

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

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

W.P.No.25931 of 2017

1. Thilakavathy
2. B.Rajthilak
3. Hema Jayaraman ... Petitioners

vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Maaligai,
Egmore, Chennai 600 008.
4. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai 600 003.
5. The Executive Engineer,
Greater Chennai Corporation,
No.36B, Pullah Avenue,
Shenoy Nagar, Chennai - 30.
6. The Zonal Officer,
Zone - VIII, Greater Chennai Corporation,
No.36B, Pullah Avenue,
Shenoy Nagar, Chennai - 30.
7. V.Lalitha Thiagarajan
8. Ravindrakumar Vedaraj Manual
9. S.P.Arya
10. S.Balakrishnan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents 1 to 6 to take suitable action as against the unauthorized constructions put up by the Respondents 7 to 10 situated in Plot No.181, 'C' Block, Easwar Apartment, Kamaraj Nagar 4th Street, Choolaimedu, Chennai 600 094, pursuant to the deviations pointed out by the 5th Respondent through his Proceedings vide Notice No.006/2016, dated 07.11.2016, immediately.

For Petitioner : Mr. R. Surya Prakash
For Respondents 1 & 2 : Mr.A.N.Thambidurai,
Special Government Pleader
For 3rd Respondent : Mr.C.Johnson
For Respondents 4, 5 & 6 : Mr.K.Soundararajan
For Respondents 7 to 10 : Mr.P.Subba Reddy

O R D E R

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

Petitioners have come up with the present Writ Petition seeking a direction to Respondents 1 to 6 to take suitable action against the unauthorized construction put up by Respondents 7 to 10 in Plot No.181, 'C' Block, Easwar Apartments, Kamaraj Nagar 4th Street, Choolaimedu, Chennai 600 094, immediately, pursuant to the deviations pointed out by the 5th Respondent vide Notice No.006/2016, dated 07.11.2016.

2. According to the Petitioners, they are residents of Plot No.181 of various Blocks viz. B, C and D, Easwar Apartments, Kamaraj Nagar 4th Street, Choolaimedu, Chennai. In each Block, there are four number of Flats and overall, there are 12 number of Flats in Plot No.181. Among the three blocks, the residents of 'C' Block, who are the Respondents 7 to 10 herein, have chosen to demolish the entire 'C' Block and put up a fresh construction with all amenities and Car Park. The case of the Petitioners is that Respondents 7 to 10 are attempting to raise a new construction, without letting any setback space, which is nothing but putting up an unauthorized construction, including the common area.

3. In spite of their representation dated 01.08.2016 to the respondent/Corporation, since no action was taken by them, Petitioners filed W.P.No.36411 of 2016 and this Court, by an order dated 18.10.2016, disposed of the said Writ Petition by directing the Commissioner of Corporation to consider the Petitioners' representation dated 01.08.2016 within two months, after notice to all concerned. Pursuant thereto, the Officials of the Respondent/Corporation conducted a site inspection on 07.11.2016 and found deviations in the construction, more particularly, in the first and second floor of the building. Thereafter, on 11.01.2017, the Respondent/Corporation called for Approved Plan to be submitted by Respondents 7 to 10. However, they did not

furnish any revised Plan to the authorities concerned and did not rectify the deviations.

4. The 6th Respondent/Corporation, vide Reply dated 17.01.2017 has stated that the building in question was put under lock and seal since 07.11.2016. Hence, Respondents 7 to 10 filed an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the 1st Respondent and also filed an Undertaking Affidavit that they will rectify the defects/deviations in the building in question. Accordingly, the 1st Respondent passed an order dated 19.01.2017, granting six months' time to Respondents 7 to 10 to rectify the defects in the building in question and also made it clear that the said premises shall not be put to use by them. However, Respondents 7 to 10, completed construction of the building without rectifying the defects. Hence, Petitioners are before this Court, once again.

5. In the counter filed by the 6th Respondent, it is stated that there are deviations in the first and second floors of the building in question to the extent of 50 sq. metres (538.196 sq. ft. approximately). As there was violation, de-occupation notice was issued and the building was locked and sealed on 05.01.2017. Though six months' time was granted by the 1st Respondent in the Appeal preferred by Respondents 7 to 10, to rectify the defects, the contesting Respondents did not comply with the same. However, they sent a letter on 28.07.2017 to the Government seeking further extension of time and a further period of six months' time was granted to the Respondents 7 to 10 to rectify the defects, which expires on 07.02.2018.

6. It is the case of the contesting Respondents 7 to 10 that they have made a representation to the Government on 28.07.2017 seeking further extension of time to rectify the defects and six month's time was granted. However, the Government has not passed any final order in the Appeal preferred by them.

7. It is seen that Respondents 7 to 10 have given an Undertaking before the 1st Respondent that they will rectify the defects in the building in question, in tune with the Revised Plan and sought time for the same. Though sufficient time was granted by the Government, the contesting Respondents have not taken necessary steps to rectify the defects and they cannot blow hot and cool at the same time.

8. Since the building in question is in violation of the Approved Plan, Respondents 7 to 10 have no other option, but to demolish the violated portions and accordingly, they are directed to demolish the violated portions of the building in question, within a period of one week from the date of receipt of a copy of this order. We make it clear that electricity supply to the building in question, i.e. at Plot

No.181, 'C' Block, Easwar Apartment, Kamaraj Nagar 4th Street, Choolaimedu, Chennai 600 094 shall not be restored unless the defects pointed out by the Respondent/Corporation are rectified by the contesting Respondents 7 to 10.

9. It is to be noted that in similar circumstances, the order dated 07.11.2017 passed by a Division Bench of this Court in W.M.P.No.30495 of 2017 in W.P.No.21639 of 2017, refusing to restore the electricity supply to the premises in question therein, was confirmed by the Supreme Court in Petition for Special Leave to Appeal (C).No.33863 of 2017, by order dated 05.01.2018.

10. It is needless to mention that if there are any violations of the construction made by the Petitioners, it is open to the authorities concerned to proceed in accordance with law. The Writ Petition is allowed with the above direction(s) and observation(s). No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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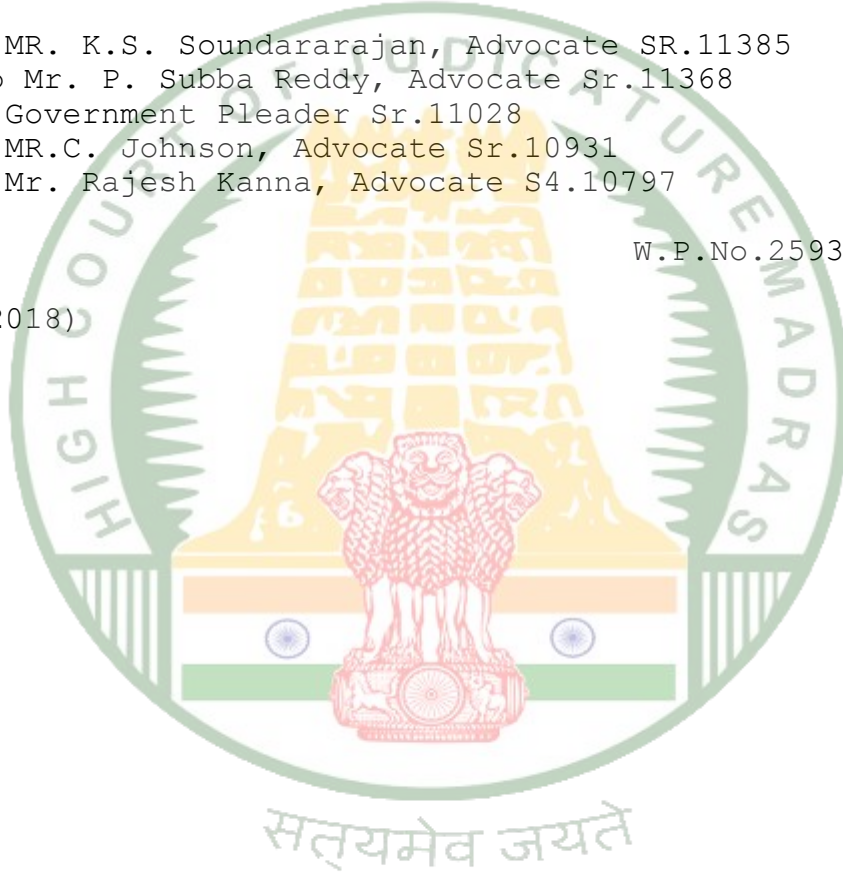
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+ 1 cc to MR. K.S. Soundararajan, Advocate SR.11385
+ 2 ccs to Mr. P. Subba Reddy, Advocate Sr.11368
+ 1 cc to Government Pleader Sr.11028
+ 1 cc to MR.C. Johnson, Advocate Sr.10931
+ 1 cc to Mr. Rajesh Kanna, Advocate S4.10797

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