

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15313 of 2017
and
W.M.P.No.16603 of 2017

V.Rupesh Kumar ... Petitioner
Vs.

1. Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwyn Road,
Egmore, Chennai-600 008.
2. Avadi Municipality,
Rep by its Commissioner,
Avadi, Chennai-600 054.
3. Mr.Jambulingam ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first and second respondents to consider and pass orders on the representations dated 21.12.2016 and 23.02.2017 to initiate enforcement action against the third respondent with respect to the additional and unauthorised constructions put up at No.12, Koilpathagai Village, comprised in Survey No.183/2, Ambattur Taluk, Thiruvallur District.

For petitioner : M/s.Shabnam Banu

For respondents: Mr.C.Johnson for R-1

Mr.P.Srinivas for R-2

Mr.A.Chidambaram for R-3

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the first and second respondents to consider and pass orders on the representations dated 21.12.2016 and 23.02.2017 to initiate enforcement action against the third respondent with respect to

the additional and unauthorised constructions put up at No.12, Koilpathagai Village, comprised in Survey No.183/2, Ambattur Taluk, Thiruvallur District.

2. Admittedly, in this case, in respect of the construction of the property in question, the plan has been sanctioned on 27.07.2010, which was valid upto 2013. The writ petitioner has averred in the affidavit that the third respondent has constructed additional structure in the II Floor, which is in contravention of the sanctioned plan.

3. Learned counsel for the second respondent-Avadi Municipality filed counter affidavit, in which, in paragraph 4, it is stated that on receipt of the representation from the petitioner, the premises in question was inspected by the Town Planning Inspector on 03.05.2017, and on such inspection, it was found that in addition to the ground floor plus first floor, the building was having an additional structure in the second floor of an extent of 16 feet by 41.25 feet and that the said additional floor has been put up without any approval. It is further stated in the counter affidavit that there was no reply by the third respondent in respect of the notice sent for deviated construction and the said notice was received by the third respondent, and hence, confirmation order was passed by the authority on 10.08.2017 and till date, the third respondent has not submitted any application for the approval of the construction so made. It is further averred in the counter that steps have been taken to prosecute the third respondent under the provisions of the Tami Nadu District Municipalities Act, namely under Sections 317, 339, 341 etc. Further, the charge sheet is being prepared, which will have to be filed on expiry of 30 days from the date of receipt of the confirmation notice and further action is being taken against the third respondent until the building is brought under conformity with the approved plan.

4. The above said counter affidavit of the second respondent is dated 28.08.2017. Whether the charge sheet has been filed or not and whether the proceedings are/were initiated or going to be conducted or not, are all independent acts. However, taking note of the present relief sought for by the petitioner, more particularly, when the notice sent by the second respondent has not been replied, which amounts to deemed admission by the third respondent himself with regard to the violation of construction, the request of the third respondent that the building constructed in violation, may be regularised, taking into account the cut-off date as 01.07.2007, cannot be accepted.

5. Learned counsel for the third respondent relied on a decision of the Supreme Court reported in 1995 Supp (4) SCC 426 (Syed Muzaffar Ali Vs. Municipal Corporation of Delhi), wherein the Apex Court has observed that in case of unauthorised construction, the authorities urged to consider as to whether the violation can be compounded or regularised and to resort to demolition only in case of serious and grave breach of building regulations.

6. It is stated by the learned counsel for the second respondent-Municipality that when a similar situation regarding regularisation/compounding of the illegal construction arose in the State of Tamil Nadu, the authorities decided to regularise the illegal construction by fixing the cut-off date as 01.07.2007. Admittedly, in this case, the plan itself was sanctioned only in 2010 and hence, the cut-off date mentioned by the State Government cannot operate retrospectively.

7. In view of the illegal construction being made by the third respondent, as pointed out by the petitioner, as affirmed by the second respondent-Municipality in the counter, which has also been deemed to have been admitted by the third respondent, as he did not respond to the notice sent by the second respondent, the unauthorised portion in question in respect of the building, will have to be demolished. Accordingly, the respondents 1 and 2 / authorities concerned are directed to ensure that the unauthorised portion in question in respect of the building is demolished within a period of one month from the date of receipt of a copy of this order. If any Police protection is sought for, the same has to be extended to the authorities to carry out the demolition. If for any reason, the petitioner prevents, the TANGEDCO/TNEB may be asked to disconnect the electricity supply and the electricity supply has to be disconnected forthwith.

8. With the above observations and direction, the Writ Petition is allowed. No costs. Consequently, W.M.P. is closed.

s/d-

Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

CS

To

1. Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwv Road, Egmore, Chennai-600 008.

2. Avadi Municipality, Rep by its Commissioner,
Avadi, Chennai-600 054.

+1 CC to Mr.C.Johnson , Advocate sr 1328.

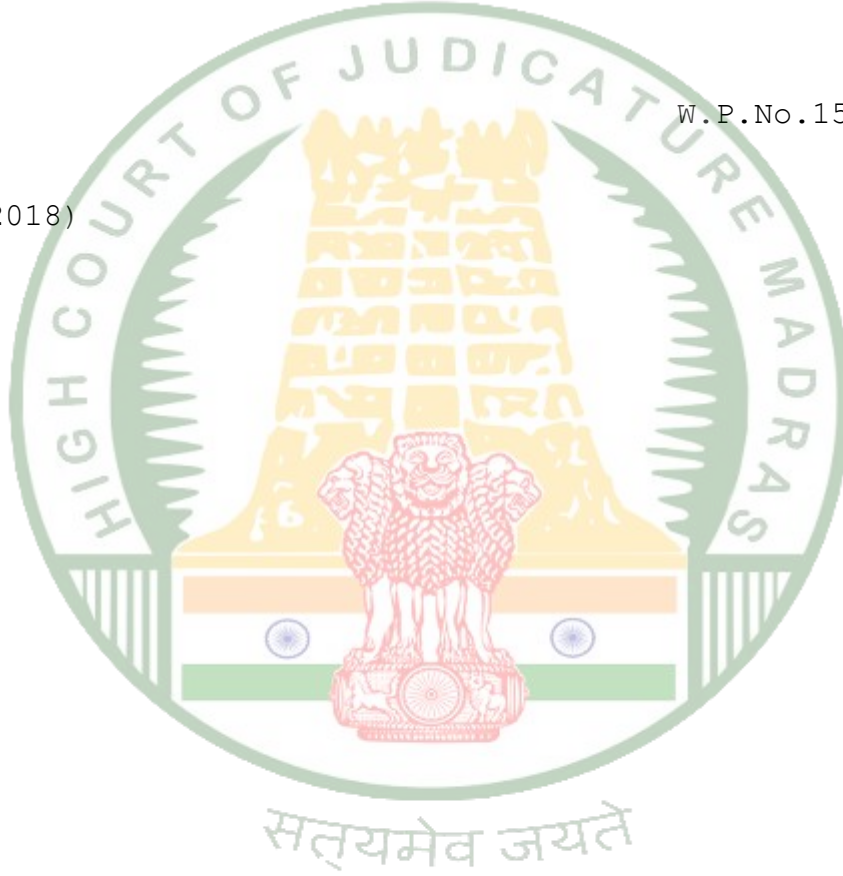
+1 cC to Mr.P. Srinivas, Advocate sr 883.

+1 Cc to Mr.A. Chidambaram, advocate sr 859.

+1 CC to Shabnam Banu, Advocate sr 761.

W.P.No.15313 of 2017

SP(22/01/2018)



WEB COPY