

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN  
and  
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.13679 of 2018  
and WMP.No.16132 of 2018

K.Shanthi

...Petitioner

Vs.

- 1.The Government of Tamilnadu,  
rep.by its Secretary,  
Housing and Urban Development Department,  
Fort St.George, Chennai - 600 009.
- 2.The Commissioner,  
Corporation of Chennai,  
Rippon Buildings,  
Chennai - 600 003.
- 3.The Chairman,  
Tamilnadu Slum Clearance Board,  
Chennai - 600 005.
- 4.The Executive Engineer,  
Zone-9, Corporation of Chennai,  
No.1, Lake Area, 2<sup>nd</sup> Street,  
Nungambakkam,  
Chennai - 600 034.
- 5.The Assistant Engineer,  
Tamilnadu Electricity Board,  
(TANGEDCO)Electricity Distribution,  
Circle South, T.P.Chatriram,  
Chennai - 600 024.

...Respondents

PRAYER: Writ petition filed under Article 226 of the  
Constitution of India praying for issuance of Writ of  
Certiorarified Mandamus, calling for the records of the

Executive Engineer Zone-9, Corporation of Chennai No.1, Lake Area 2<sup>nd</sup> Street, Nungambakkam, Chennai - 600 034 the 4<sup>th</sup> respondent herein culminating in notice No.Z.O.C.No.04908/2018 dated 07.05.2018 and quash the same and further direct the respondents not to take any Coercive steps to demolish the construction put up in the Plot No.337 and adjoining area of 36 sq.mt.on the Northern Side of the Children Nutrition Centre, Door No.196, East Namachivayapuram, Choolaimedu, Chennai - 600 094.

For Petitioner : Mr.K.Balakrishnan

For Respondents : Mr.A.N.Thambidurai, Spl GP for R1  
Mr.A.Nagarajan for R2 & R4  
Mr.S.Prabhu for R3

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1<sup>st</sup> respondent, Mr.A.Nagarajan, learned Standing Counsel accepts notice on behalf of respondents 2 and 4, Mr.S.Prabhu, learned counsel accepts notice on behalf of the 4<sup>th</sup> respondent and Mr.S.K.Raameshwar, learned Standing Counsel accepts notice on behalf of the 5<sup>th</sup> respondent.

2. The petitioner would submit that land bearing Plot no.337, admeasuring to an extent of 450 sq.ft at No.196, East Namachivayapuram, Choolaimedu, Chennai-600 094 was allotted to the husband of the petitioner viz., Karmegam in the year 1984 and vide proceedings dated 12.05.1994, the 3<sup>rd</sup> respondent has also called upon the husband of the petitioner to pay service charges and it was also paid and thereafter, the land was measured and subsequently, superstructure was put up in the year 1995 and it was also subjected to statutory levies. However to the shock and surprise of the petitioner, the 4<sup>th</sup> respondent has issued a Lock and Seal notice on 24.11.2011 and subsequently, Demolition notice dated 28.01.2017 was issued. The petitioner challenging the same has filed Special Revision / Appeal under Section 80-A of the Town and Country Planning Act, 1971 before the 1<sup>st</sup> respondent on 23.02.2017 and the same is pending. However, the 4<sup>th</sup> respondent, without taking note of the pendency of the appeal, has once again issued the impugned De-occupation, Lock and Seal notice dated 07.05.2018 under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971. Challenging the said notice, the petitioner has come forward with this writ petition.

3. Mr.K.Balakrishnan, learned counsel appearing for the petitioner would submit that Section 57 of the Tamil Nadu Town and Country Planning Act, 1971 cannot be invoked for the reason that it would applies for undergoing construction and admittedly superstructure had been put up very long back and it is also subjected to statutory levies and therefore, the Corporation of Chennai cannot take a stand that the superstructure is unauthorised and also would further urge that the plinth area of the superstructure is minimal in nature and the petitioner belonging to lower economic group and he is in occupation of the same for over thirty years and would further add that since the statutory special revision / appeal is pending for nearly one year, appropriate direction can be issued to the 1<sup>st</sup> respondent to dispose of the same and till such time, further proceedings may be deferred in respect of the impugned de-occupation notice.

4. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1<sup>st</sup> respondent would submit that though the statutory revision/special appeal has been filed, no petition for stay has been filed and the said appeal/special revision would be given disposal in accordance with law at the earliest.

5. The learned Standing counsel appearing for the Corporation of Chennai would submit that since the unauthorised superstructure has been put up, action has been taken by following due process of law and it cannot be faulted with and would further submit that the Tamil Nadu Slum Clearance Board has nothing to do with the unauthorised construction and it is for the concerned official to take appropriate action in accordance with law. The learned Standing Counsel appearing for the 5<sup>th</sup> respondent would submit that in the event of any order of interim direction being passed, the 5<sup>th</sup> respondent would obey and comply with the said order.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. It is not in dispute that the statutory special revision / appeal is pending on the file of the 1<sup>st</sup> respondent and taking note of the same, this Court, without going into the merits of the claim projected by the petitioner and the said special revision / appeal, directs the 1<sup>st</sup> respondent to entertain the said appeal, if the papers are otherwise in order and thereafter dispose of the said appeal / special revision on merits and in accordance with law within a period of six weeks from the date of receipt of copy of this order and till such time, the 4<sup>th</sup> respondent shall defer further decision in terms of the impugned de-occupation notice dated 07.05.2018. It is also made clear that till the disposal of the special revision / appeal, the petitioner shall not create any third party rights

in respect of the superstructure in question and shall not alter the physical features also.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sk

To

- 1.The Secretary,  
Housing and Urban Development Department,  
Fort St.George, Chennai - 600 009.
- 2.The Commissioner,  
Corporation of Chennai,  
Rippon Buildings,  
Chennai - 600 003.
- 3.The Chairman,  
Tamilnadu Slum Clearance Board,  
Chennai - 600 005.
- 4.The Executive Engineer,  
Zone-9, Corporation of Chennai,  
No.1, Lake Area, 2<sup>nd</sup> Street,  
Nungambakkam,  
Chennai - 600 034.
- 5.The Assistant Engineer,  
Tamilnadu Electricity Board,  
(TANGEDCO)Electricity Distribution,  
Circle South, T.P.Chatriram,  
Chennai - 600 024.

+1cc to Mr.K.Balakrishnan, Advocate sr.no.35716  
+1cc to Mr.S.Prabhu, Advocate sr.no.35415  
+1cc to Government Pleader in sr.no.36064

WP.No.13679 of 2018

nr 20/06/2018