

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

WP.No.33926 of 2017 and WMP.No.37630 and 37631 of 2017

M/s.Theyagaraya Nagar Gymnastic Club,
Rep. by its Secretary, Mr.J.Sasikumar,
Old No.5, (s per TSLR Record),
New No.17, Govindu Street,
T. Nagar, Chennai 600 017 ... Petitioner

Versus

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai 600 003.
2. The Regional Deputy Commissioner (Central),
Door No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai 600 030.
3. Assistant Executive Engineer,
Unit 30, Zone X,
Greater Chennai Corporation,
No.64, NSK Salai,
Kodambakkam, Chennai 600 024.
4. Assistant Engineer,
Division 136, Zone X,
Greater Chennai Corporation,
No.64, NSK Salai, Kodambakkam,
Chennai - 600 024 ... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call for the records with respect of the notice No.10/0029/2017 dated 29.11.2017 issued by the 3rd & 4th respondents and quash the same as illegal and consequently forbearing the respondents from interfering in renovation of damaged ACC Sheet in Old No.5, (As per TSLT Record) New No.17, Govindu Street, T.Nagar, Chennai 600 017.

For Petitioner : M/s.KJayasudha

For Respondents : Mr.A.Nagarajan,
Standing Counsel

ORDER

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

By consent, the writ petition is taken up for final disposal.

2. The petitioner is a registered society under the name and style of M/s.Theyagaraya Nagar Gymnastic Club and the premises in question was leased out in their favour by the Corporation of Chennai Employees Co-operative Society. It is the claim of the petitioner that the said society is engaged in promoting athletics and other games in the premises in question is exclusively used only for that purpose and not for any other purpose. The petitioner would further states that the premises in question is an old building having ACC roof and it got damaged due to fall of a tree and steps are being taken to replace the same with metal sheet and at this juncture, the 3rd and 4th respondents have issued a Joint impugned notice dated 29.11.2017 in Notice No.10/00029/2017 under Section 56(1) and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that provisions of Section 49 of Town and Country Planning Act, 1971 have no application to the case on hand, for the reason that the premises in question belongs to Corporation of Chennai Employees Co-operative Society and they have taken up the said premises on lease, which is an old structure. Due to falling of tree, the Asbestos sheet got damaged and therefore replacing it with a metal sheet and in the light of Section 255 of the Chennai City Municipal Corporation Act, 1919, they are entitled to alter the same and prays for interference.

4. Per contra, the learned counsel appearing for the respondents 1 to 4 has invited the attention of this Court to the Counter Affidavit of the Zonal Officer, Zone -10, Corporation of Chennai and would submit that since the building permit is necessary and admittedly, the petitioner did not obtain the same, the action is being initiated.

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

6. A perusal of the materials placed before this Court would indicate that the premises in question belong to the Corporation of Chennai Employees Co-operative Society and it was leased out in favour of the petitioner. It is a specific case of the petitioner that the building was having Asbestos Sheet and on account of fall of a tree, it got damaged and it is being replaced with a metal sheet and no alterations are carried out in the said building. It is also the submission of the learned counsel appearing for the petitioner on instructions that the premises in question is purely used for the purpose of promoting athletics, body building activities and other lawful activities and not for any other purpose. In the light of the same, this Court is of the considered view that the impugned notice warrants interference.

7. In the result, the writ petition is allowed and the impugned notice dated 29.11.2017 is quashed. The petitioner is permitted to replace the damaged Asbestos Sheet with the metal sheet. It is made clear that the petitioner under the guise of replacing the asbestos sheet with a metal sheet, shall not alter the physical features of the superstructure in question and shall not put up any additional construction also. No Cost. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rka/sk

To

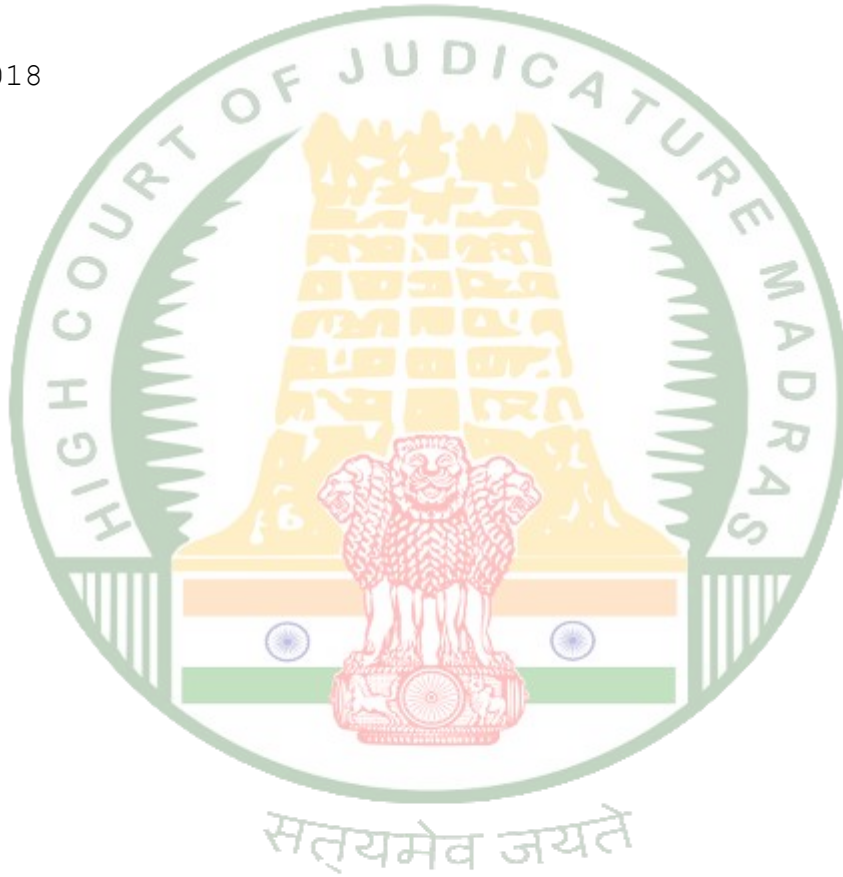
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+3 ccs to M/s.K.Jayasudha Advocate sr 24767

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