

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.02.2018

Coram

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

W.P.No.26243 of 2017
and
W.M.P.Nos.27900 to 27902 of 2017

G.Vinodhya
represented by Power of Attorney
Mr.Chithambaranathan,
C-9A, Madhuras Apartments,
147, Mohanram Nagar,
Mogappair West,
Chennai - 600 037. .. Petitioner

Vs.

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Maaligai,
Gandhi Irvin Road, Egmore - 600 008.
- 2.The Minjur Panchayat Union,
Represented by The Commissioner,
Minjur, Ponneri Taluk, Tiruvallur District.
- 3.The District Revenue Officer,
Ponneri, Tiruvallur District.
- 4.The Executive Engineer,
TANGEDCO, Chennai North,
Tondiarpet Zone,
Chennai - 600 021.

5.D.Raja ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the Respondents 1 and 2 to stop, demolish and permanently remove the illegal, unsanctioned and unauthorised construction of Commercial Building being carried out by the 4th Respondent at Athippattu Panchayat, Survey Nos.308/2, 308/2b, 308/2c, 305/7b and 305/7c Minjur Panchayat Union, Ponneri Taluk, Tiruvallur District within a time frame to be fixed by this Court.

For Petitioner : Mrs.Poornima Madhuras
For M/s.D.Geetha

For 1st Respondent : Mr.C.Johnson
For 2nd Respondent : Mr.S.Jaganathan
For Mrs.E.Raniselvam
For 3rd Respondent : Mrs.M.Lalitha
Government Advocate
For 4th Respondent : Mr.P.R.Dhilipkumar
For 5th Respondent : Mr.K.Sathyabal

O R D E R

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

The petitioner has come forward with this writ petition praying to direct the Respondents 1 and 2 to stop, demolish and permanently remove the illegal, unsanctioned and unauthorised construction of Commercial Building being carried out by the 5th Respondent at Athippattu Panchayat, Survey Nos.308/2, 308/2b, 308/2c, 305/7b and 305/7c Minjur Panchayat Union, Ponneri Taluk, Tiruvallur District.

2.When the matter is taken up for hearing, it is submitted by the learned counsel for the 5th respondent that the entire structure which is alleged to have been illegal, has been removed and even after removal of the so-called illegal construction, the authorities have kept the building under lock and seal and that the illegality cannot be perpetuated.

3.The learned counsel appearing for the petitioner submitted that as there is no building plan and that the building has been constructed without a Plan, it has been brought to the attention of the authorities by the petitioner, for which, action has been initiated and lock and seal has been issued.

4.Though the learned counsel for the 5th respondent has vehemently contended by referring to Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 and stated once an application is filed under Section 49, there is automatic stay of further proceedings in terms of Sections 56(3) or 56(4), this Court is of the view that even according to the 5th respondent, the violated portions have been removed and that he has made an application before the authorities that is on 4th December, 2017, which is still pending. Hence, there is no need to give a finding on this argument.

5.This Court, by an order dated 09.01.2018 in W.P.No.14520 of 2017, has issued guidelines with regard to issuance of Building Completion Certificate and the same are extracted hereunder:

(i) After getting the approved Plan,
once the basement of the building is
constructed, the applicant shall approach

the authorities concerned seeking to inspect the site before further progress, to ensure that there is no encroachment on the road and that there is proper setback on all sides, in accordance with the Plan. The authorities concerned shall inspect the site within 15 days from the date of such application and point out the defects, if any;

(ii) Once the structure of the building is completed as per the Plan, the applicant shall apply for Completion Certificate, be it to the Corporation/CMDA/Municipality/Local Authority etc., and the authorities concerned shall inspect the building as to whether it is constructed as per the sanctioned Plan, within a period of 15 days from the date of receipt of application;

(iii) If any violations are pointed out by the said authorities, the applicant shall rectify the defects and send the Compliance Report to the authorities, who, on receipt of the same, shall again inspect the building and issue Completion Certificate to the applicant, if the building is in accordance with the sanctioned Plan. Such exercise shall be completed within a period of 15 days from the date of receipt of the Compliance Report from the applicant;

(iv) After obtaining Completion Certificate, if any construction is made in violation of the Approved Plan, such violated construction shall not be regularized at all;

(v) Thereafter, it is open to the applicant to apply for Electricity service connection/ Water and Sewerage connection to the authorities concerned. The authorities of Tamil Nadu Electricity Board/Tamil Nadu Water and Sewerage Board shall effect the respective service connection to the applicant, only on receipt of a copy of the Building Completion Certificate issued by the Corporation/Municipality/local authority concerned;

(vi) The Officials concerned shall visit the site at every stage of completion of the building as may be identified or intimated to the authorities and that the second floor and floors above, shall be inspected at the stage of completion by CMDA/Corporation/local authority under whose

jurisdiction, it falls, to avoid construction of buildings with violations;

(vii) The conditions applicable to multi-storied and special buildings shall also be equally applicable to the buildings that are constructed as per the Plan sanctioned by the Corporation/CMDA/Municipality/local authority;

(viii) The authority, who issues Completion Certificate to the applicant, shall furnish a copy of his Aadhar Card/Government Identity Card/ Employment Card/PAN Card/ Passport, if any, with the Completion Certificate, so that he cannot escape from the clutches of law, in case, if he had issued Completion Certificate to a building constructed in violation of the sanctioned Plan;

(ix) If there is any complaint from the applicant with regard to the non-issuance of Completion Certificate on the ground that officials have demanded bribe, such complaint will have to be investigated and in case, it is established by means of an enquiry, major penalty under various provisions of law/Service Regulations, shall be imposed on the officials demanding bribe and the same shall be entered into their service records.

(x) Details of the authorities, who sanction the Building Plan/inspects the Building/issues Completion Certificate, need to be uploaded in the internet together with their Employment Card, so that the applicant can have access to the same and in case of violation of the building Plan, the officials can be brought to book."

6. Since the matter is pending before the authorities for scrutinising the application, the authorities are expected to process the application and consider grant of approval within 15 days from the date of receipt of a copy of this order, if the application is in order. If there are any defects, it can be pointed to the 5th respondent within the time stipulated supra and it is open to the 5th respondent to rectify the defects and submit the application in the corrected format within 15 days thereafter.

7. In view of the submission of the 5th respondent, the application is stated to be pending before the authority, if it is not returned by the authorities, the authorities are expected to scrutinise the same and complete the process within the time stipulated supra. Therefore, no further

adjudication is required in the writ petition. If the parties are aggrieved, it is open to them to question the same in accordance with law. For the purpose of removing the belongings of the 5th respondent, it is open to the authorities to open the lock and seal temporarily. After planning permission is obtained, the lock and seal can be removed permanently. But, however, the permanent electricity connection shall not be granted, if the building is not constructed in accordance with the Plan and also as observed by us in the extract mentioned supra.

8. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Maaligai,
Gandhi Irvin Road, Egmore - 600 008.
2. The Minjur Panchayat Union,
Represented by The Commissioner,
Minjur, Ponneri Taluk, Tiruvallur District.
3. The District Revenue Officer,
Ponneri, Tiruvallur District.
4. The Executive Engineer,
TANGEDCO, Chennai North,
Tondiarpet Zone,
Chennai - 600 021.

+1cc to Government Pleader Sr.No.13244
+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.No.13152
+1cc to Mr.C.Johnson, Advocate Sr.No.12902
+1cc to Mrs.D.Geetha, Advocate Sr.No.12740
+2cc to Mr.K.Sathyabal, Advocate Sr.No.12894

GMR(CO)

sm:23.3.2018

W.P.No.26243 of 2017