

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

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

W.P.No.17945 of 2017

K.Munirathinam

... Petitioner

vs.

1. The Director,
Municipal Administration,
Ezhilagam, Chepauk,
Chennai 600 005.
2. The Commissioner,
Arakkonam Municipality,
No.110, Gandhi Road,
Arakkonam, Vellore District.
3. The Town Planning Officer,
Municipal Office,
Arakkonam, Vellore District.
4. Sukanya

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a mandamus directing the 2nd and 3rd respondents herein to take suitable action against the unauthorized construction of property comprised in Survey No.208/10, Block No.12, T.S.No.77, Door No.29/15, situated at Tahsildar Street, Stuartpet, Arakkonam Town, Vellore District belonging to the 4th respondent herein.

For Petitioner	:	Mr.R.Ramesh
For Respondents 1 & 3	:	Mr.A.N.Thambidurai, Special Government Pleader
For 2 nd Respondent	:	Mr.S.S.Swaminathan
For 4 th Respondent	:	Mr.R.Karthikeyan

O R D E R

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

The Petitioner has come up with this Writ Petition seeking a direction to the 2nd and 3rd respondents herein to take suitable action against the unauthorized construction of property comprised in Survey No.208/10, Block No.12, T.S.No.77, Door No.29/15, situated at Tahsildar Street, Stuartpet, Arakkonam Town, Vellore District belonging to the 4th respondent herein.

2. The case of the Petitioner is that the 4th Respondent has constructed a building in the premises in question, in violation of the Rules. According to him, the 4th Respondent obtained permission only for ground floor. But, she has constructed upto six floors apart from ground floor, without any prior permission and without proper set back. Despite making representations to the official respondents herein to take suitable action against the 4th Respondent, since no proper response is evoked, the Petitioner, having no other efficacious alternative remedy, has approached this Court.

3. While so, it is the case of the contesting 4th Respondent that there is a dispute between her and the Petitioner and that the Petitioner is causing unnecessary trouble to her. It is her further case that the 2nd Respondent/Commissioner, Arakkonam Municipality had already issued stop work notice to her and also called upon her to demolish the building and the Petitioner has also issued a letter requesting the 2nd Respondent to stop demolition of the building, pending obtaining 'No Objection Certificate' from the Naval Air Station Authorities.

4. The 2nd Respondent has filed counter stating that Planning Permission in respect of the premises in question has been granted to the 4th Respondent vide Proceedings bearing BL No.68/2016, dated 18.08.2016 only for construction of Ground Floor, but, on inspection it was found that the 4th Respondent has constructed 1st Floor, 2nd Floor, 3rd Floor and 4th Floor unauthorizedly, without any permission. As sanction has been accorded only to Ground Floor, the 2nd Respondent issued necessary notice to the 4th Respondent under Sections 205(1), 216 (1) and 317 of the Tamil Nadu District Municipalities Act, 1920, calling upon her to submit her explanation in writing within three days from the date of receipt of the said notice. The 4th Respondent submitted her explanation in writing on 01.02.2017 to the 2nd Respondent along with necessary documents. She also undertook to produce the No Objection Certificate from Air Force Station, Arakkonam and also sought permission for the

entire building on payment of necessary charges. In the meantime, the Petitioner has approached this Court with the above prayer.

5. For better appreciation, paragraph 7 of the counter affidavit filed by the 2nd Respondent, is extracted hereunder:

"7. ...

The 4th Respondent submitted her explanation in writing on 01.02.2017 to the 2nd Respondent enclosing the application and other documents submitted to the Air Force Station, Arakkonam for obtaining the NOC for construction of building at property comprised in Survey No.208/10, Block No.12, TS No.77, premises bearing Door No.29/15, Tahsildar Street, Stuartpet, Arakkonam. The 4th Respondent undertook to produce the NOC Certificate from Air Force Station, Arakkonam and also to seek permission for the entire building on payment of necessary charges."

6. A reading of paragraph 7 of the counter affidavit of the 2nd Respondent, makes it clear that the 4th Respondent has put up construction in the premises in question, in violation of the sanctioned Plan and has even sought permission for the entire building, on payment of necessary charges. Since Naval Air Station is situated close to the premises in question and that the building in question is in contravention of the sanctioned Plan, this Court cannot be a party to the illegality committed by the 4th Respondent.

7. With regard to set back, the First Bench of this Court, in W.P.No.18777 of 2014, by an order dated 08.11.2016, has held as under:

"8. ... We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

8. It is pertinent to note that the First Bench of this Court in Contempt Petition No.1769 of 2015 and Contempt Petition

No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

''4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available.''

9. In the case on hand, the undertaking given by the 4th Respondent that she will get appropriate NOC from the authorities concerned are self-serving statements and we are not inclined to accept the same. Since the 4th Respondent has constructed the building in violation of the sanctioned Plan, the building has to be necessarily razed to the ground.

10. Thus, we find much force in the contentions of the Petitioner and in view of the fact that there is an unauthorized construction, it cannot be allowed to be utilized by the 4th Respondent. Hence, the 4th Respondent is directed to demolish

the unauthorized construction in the premises in question within a period of thirty days from the date of receipt of a copy of this order, failing which, the Authorities concerned shall demolish the building immediately thereafter within a period of thirty days. In case of demolition by the Authorities concerned, they shall collect the Demolition Fee from the 4th Respondent.

The Writ Petition is allowed with the above directions and observations. No costs. Consequently, connected W.M.P.No.19471 of 2017 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Director,
Municipal Administration,
Ezhilagam, Chempauk,
Chennai 600 005.
2. The Commissioner,
Arakkonam Municipality,
No.110, Gandhi Road,
Arakkonam, Vellore District.
3. The Town Planning Officer,
Municipal Office,
Arakkonam, Vellore District.

+1cc to Mr.R.Karthikeyan, Advocate S.R.No.875
+1cc to Government Pleader, S.R.No.911
+1cc to Mr.R.Ramesh, S.R.No.1114

Order in
W.P.No.17945 of 2017

ak(CO)
MRR(03/02/2018)