

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

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

W.P.No.2707 of 2018
and
W.M.P.No.3352 of 2018

Mr.E.Sasikumar

.. Petitioner

Vs.

1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
3. The Assistant Engineer,
TNEB/TANGEDCO,
Mint Street,
Chennai-600 079.

(Third respondent suo-motu impleaded as per
the order passed today in this writ petition)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Certiorari Mandamus to call for the records in Notice
bearing No.EC/EA/N-1/9283/2015, dated 22.01.2018 issued by the
second respondent and quash the same and consequently direct the
first respondent to act upon the appeal and stay filed by the
petitioner in respect of the petition mentioned property situate
at New No.443, 445, Old No.215, 216, Mint Street, Chennai-600
079 within a stipulated period.

For petitioner: Mr.AL.Somayagji,
Senior Counsel for M/s.D.S.Ramesh
For respondents: Mr.R.Udayakumar, Addl.G.P. for R-1
Mr.C.Johnson for R-2
Mr.S.K.Rameshwar for R-3

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records in Notice bearing No.EC/EA/N-1/9283/2015, dated 22.01.2008 issued by the second respondent and quash the same and consequently direct the first respondent to act upon the appeal and stay filed by the petitioner in respect of the petition mentioned property situate at New Nos.443, 445, Old Nos.215, 216, Mint Street, Chennai-600 079 within a stipulated period.

2. Heard the learned Senior Counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the second respondent and perused the materials available on record. No counter is filed by the respondents. By consent of the learned counsel appearing for the parties, the main Writ Petition itself is taken up for final disposal.

3. According to the petitioner, he and his wife are joint owners of the property situated at New Nos.443, 445, Old Nos.215, 216, Mint Street, Chennai-600 079. Patta was also issued in their names. The petitioner and his wife constructed building in the year 2013, after getting planning permission and approval for stilt, first and second floors and subsequently they have also constructed the other floors. They have also paid property tax to the Corporation of Chennai and also obtained electricity connection for the building.

4. It comes to be known that the second respondent/CMDA issued notice dated 08.06.2015 to the petitioner calling for approved plan and directed to stop the construction work immediately as though the construction work is going on, and the construction was completed even in the year 2013 itself. Also, on 12.06.2015, the petitioner handed over the approved plan to the second respondent.

5. It transpires that the second respondent/CMDA issued further notice under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act (as amended) for locking and sealing and demolition notice, by letter dated 30.09.2015, for which, the petitioner submitted the approved plan and also sought for regularisation of the building. The petitioner, by letter dated 04.11.2017, requested the second respondent to consider the petitioner's plan approval application in respect of the building. As against the said

locking and sealing and demolition notice, the petitioner requested the first respondent also by letter dated 08.11.2017, which was treated as an appeal by the first respondent, and a letter with regard to the same was also given by the petitioner to the second respondent on 09.11.2017. Further, on 16.11.2017, the petitioner gave a letter to the second respondent, stating that since the appeal is pending before the first respondent, he requested the second respondent not to proceed with further action until the said appeal is disposed of by the first respondent. As directed by the first respondent, the petitioner filed the appeal in proper format on 04.01.2018 along with stay petition before the first respondent, on which, no order was passed by the first respondent.

6. The main grievance of the petitioner is that the appeal is pending before the first respondent and irrespective of the same, the second respondent has issued a de-occupation notice dated 17.01.2018, signed on 22.01.2018, which was received by the petitioner on 27.01.2018 and in the said notice, the second respondent directed the petitioner to discontinue the occupied portion of the premises within 7 days from the date of receipt of the notice to enable them to carry out the locking and sealing of the premises. According to the petitioner, the impugned de-occupation notice is illegal and contrary to the well settled principles of natural justice.

7. Learned Senior Counsel appearing for the petitioner contends that the second respondent-CMDA has totally ignored the fact that the appeal is pending before the first respondent and in fact, the second respondent had mechanically issued the 'stop work notice' earlier on 08.06.2015 as though the work was being carried on at that time, when the fact of the matter is that the construction was completed as early as in 2013 itself. The property itself was assessed to property tax in the year 2013 itself.

8. Lastly, it is the submission of the learned Senior Counsel that the impugned notice dated 17.01.2018, signed on 22.01.2018, issued by the second respondent for locking, sealing and demolition, deserves to be set aside by exercise of special powers available with the Government under Section 80-A of the Tamil Nadu Town and Country Planning Act.

9. Apart from the above, a plea is taken on behalf of the petitioner that the second respondent ought not to have issued the impugned notice, since the building itself was constructed as early as in the year 2013 itself. It is also brought to the

notice of this Court that the said appeal preferred by the petitioner, is admittedly pending before the first respondent.

10. It is not in dispute that the petitioner's appeal is pending before the first respondent, along with the stay petition. The stand of the petitioner is that during the pendency of the appeal filed along with stay petition, the second respondent/CMDA has issued the impugned de-occupation notice dated 17.01.2018, signed on 22.01.2018, which is against law.

11. This Court, taking note of the primordial fact that the appeal filed by the petitioner is pending together with stay petition, this Court, in the interest of justice, fair play, equity and good conscience and as a matter of prudence, directs the first respondent to take up the appeal filed by the petitioner and dispose of the same along with stay petition, within a period of four months from the date of receipt of a copy of this order, apart from following the procedures laid down under law and after hearing the parties, including the petitioner and the complainant, if any. The petitioner is directed to vacate from the fourth and fifth floors of the premises in question, within a period of three weeks from the date of receipt of a copy of this order. It is open for the petitioner herein to raise all the factual and legal pleas before the first respondent at the time of disposal of the said appeal. The first respondent thereafter shall pass reasoned and speaking order, after adhering to the principles of natural justice and after hearing all the concerned parties, as directed supra.

12. At this stage, in order to disconnect the electricity supply, this Court suo-motu impleads the Assistant Engineer of the TNEB/TANGEDCO, Mint Street Chennai-600 079, as third respondent, for whom, Mr.S.K.Rameshwar, learned counsel takes notice. This Court directs the impleaded third respondent to disconnect the electricity supply with regard to the violated portions in respect of the premises in question, till the appeal is disposed of finally. It is made clear that the set-backs cannot be regularised in any event.

13. Further, this Court directs that till the disposal of the appeal filed by the petitioner before the first respondent, the violated portions in question need not be demolished and it shall also not be put to use. However, as directed above, the electricity supply shall be disconnected. Furthermore, the petitioner shall not create any third party right in respect of the property in question.

14. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development,
Fort St.George, Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
3. The Assistant Engineer,
TNEB/TANGEDCO,
Mint Street, Chennai-600 079.

+ 1 cc to Government Pleader Sr.9768
+ 1 cc to Mr.D.S. Ramesh, Advocate Sr.9238
+ 1 cc to Mr.C. Johnson, Advocate sR.9466

SSV(CO)
EU(15/02/2018)

W.P.No.2707 of 2018

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