

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.3.2018

CORAM

The HON'BLE MR.JUSTICE M.VENUGOPAL

AND

The HON'BLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.25451 of 2017 & WMP.No.26893 of 2017

R.GanapathyPetitioner

Vs

1.The Municipal Commissioner,
Pammal Municipality, Pasumpon
Nagar, Pammal, Chennai-75.

2.Mrs.Savera

3.R.Gopalakrishnan

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to quash the notice Ka.Aa.No. 28/2014/F1 dated 23.12.2016 issued by the 1st respondent to 2nd respondent and directing the 1st respondent to remove the unauthorized development i.e. illegal construction made by the 2nd respondent against the building permit plan No.28/2014 dated 14.2.2014 in the schedule mentioned property within time fixed by this Court.

For Petitioner : Mr.A.K.Rajaraman

For Respondent-1 : Mr.P.Srinivas

For Respondent-2 : Mr.P.Vasanth

For Respondent-3 : Ms.S.Suba Shiny for
Mr.S.Sakthivel

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

The petitioner has come forward with this writ petition challenging the notice dated 23.12.2016 issued by the first respondent to the second respondent wherein it has been pointed out that there was no violation in the car parking area and that the construction put up on two sides to an extent of 15' 9" X 4 ft., deviating the sanctioned plan, should be removed by the second respondent. The petitioner has also sought a direction to the first respondent to remove the unauthorized construction made by the second respondent, which is against building plan

permit No.28/2014 dated 14.2.2014.

2. It is seen that the second respondent is the owner of the vacant land measuring an extent of 2,889 sq.ft at plot No.13, Samundeeswari Nagar, comprised in old S.No.176/3B, new S.No.176/8A2 having patta No. 5947 situated at old No.129 (100), New No.88, Pammal Village, Alandur Taluk, Kanchipuram District. Respondents 2 and 3 entered into a registered joint venture agreement dated 11.6.2015 for the construction of residential apartments. Accordingly, flats were constructed and the second respondent also became the owner of a flat. The petitioner is also the owner of a flat in the said construction. After being put into possession, the second respondent started construction illegally and converted a single bedroom flat into a double bedroom flat by encroaching a car park, which, according to the petitioner, is against the building plan. Actually, the car park was allotted to the flat owners in the first and the second floor.

3. Therefore, the petitioner approached this Court on the earlier occasion by filing W.P.No.31585 of 2016, seeking to direct the Chennai Metropolitan Development Authority and the first respondent herein to remove the unauthorized development made by the second respondent herein against the building permit. The First Bench of this Court, by an order dated 09.11.2016, disposed of the said writ petition after recording the submission of the learned counsel for the first respondent herein that already necessary notices were issued and that if any violation in the car parking area is found, action would be taken in accordance with law after notice to all concerned. However, the second respondent, by the impugned proceedings dated 23.12.2016, informed the second respondent that there was no violation in the car parking area and that the construction put up in the ground floor mentioned in the order should be removed by the second respondent. Challenging the same, the petitioner is before this Court.

4. After notice, a counter has been filed by the respective parties.

5. The learned counsel for the first respondent - Municipality submits that in the second floor, the building has been constructed in excess of the sanctioned plan which was for only an extent of 867 sq.ft. and that the construction has been made deviating the sanctioned plan. He further submits that the extent of the site is larger than the patta land. i.e. The extent of the site is 3,488 sq.ft whereas the petitioner owns patta for 2,157 sq.ft and the building plan has been given only for the land of 2,157 sq.ft. Taking into account the entire area, there is a violation even if the plan is sanctioned either with regard to an extent of 2,157 sq.ft. or to an extent of 3,488 sq.ft. In the counter, the first respondent stated that there was no violation in the car parking area.

6. The learned counsel for the second respondent would submit that she had entered into an agreement with the third

respondent for construction of the building and that she, being an illiterate, signed the agreement on the dotted lines mentioned by the third respondent and that she is not aware of the illegal structure that has been constructed by the third respondent. It is further submitted that there is no violation at all and that apart from the car park, extra car park was available and only in the extra car parking area, a construction has been made, which cannot, by any stretch of imagination, be stated to be in violation of the sanctioned plan. It is further pointed out that the writ petitioner and the third respondent colluded and tried to deprive the benefit available to the second respondent and that for the vested interest of the petitioner and the third respondent, the second respondent has been unnecessarily dragged into the litigation for no fault of hers.

7. The learned counsel appearing for the third respondent would submit that the construction agreement has been entered into between the second and third respondents, that the building has been constructed in accordance with the sanctioned plan, that there are two approved plans and that based on the plan given to the third respondent by the second respondent, a construction agreement has been made and the building has been constructed as per that agreement and after entrustment of the constructed building, there has been a violation in the car parking area by the second respondent.

8. Heard all the parties.

9. Though there are disputed questions of fact with regard to the issue as to whether, with open mind, the second respondent entered into the agreement with the third respondent, the third respondent constructed the building in the first and second floors in violation of the sanctioned plan and that the violation pointed out by the petitioner in the car parking area has got to be determined only after the survey to be conducted in the presence of all the parties.

10. But, as pointed out by the learned counsel for the first respondent, the plan has been sanctioned, that there are violations deviating the sanctioned plan, that the violated extent shall not be there and that it has got to be demolished. It is also pointed out that both in the extent of 2,157 sq.ft., and 3488 sq.ft., there is no set back space and that without set back space, the building was constructed. Hence, it is very clear that the building has been constructed in violation of the sanctioned plan.

11. We are of the view that if there are any violation in the construction of the building, then the violated portions have got to be demolished.

12. In order to give the parties an opportunity and as violations have been pointed out by the Municipality, all the violated portions shall be kept under lock and seal and the water connection and the electricity connection for the said portions shall be disconnected till the issue is decided one way

or the other. We also make it clear that, more particularly, after taking note of the fact that the joint construction agreement has been signed by both the second respondent and the third respondent and that the total extent of constructed area has been identified in paragraph 2 and 3 of the counter affidavit filed by the first respondent, we are of the view that any construction, which is contrary to the building plan, has got to be demolished.

13. It is needless to mention that we have taken a similar view in the case of Golden Enclave Owners Association represented by its Secretary Vs. Commissioner, Pammal Municipality and others [W.P. No.8162 of 2017 dated 05.2.2018] holding that if the owners of the flats are put to loss or prejudice, on account of the illegal construction, the builder will have to compensate the loss to the owners of the flats.

14. In the instant case, it is for the parties namely the petitioner, the second respondent and also the other owners of the flats to put forth their plea before the appropriate forum to get necessary compensation from the builder and that it is for the builder to establish his innocence that the same has been done only on the instructions of the owner of the land and not on his own accord. The Municipality is directed to inform the Electricity Board/ TANGEDCO as well as the Tamil Nadu Water Supply and Sewerage Board to disconnect the electricity and water connection.

15. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

RS

To:

The Municipal Commissioner, Pammal Municipality, Pasumpon Nagar,
Pammal, Chennai-75.

+1 CC TO MR.P.Vasanth, Advocate SR. No.19135
+1 CC TO MR.P.Srinivas, Advocate SR. No.19377
+1 CC TO MR.Rajamohamed, Advocate SR. No.19978

WP.No.25451 of 2017&
WMP.No.26893 of 2017

RSY (CO)

RMP (02/04/2018)