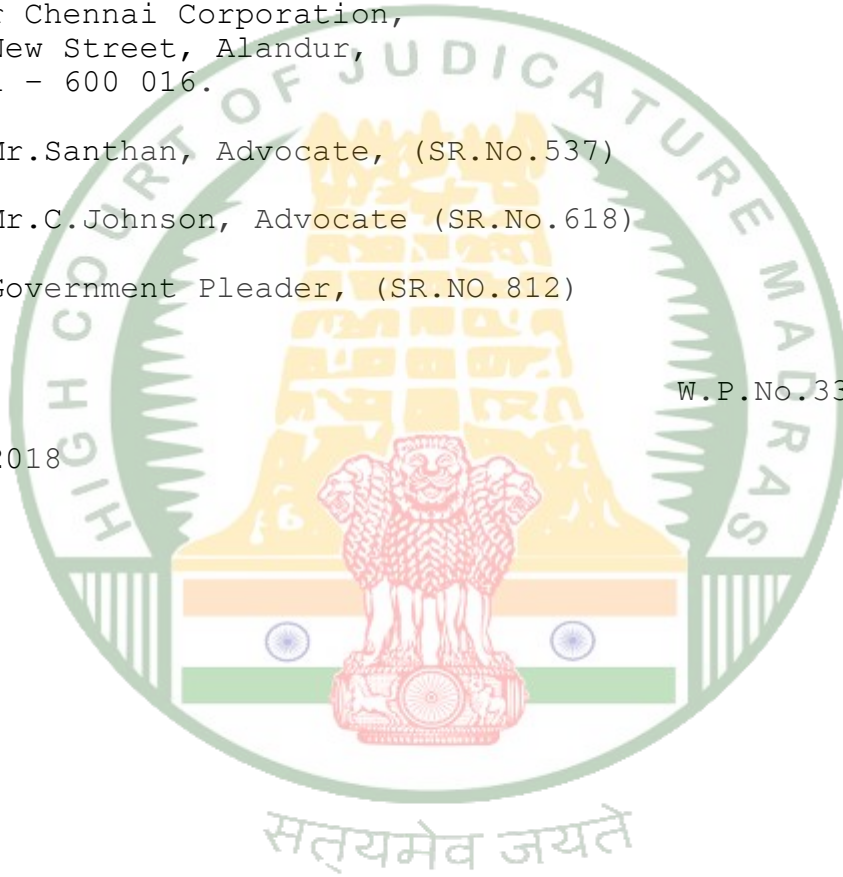
+1 CC to Mr.Santhan, Advocate, (SR.No.537)

+1 CC to Mr.C.Johnson, Advocate (SR.No.618)

+1 CC to Government Pleader, (SR.NO.812)

W.P.No.33925 of 2017

MS:03/02/2018



WEB COPY