

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P.No.23792 of 2018 and
W.M.P.No.27735 of 2018

Naresh Gopi

.. Petitioner

Vs

1.The Commissioner,
Corporation of Chennai
Rippon Building, Chennai - 600 003.

2.The Executive Engineer,
Zonal Office,
Zone-XIV (Perungudi)
No.6/64, Puzhuthivakkam,
Main Road, 600 091.

3.The Assistant Executive Engineer,
Unit 44, Corporation of Chennai,
Sholinganallur, Chennai - 600 119.

4.The Assistant Engineer,
Division 196, Corporation of Chennai,
Sholinganallur, Chennai - 600 119.

5.Government of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF MANDAMUS forbearing the Respondents 1 to 4 or anybody acting on their behalf from initiating any coercive action of Lock & Seal and Demolishing with regard to the Petitioner's residence at Plot No.1/138, Bethal Nagar 1st Street, Injambakkam, Chennai - 600 115, pending determination of the special revision petition dated 06/09/2018 by the 5th Respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : M/s.Ramasubramaniam Raja
G.Vikraman

For RR 1 to 4 : Mr.A.Nagarajan

For 5th Respondent : Mr.R.Udayakumar
Additional Government Pleader

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner; Mr.A.Nagarajan, Learned Counsel takes notice for Respondents 1 to 4 and Mr.R.Udayakumar, Learned Additional Government Pleader takes notice for the 5th Respondent.

2.No counter is filed on behalf of the Respondents 1 to 5.

3.According to the Petitioner, in the year 2006, he had constructed a house admeasuring 1800 sq.ft. with all his life savings (including that of his parents savings) and also availed hand loans from relatives and friends. The cost of construction in 2006 was Rs.10 Lakhs. He is living peacefully without any disturbance or interference for the past 15 years. He is living in the said premises along with his family comprising of his wife, sister, brother, mother and his two children and his nephew and niece. All the children are minors below five years and they are studying in A.L.M. Matriculation Higher Secondary School, Injambakkam Chennai - 600 115.

4.In order to overcome the water logging inside his house, he had to re-built his house in the year 2017 spending Rs.25 Lakhs. Because of previous enmity from the neighbours Sagayam, Duraimurugan, Veerabathran, Vijayapurushothaman, Anusiya and Jeya Prabakaran, they made a complaint as if the Petitioner's construction was being put up for the first time in the said place. He had only re-built his existing house. To a shock and surprise, the Petitioner received a Lock and Seal and Demolition Notice dated 05.01.2018 from Respondents 2 to 4, stating that there is purported ongoing unauthorised construction and the said notice stated that a purported notice to stop work was issued through letter dated 05.09.2017. Apart from that, the said notice called upon the Petitioner to restore the Land to its original condition.

5.The plea of the Petitioner is that he had not received any stop work notice as mentioned in the Lock and Seal and Demolition Notice dated 05.01.2018. Further, his stand is that there is no ongoing unauthorised construction as mentioned in

the notice. As such, the said notice is an illegal one and as against the relevant provisions of the Tamil Nadu Town and Country Planning Act, 1971. Moreover, the Respondents 2 to 4 are misled by his neighbours. The Petitioner also issued a reply dated 11.01.2018 stating that he is residing in the said premises for 15 years and had only re-built the house with higher basement due to water logging.

6.While this being the fact situation, the Petitioner received another De-occupation Notice dated 02.08.2018 issued by Respondents 2 to 4 stating that action has been taken under Section 56 sub-section 2(A) and 57 of the Tamil Nadu Town and Country Planning Act, 1971 to De-occupy the said premises within 15 days from the receipt of this notice. The 3rd Respondent had not considered his reply dated 11.01.2018.

7.Besides this, the Petitioner, as an aggrieved person, in respect of the action of Respondents 2 to 4, had preferred an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 seeking to quash the Notices dated 05.01.2018 and 02.08.2018 before the 5th Respondent/Government of Tamil Nadu, represented by its Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St George, Chennai and the said Appeal is pending as on date.

8.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner has also sought an interim stay of the operation of the impugned Lock and Seal and Demolition Notice dated 05.01.2018 and De-occupation Notice dated 02.08.2018.

9.It is not in dispute that as on date, the Appeal preferred by the Petitioner along with interim relief sought therein are pending consideration in the hands of the 5th Respondent. Both the Appeal and the interim relief sought in the said Appeal were projected by the Petitioner only on 05.09.2018 before the 5th Respondent. Within five days, the Petitioner has approached this Court by filing the present Writ Petition.

10.At this stage, it may not be out of place for this Court to make a significant mention that Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 deals with 'Application for Permission before the Appropriate Authority seeking to carryout any development on any land or building and the grant or refusal of the said permission by the concerned 'Planning Authority''. Apart from that, the G.O.(Ms)No.652, R.D. & L.A., dated 08.04.1975 pertains to the Rules framed as regards the 'Application for Planning Permission' under the Act, 1971.

11.Also, this Court aptly points out the decision in Madras Race Club represented by Mr.Aruna, Officer-In-Charge [Legal], Chennai V. Chennai Metropolitan Development Authority, represented by its Member Secretary, Chennai and Others reported in (2006) 4 M.L.J. 1 at special page 2 wherein it is observed and held as follows:

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

12.Besides the above, in the decision Chennai Metropolitan Development Authority, represented by its Member Secretary, Chennai V. Abdur Rehman, Hotel Nest International, Chennai and another reported in (2002) 2 M.L.J. 431 at special page 434 wherein at paragraph Nos.11 & 12, it is held 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."

13. Further, the notice specified in Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 is not an empty ritualistic formality. Indeed, 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.

14. It is to be noted that 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 Tamil Nadu Town and Country Planning Act, 1971, or any litigation pending before the Court of Law. Apart from the above, 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.

15. It is to be pointed out 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 in M/s. Sankranthi Hotels Private Limited V. The Government of Tamil Nadu, & Others reported in (2013) 5 Law Weekly 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.

16.As far as the present case is concerned, even though the Petitioner has filed an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the 5th Respondent and also sought relief under sub-section 80-A(3) of the Act seeking interim relief, in stricto sense of the term, the Appeal preferred by the Petitioner can only be construed as a Revision and this is quite evident from the special powers of the 5th Respondent as per Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Since the Appeal is pending before the 5th Respondent together with the interim relief, at this stage, this Court, without expressing any opinion on the merits/demerits of the Appeal, simpliciter, directs the 5th Respondent to take up the Appeal along with Interlocutory Application seeking interim relief preferred by the Petitioner, by providing adequate opportunity of hearing to him, after adhering to the Principles of Natural Justice. In any event, the 5th Respondent is directed to pass a reasoned speaking order on merits, within a period of six weeks from the date of receipt of copy of this order. It is open to the Petitioner to raise all factual and legal pleas before the 5th Respondent, who shall advert/deal with the same at the time of passing the final orders in the Appeal in question.

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

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Sgl

To

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2.The Executive Engineer,
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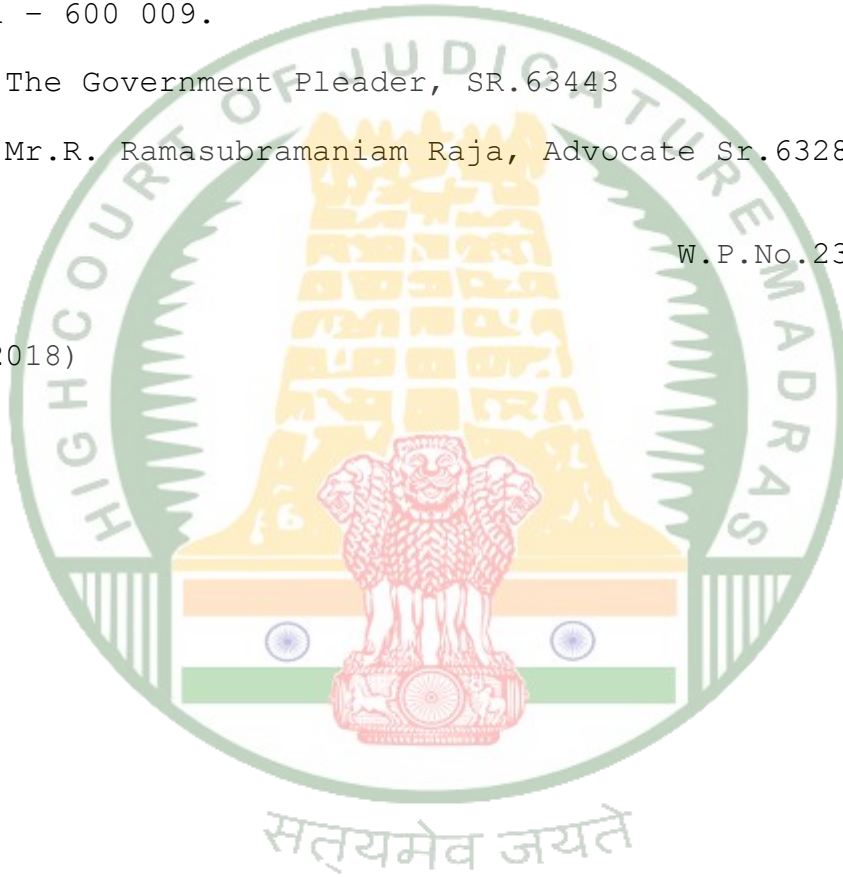
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- 5.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

+ 1 cc to The Government Pleader, SR.63443

+ 1 cc to Mr.R. Ramasubramaniam Raja, Advocate Sr.63287

W.P.No.23792 of 2018

(CS-V)
EU(28/09/2018)



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