

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2018

Coram

THE HONOURABLE **Mr. JUSTICE M.VENUGOPAL**
AND
THE HONOURABLE **Mr. JUSTICE S.VAIDYANATHAN**

W.P.No.24028 of 2017 and
W.M.P.No.25340 of 2017

G.K.Balasubhramani

..Petitioners

Vs.

1. The Commissioner,
Corporation of Chennai
Rippon Buildings,
Chennai – 600 003

2. The Assistant Engineer,
36th Ward, Unit 9, Division IV,
Greater Corporation of Chennai
15th West Cross Street,
M.K.B.Nagar, Chennai 600 039

3. S.Mani

4. The Secretary,
Chennai Metropolitan Development
Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai – 8.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Mandamus directing the 2nd respondent

to consider and dispose the petitioner's representation dated 22.08.2015 with regard to the unauthorised and illegal construction over the property bearing No.209, Second Main Road, MR Nagar, Chennai – 600 118.

For Petitioner : Ms.S.P.Arthi
 For Respondents : Mr.A.Nagarajan for R1 and R2
 Mr.Adinarayana Rao for R3
 Mr.N.Sampath for R4

ORDER

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

This Writ Petition has been filed to direct the 2nd respondent to consider and dispose the petitioner's representation dated 22.08.2015 with regard to the unauthorised and illegal construction over the property bearing No.209, Second Main Road, MR Nagar, Chennai – 600 118.

2. The grievance of the petitioner is that the 3rd respondent, without obtaining any planning permission or authorisation, is putting up a superstructure, consisting of Ground + 2 Floors, which also touch upon the Western boundary line of the petitioner's premises and despite very many representations and repeated visits made to the office of the

2nd respondent, no action has been taken and therefore, the petitioner has come forward to file the present petition.

3. The Greater Chennai Corporation / Respondents 1 and 2 have filed a Status Report dated 07.11.2017 stating that at the time of inspection, the 3rd respondent has furnished the approved plan, vide planing permit PPA/WDCN04/8557/2013 and building approval vide BA/WDCN04/01330/2014 dated 22.02.2014. It is further stated that the 3rd respondent has put up his building by deviating the approved plan and the said deviations and set backs are extracted hereunder:

<i>Sl.</i>	<i>Description</i>	<i>As per plan</i>	<i>As per Site</i>	<i>Deviated / Unauthorised</i>
1	Front Set Back	1.50 m	0.40 m	1.10 m
2	Rear Setback	1.50 m	(0.00m, 0.94m & 0.57m)	(1.50m, 0.56m & 0.93 m)
3	Side Setback (E)	1.50 m	(0.00m&0.65m)	(1.50m & 0.85m)
4	Side Setback(W)	1.50m	0.53 m	0.97 m
5	Silt Floor	Car Parking – 1 no. Two wheeler parking – 11 nos	Parking area converted into Residential Usage of an area 130.41 m2	Deviated construction Area 130.41m2 (Parking area converted into Residential Usage)

<i>Sl.</i>	<i>Description</i>	<i>As per plan</i>	<i>As per Site</i>	<i>Deviated / Unauthorised</i>
6	First Floor	83.81 m2 (Residential)	130.41m2 (Residential)	Deviated Construction Area 46.80 m2
7	Second Floor	83.81 m2 (Residential)	130.41 m2	Deviated construction Area 46.80m2
8	Terrace	17.40 m2	Headroom 43.20 m2	Unauthorised construction area 25.80 m2
Balcony				
1	First Floor	Nil	3 m2	Deviated Area 3m2
2	Second Floor	Nil	3m2	Deviated Area 3m2
3	Terrace	Nil	3m2	Deviated Area 3m2

4. Besides the above, the Greater Chennai Corporation / Respondents 1 and 2 have filed a Status Report dated 28.12.2017 stating that at the time of inspection, the petitioner has furnished the approved plan, vide planing permit PPA/V1/118/84 and building approval vide BAV1/118/84 dated 23.04.1984. It is further stated that the petitioner has put up his building by deviating the approved plan and the said deviations and set backs are extracted hereunder:

<i>Sl.</i>	<i>Description</i>	<i>As per plan</i>	<i>As per Site</i>	<i>Deviated / Unauthorised</i>
1	Front Set Back	10feet	10 feet 7 inch	7 inches (Deviated and Orientation Changed)
2	Rear Setback	32 feet 3 inch	30 feet 11 inch	1 feet 2 inch (Deviated & orientation changed)
3	Side Setback (E)	11 feet 3 inch	4 feet 2 inch	7 feet 1 inch (Deviated & orientation changed)
4	Side Setback(W)	6 feet 6 inch	13 feet 3 inch	6 feet 9 inch (Deviated and Orientation changed)
5	Ground Floor	503.50 sft.	609.375 sft	105.875 sft deviated
6	First Floor	503.50 sft	621.05 sft	117.55 sft Deviated
7	Second Floor	Nil	323.10 sft	323.1 sft Unauthorised construction
8	Balcony First Floor	Nil	50.625 sft	50.625 sft Deviated construction
9	Balcony Second Floor	Nil	70.79 sft	70.79 sft deviated construction

5. The learned counsel appearing for the respondents 1 and 2 submitted that the respondents are going to lock and seal the premises in question.

6. Heard the learned respective counsel and perused the documents available on record.

7. With regard to set back, the First Bench of this Court, in **W.P.No.18777 of 2014**, by an order dated **08.11.2016**, has held as under:

"8. ... We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/ violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised – if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

8. It is pertinent to note that the First Bench of this Court in **Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu)**, took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We

have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

9. This Court being bound by the said Judgments, is inclined to allow the Writ Petition. Further, this Court makes it clear that unless and otherwise the building is constructed in accordance with the plan, the petitioner shall not occupy the premises and if the petitioner is able

to rectify the defects pointed out in the 2nd stated Tabular column extracted above, after getting the report from the officials and also after hearing the complainant / 3rd respondent, the petitioner is permitted to occupy the premises. If there is lock and seal, it cannot be questioned, as there is serious violation of the action plan. It is represented by the 3rd respondent that there is violation of construction even by the petitioner. It is needles to mention that official respondents are directed to demolish the illegal construction and if the petitioner is unable to bring the building in accordance with the sanctioned plan, if any, till such time, electricity supply to the building shall be disconnected and a communication may be sent to the respective Area Engineer / authority of TANGEDCO in this regard by enclosing a copy of this order. If as stated by the petitioner, there are violations in the construction of the petitioner's building, necessary action shall follow and the authority must ensure that the building constructed is not in violation of the sanctioned plan, of course, subject to the minimum deviations that are permissible under the provision of the enactment, Building Regulations, etc.,

With the above observations and directions, the Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.
No costs.

(M.V.J.)

(S.V.N.J.)

02.01.2018

Index :Yes / No

Internet :Yes / No

Speaking Order / Non speaking order

ssd

To

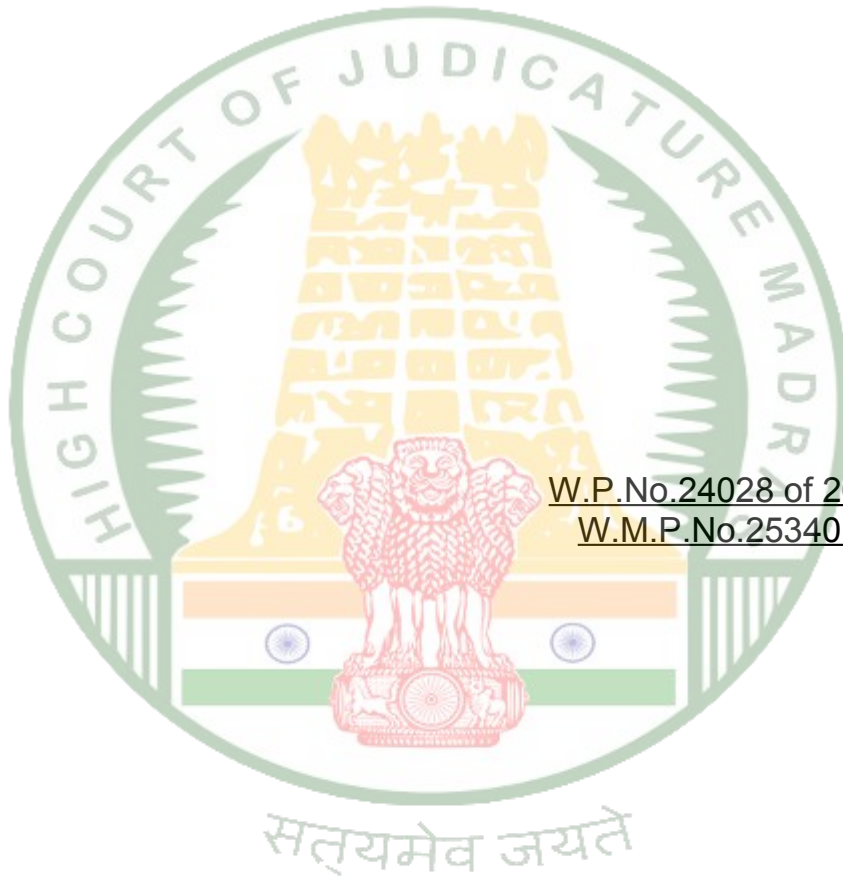
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