

In the High Court of Judicature at Madras

Reserved on	03.09.2018
Pronounced on	07.09.2018

Coram:

The Hon'ble Mr. Justice M. VENUGOPAL
and
The Hon'ble Mrs. Justice S. RAMATHILAGAM

W.P.No.22103 of 2018 and
W.M.P. No.25902 of 2018

Sudha Pandian

..Petitioner

Vs.

1. The Executive Engineer-II,
Greater Chennai Corporation,
Zone -13, Adayar,
Chennai - 600 020
2. Assistant Executive Engineer,
Unit 39, Greater Chennai Corporation,
Zone - 13, Adayar, Chennai - 600 020
3. The Assistant Engineer,
Division - 180, Greater Chennai Corporation,
Zone-13, Adayar, Chennai - 600 020
4. The Chairman,
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 600 005
5. The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai, Chennai - 600 005
6. The Estate Officer,
Estate Office - 6,
Tamil Nadu Slum Clearance Board,
Chennai - 600 004

..Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records pertaining to the Notices No.Div.180/002/2018 dated 07.6.2018 and No.Div.180/002/2018 dated 17.07.2018 issued by the Respondents 1 to 3 and quash the same and consequentially issue direction directing the 2nd Respondent to grant building plan approval to the Petitioner property by considering her application dated 10.08.2018.

For Petitioner : Mr.L.Chandrakumar for
Mr.R.Marudhachalamurthy

For Respondents : Mr.A.Nagarajan for R1 to R3
Mr.M.Rajasekar for R4 to R6

O R D E R

M.VENUGOPAL, J.

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. According to the Petitioner, she is residing along with her family in Plot Nos.120 and 121, now the same is situated in No.13, Anjugam Street, Thanthai Periyar Nagar, Taramani, Chennai - 600 113. Originally, the Plot No.120 was in possession of her husband and Plot No.121 is in her possession and they are in the said land right from the year 1997. She has a proof from the year 1999 to establish their possession in the property. The 1st Respondent had levied property tax and in respect of her Plot No.121, the Door Number was assigned as No.9-A and in respect of her husband's Plot No.120, the Door Number was assigned as No.9 and for the said two houses, they are promptly paying the property tax and further that, the Revenue Records stand in her name right from the year 2005.

3. The stand of the Petitioner is that they initially lived in the property, which was a 'Hut' and later in 2000-2001, she converted the 'Hut' into an asbestos house by spending nearly Rs.50,000/-. The 1st Respondent assigned the 'Property Tax' to the said house in her favour in 2005. Also, Electricity Service connection is obtained to her house, which stands in her name from the year 2008.

4. The Petitioner takes a plea that the area in which she is now residing is under the control of Respondents 4 to 6 and before the Respondent Nos.4 to 6, she made an application to assign the Plot Nos.120 and 121 in favour of her husband and herself, the same is under their consideration. Her children had completed their college studies and her husband and herself decided to perform marriage for their children and accordingly, decided to renovate the house as a 'Terraced' one. They commenced their renovation process right from February, 2018 by obtaining loan in the property in question. When they had commenced the renovating process, the Respondents 2 and 3 had not questioned anything and all of a sudden, the Respondents 2 and 3 had issued 'Stop Work Notice' dated 06.04.2018 for renovation of her house and also they called upon them to submit the approval plan for their building, which is under renovation.

5. It is represented that the Petitioner and her Husband on receipt of the notice approached the 2nd and 3rd Respondents and explained to them that already there is a 'House' existing in Plot Nos.120 and 121 and they are only renovating the same and as such, issue of obtaining 'Building plan' would not arise. Further, in their Written Representation on 25.04.2018 a request was made to the 2nd and 3rd Respondents to withdraw the Notice dated 06.04.2018. Also, it was pointed out that the whole area is under the control of Respondent Nos. 4 to 6 and all the Houses like their houses, neither obtained Building Plan Approval, nor insisted by the Respondents for obtaining the same. In fact, the Respondents 1 to 3 had issued a notice with a malafide intention and the said Respondents had not withdrawn the notice dated 06.04.2018.

6. The Petitioner assailing the Notice dated 06.04.2018 issued by the Respondents 2 and 3 had filed the Writ Petition before this Court, in which the Respondents had entered appearance and the matter is pending. When the 1st Notice issued by the Respondents 2 and 3 dated 06.04.2018 is questioned in the Writ Petition before this Court, the Respondents 1 to 3 had issued a 'Lock and Seal Notice' on 07.06.2018 and further that, due to inducement of their rival persons in their locality, the Respondents 1 to 3 are acting against her in a malafide manner.

7. The Petitioner was issued with a de-occupation Notice No.Div 180/002/2018 dated 17.07.2018 and soon after receipt of the same, she issued a legal notice dated 19.07.2018 and requested the Respondents 1 to 3 not to take any further action based on Notices dated 06.04.2018, 07.06.2018 and 17.07.2018. The said legal notice was received by the Respondents 1 to 3. The Petitioner had applied for Building Plan Approval before the 2nd Respondent / Assistant Executive Engineer, Unit 39, Greater Chennai Corporation, Zone - 13, Adyar, Chennai - 600 020 on 10.08.2018, as per requirement mentioned in the Impugned Notice and the same was pending consideration without passing any order in the building plan approval by the 2nd Respondent. To a shock and dismay, the Respondents 1 to 3 came along with police persons to the renovated property and placed the board and tape stating that 'this premises is under Lock and Seal by the Greater Chennai Corporation'. The present act of putting physical 'Lock and Seal' by the Respondent Nos. 1 to 3 shows their clear intention and hence the Petitioner has projected the present Writ Petition.

8. The Learned Counsel for the Petitioner submits that the Impugned Notice dated 07.06.2018 and 17.07.2018 issued by the Respondents 2 and 3 are arbitrary, unconstitutional, without jurisdiction and power and against Law and on facts. Further, the Respondents 1 to 3 had issued the Impugned Notice only to the Petitioner even though there are thousands of house in the same area situated like the house of the

Petitioner.

9. The Learned Counsel for the Petitioner takes a plea that the land is under the control of Respondents 4 to 6 and further that the Petitioner had approached the Respondents 4 to 6 for want of allotment and when the same is pending consideration, the issuance of notice dated 17.07.2018 would not arise.

10. The other submission of the Learned Counsel for the Petitioner is that the Petitioner is residing in the property for 21 years and the question of de-occupation notice dated 17.07.2018 by the Respondents 1 to 3 are against the Constitutional right envisaged under Article 300A of the Constitution of India.

11. The Learned Counsel for the Petitioner projects an argument that the Respondents 1 to 3 had failed to consider the Application submitted by the Petitioner for granting Building Plan Approval and as such, affixing of Lock and Seal Notice and Tape physically to the Petitioner's property is an illegal one.

12. Per contra, it is the submission of the Learned Counsel for the Respondents 1 to 3 that the Petitioner had commenced construction unauthorisedly at No.9, Anjugam Ammal Street, Thanthai Periyar Nagar, Taramani, Chennai - 600 113 and a complaint was received from one Mookandi, who had stated that the Petitioner had commenced construction on the land belonged to him. Apart from that, even for several instructions from the Greater Chennai Corporation, neither the Petitioner nor the complainant produced the document / allotment orders issued by the Tamilnadu Slum Clearance Board. After inspecting the site in question, action was initiated by issuing a Stop Work Notice / Notice calling for Approved Plan under Sections 56 and 57 read with Section 85 of the Tamilnadu Town and Country Planning Act, 1971 dated 06.04.2018 to the Petitioner. The Petitioner, on receipt of Notice had stopped the construction activity, but had failed to produce any approved plan within the statutory period of the aforesaid notice. As per the Tamilnadu Town and Country Planning Act, 1971, the Petitioner is to apply for a Planning Permission before commencement of the construction of the building in issue.

13. The Learned Counsel for the Respondents 1 to 3 contends that the Petitioner earlier filed W.P.No.11501 of 2018 against the Stop Work Notice issued by Greater Chennai Corporation and continued the construction activities and this Court had dismissed the Writ Petition with the following observations:

"---- This matter was listed on 06.06.2018 and was called twice. Since there was no representation for the petitioner, the matter was directed to be

listed today under the caption "for dismissal". Accordingly, when the matter is listed and called today, once again, there is no representation on behalf of the petitioner. Therefore, this writ petition is dismissed for default. No costs. Consequently, the connected W.M.P.No.13446 of 2018 also stands dismissed.

Learned standing counsel appearing for the respondents would submit that Lock and Seal Notice, dated 07.06.2018, has been issued to the petitioner and further process will take place in accordance with law.

It is open to the respondents to proceed with the matter in accordance with law...."

14. The Learned Counsel for the Respondents 1 to 3 submits that the pursuant to the direction of this Court to take further action against the Petitioner's unauthorised construction at No.9, Anjugam ammal Street, Thanthai Periyar Nagar, Taramani, Chennai - 113, a notice under Sections 56 and 57 read with Section 85 of the Town and Country Planning Act, 1971 was issued to the Petitioner on 07.06.2018 to Lock and Seal her unauthorised construction. The Petitioner after receiving the notice ignored the same and continued the construction unauthorisedly. The said unauthorised construction was Locked and Sealed on 24.08.2018 by following the procedures.

15. The Learned Counsel for the Respondents 1 to 3 brings it to the notice of this Court that one P.Mookandi filed a suit in O.S.No.4164 of 2018 on the file of II Assistant Judge, City Civil Court, Chennai against the present Writ Petitioner [1st Defendant in O.S.No.4164 of 2018] and Greater Chennai Corporation seeking a relief of Permanent Injunction restraining the Defendants 1 and 2 there men, agents etc, in any manner from putting up any further construction in respect of the suit property bearing No.9, Anjugam Ammal Street, Thanthai Periyar Nagar, Taramani, Chennai - 600 113 and at this stage, the Petitioner has filed the present W.P.No.22103 of 2018.

16. The Learned Counsel for the Respondents points out that for issuing planning permission in online, the following two steps are to be followed by the Greater Chennai Corporation and the same are as under:

"Step 1 :

The owner / power of attorney of a plot who wish to obtain planning permission should initially draw the building plan of the proposed construction through a licensed surveyor enrolled with Greater Chennai Corporation according to development control rules of CMDA and apply on the Greater Chennai Corporation website. If the submitted plan of the proposal is as per development control rules, the pre

designed software installed will approve the drawing automatically and an approval number Greater Chennai Corporation shall be created. That means the proposed drawing submitted is as per rules and it cannot be taken as planning approval. This petitioner has uploaded the building drawing of her construction in online of the Greater Chennai Corporation website and the submitted drawing was according to the development control rules and hence the drawing alone approved and numbered as drawing reference No.COC/13492/2018 dated 10.08.2018.

Step :2

After the drawing is approved on the corporation website the individual plot owner should apply planning permission in online to Greater Chennai Corporation website through the licensed surveyor enrolled with Greater Chennai Corporation along with documents belongs to his property, Patta, encumbrance certificate and NOC from various department according to the requirements of the concerned plot."

17. Besides the above, the planning proposal submitted by the concerned person in online shall be automatically sent to the concerned Assistant Executive Engineer's login and that the concerned Assistant Executive Engineer should inspect the site within seven days and scrutinise all the documents. If any other additional documents / details are required, then, the said Engineer should send a letter to the concerned individual through online and for the queries raised, the Applicant should reply through his licenced surveyor within 10 days in online. If reply / additional documents / information furnished by the applicant is sufficient and satisfactory, then, proposal will be approved by the Executive Engineer and an advice for remittance in regard to the required fees will be generated in online and the applicant can download the advice. Soon after receipt of the advice, the applicant should remit the fees. After the fees are paid, planning permit and building licence will be granted by the Greater Chennai Corporation.

18. The Learned Counsel for the Respondents 1 to 3 takes a plea that the Petitioner had completed the First Step only and the Planning Permission Application was not yet received in Chennai Corporation Website. On receipt of planning permission application in online, the same will be entertained, as per Rules subject to the satisfaction of approving authority that the applicant is the owner of the said property. Also that, the planning permission application of the Petitioner for the building in question if any, submitted to the Greater Chennai Corporation, the same can be considered only after desealing all the unauthorised construction, which was already locked and sealed on 24.08.2018. Further, the orders of the Competent Authority, viz., Secretary, Housing and Urban Department should be obtained for desealing the unauthorised building and in this

regard, the Petitioner is to prefer an Appeal to the Housing and Urban Department. Besides these, the Petitioner's unauthorised construction was made without leaving any side setback and completely violating the Development Control Rules of the 2nd Master Plan of CMDA.

19. It must be borne in mind that Section 49 of Tamilnadu Town and Country Planning Act, 1971 speaks of filing of an Application for Permission before the appropriate Authority seeking to carry out any development on any land or building and the grant or refusal of said permission by the concerned Planning Authority. Moreover, the ingredients of G.O.Ms.No.652, R.D. and L.A., dated 08.04.1975 relates to the Rules framed in regard to the application for planning permission under the Act, 1971.

20. At this juncture, this Court cites the decision Madras Race Club rep. By Mr.Aruna, Officer-In-Charge [Legal], Chennai V. Chennai Metropolitan Development Authority, rep. By its Member Secretary, Chennai and Others reported in [2006] 4 M.L.J. Page 1 at Special Page 2 wherein it is held as under:-

"A person proceeding with unauthorised constructions, in total violation of the Rules is not entitled to invoke exemption under Section 49 of the Tamilnadu Town and Country Planning Act, which could be granted only in slight deviations. If the Construction is illegal it has to be demolished."

21. Further, in the decision of Chennai Metropolitan Development Authority, rep. By its Member Secretary, Gandhi Irwin Road, Chennai- 8 V.Abdur Rehman, Hotel Nest International, 31, Gandhi Irwin Road, Egmore, Chennai - 8 and another reported in 2002-3-Law Weekly at Page 309 at Special Pages 313 and 314 wherein at Paragraph Nos.11 and 12, it is observed as under:

"11. However, if an application is made for permission under Section 49 as per Sub-Section(3), then the notice shall not have any effect pending determination of the application as per Sub-section (4). Section 80 of the Act provides for a revision by the Director on application, to call for and examine the records of any officer subordinate to him. The said provision is also available to the Government to call for and examine the records of the Director. Sub-Section(3) empowers the Director or the Government to suspend the execution of the decision or order pending disposal of the revision.

12. The Tamil Nadu Town and Country Planning Act, 1971 provides for the planned and orderly development and use of urban land, and in order to achieve the said object, it has provided for a scheme and machinery for the control of development and use of the land. Section 49 begins with a prohibition as

to the carrying out of development of any land except as otherwise provided for, and only after making an application in writing to the appropriate planning authority for permission. The duration of permission is provided for under Section 50. The removal comes only on the failure as per the Act. Section 56 empowers to remove the unauthorised development. As against the refusal to grant permission under Section 49, an appeal is provided for under Section 79 of the Act. A revision is provided for against the proceedings taken under Section 80 of the Act. The remedies are available against any decision and the proceedings under the Act. The provisions give sufficient safeguards and opportunity to the concerned either to explain, comply or move a revision. Section 56(1) itself provides for one month's time to take such steps. The person aggrieved has a choice to apply for permission and get the matter postponed till the final determination or file a revision against such a decision."

22. It is to be pointed out that the notice visualised in the ingredients of Section 56 of the Tamilnadu Town and Country Planning Act, 1971 is not an empty ritualistic formality. As a matter of fact, a decision is to be arrived at when the conditions under Sub-Section [1] of Section 56 is satisfied, a notice is preceded by the determination that the contents of Sections 49, 50, 54 and 56 are satisfied for the violation. Undoubtedly, a notice enjoined in Section 56 of the Act, 1971 is a decision under Section 56(2-A) of the Act allows the planning authority to Seal and Lock the premises, in case owner or occupier failed to comply with the notice issued earlier under Section 56(1) of the Act.

23. In reality, the Planning Authority is empowered to press into service Section 56(2-A) of the Act irrespective of the pendency of the Application under Section 49 or Appeal under Section 79 of the Tamilnadu Town and Country Planning Act, 1971, or any litigation pending before the Court of Law. Apart from that, though Section 80-A of the Act speaks of Special powers of the Government, it is strictly not an 'Appeal', but, it is only a revisional power to examine the records of the planning authority and to take a decision either to modify, annual reverse or remit the matter for reconsideration. It cannot be gainsaid that for involving the special powers of the Government under Section 80-A of the Act, a valid order passed under Sub-Section [2-A] of Section 56 or Sub-Section [4] of Section 57 is a mandatory one, as per decision M/s. Sankranthi Hotels Pvt., Limited V. the Government of Tamilnadu, & Others reported in 2013-5-Law Weekly page 864. Moreover, Sub-Section 3 of Section 80-A of the Act gives power to the Government to pass an interim orders. As such, the Government is empowered to stay the decision as regards Locking and Sealing pending Revision. In

short, sealing of the premises is not a condition precedent for filing Special Revision Petition as per Section 80-A of the Act, 1971.

24. In the present case, according to the Greater Chennai Corporation, the Petitioner had completed the First Step by submitting the drawing in respect of the building plan in question. The Petitioner has not crossed the Second Step, as on date, the drawing submitted by the Petitioner is not yet approved.

25. Considering the fact that the Petitioner is to satisfy the Second Step, viz., after the drawing is approved in Corporation Website, she should apply for planning permission in online to Greater Chennai Corporation Website through Licence Surveyor enrolled with the Greater Chennai Corporation together with documents to show in relation to the property patta encumbrance etc., the Petitioner is directed by this Court to submit necessary documents relating to her property to the Chennai Corporation after getting an intimation from the Chennai Corporation that the drawing of the building in question was approved by the Corporation, of course, after scrutiny. The Greater Chennai Corporation in this regard shall provide sometime to the Petitioner to furnish the documents in question after the drawing submitted by her is approved, as per Rules. Thereafter, necessary orders may be passed in the subject matter in issue by the Concerned Authority, as per Rules and Regulations and Law.

26. Insofar as the aspect of desealing the Petitioner's unauthorised building, which is locked and sealed on 24.08.2018 is concerned, it is open to the Petitioner to approach the Competent Authority / the Secretary, Housing and Urban Department of the Government of Tamilnadu and to obtain necessary orders by way of filing a necessary Appeal. Liberty is granted to the Petitioner to raise all factual and legal pleas before the Concerned Authority in Appeal and the Competent Authority / the Secretary, Housing and Urban Department of Government of Tamilnadu shall advert to the same in the orders to be passed by him. It is open to the Petitioner to file an Interim Application and to seek necessary orders from the Government, as per Section 80-A(3) of the Tamilnadu Town and Country Planning Act, 1971. Before parting with the case, this Court directs the Officials of the Greater Chennai Corporation not to give room for any complaint or complaints in not taking necessary action against the violators / deviants, as per Tamilnadu Town and Country Planning Act, 1971 and Building Regulations. Further, they are directed to take uniform action against the concerned violators / deviants without showing any indulgence, thereby avoiding the plea of 'Bias or Malafides or Discrimination' being meted out in this regard.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Executive Engineer-II,
Greater Chennai Corporation,
Zone -13, Adayar, Chennai - 600 020
2. Assistant Executive Engineer,
Unit 39, Greater Chennai Corporation,
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6. The Estate Officer,
Estate Office - 6,
Tamil Nadu Slum Clearance Board,
Chennai - 600 004
7. The Commissioner,
Greater Chennai Corporation,
Chennai - 3
[For favour of Information and
necessary follow up action]

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.NO.62337

+1cc to Mr.M.Rajasekar, Advocate SR.NO.62204

+1cc to Mr.A.Nagarajan, Advocate SR.NO.62067

SS(CO)

sm:19.9.2018

W.P.No.22103 of 2018 and
W.M.P. No.25902 of 2018