

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM:

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

W.P.No.19676 of 2017
and
W.M.P.No.21232 of 2017

C.Dhanasekaran ... Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.
2. The Zonal Officer,
Zone VII, Corporation of Chennai Division,
Ambattur, Chennai-600 053.
3. M.Justin Rajan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 herein to consider the representations of the petitioner, dated 19.05.2017 and 17.07.2017 and take further proceedings pursuant to the notice of the second respondent issued in notice No.VII/Division 91/140/2017, dated 20.05.2017 by taking action against the unauthorised construction put up by the third respondent in the plot bearing No.32 in AIBEA Nagar, comprised in Old Survey No.603 Part, New Survey No.603/1A11 of Mogappair Village, Ambattur Taluk, Thiruvallur District.

For petitioner : Mr.V.Devendhiran

For respondents: Mr.R.Arun Mozhi for RR-1 and 2
Mr.M.Stalin for R-3

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with this Writ Petition

praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 herein to consider the representations of the petitioner, dated 19.05.2017 and 17.07.2017 and take further proceedings pursuant to the notice of the second respondent issued in Zone-7/Division-91/140/2017, dated 20.05.2017 by taking action against the unauthorised construction put up by the third respondent in the plot bearing No.32 in AIBEA Nagar, comprised in Old Survey No.603 Part, New Survey No.603/1A11 of Mogappair Village, Ambattur Taluk, Thiruvallur District.

2. According to the petitioner, the third respondent has put up unauthorised construction in the property in question and that necessary action needs to be taken pursuant to the representations, dated 19.05.2017 and 17.07.2017.

3. Learned counsel for the third respondent submitted that the case of the writ petitioner before the Civil Court in O.S.No.346 of 2012 was that the third respondent has encroached upon the petitioner's plot and started construction. The said civil suit was decreed ex-parte on 23.11.2014. The person who is aggrieved by the judgment and decree in a suit, has got a right of appeal before the lower appellate Court/first appellate Court for getting the ex-parte decree set aside or by filing petition to set aside the ex-parte decree before the trial Court itself. We are not clear to give an opinion on that issue, which has already been concluded before the Civil Court.

4. As far as the issue on hand is concerned, the third respondent has obtained planning permission, as could be seen from page 19 of the typed set of papers filed by the third respondent, which has been duly sanctioned by the Commissioner of Ambattur Municipality. According to the learned counsel for the third respondent, the building has been constructed in accordance with the plan. Since the writ petitioner has got a grudge over the construction made by the third respondent, a false complaint has been given against the third respondent by the petitioner.

5. Learned counsel for the respondents 1 and 2/Corporation of Chennai submitted that, by notice calling for approved plan, dated 20.05.2017, the third respondent was asked to produce a copy of the approved plan in original and photocopy for verification, pursuant to the complaint given by the petitioner. No plan was produced, and hence, "locking and sealing and demolition notice" dated 31.07.2017 was issued by the second respondent in terms of the provisions of the Tamil Nadu Town and Country Planning Act and that there is unauthorised construction

to an extent of 139.29 Sq.M. in the ground floor of the building. It is also stated by the learned counsel for the first and second respondents/Corporation of Chennai that the third respondent has preferred appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, dated 17.08.2017 and the same is pending before the appellate authority.

6. In reply, learned counsel for the petitioner submitted that the matter has been heard in detail and orders have been reserved in the said appeal.

7. Heard both sides and perused the materials available on record.

8. From the said appeal, dated 17.08.2017 filed by the third respondent, it is seen that the third respondent has stated that there is deviation in the construction and that the third respondent has sought for regularisation. As stated supra, we are not inclined to go into the issue that has already been concluded by the civil Court. As far as the issue on hand is concerned, as the appeal is pending and orders have been reserved in the appeal, we make it clear that the authority cannot and shall not regularise the set-back(s), and the Apex Court, in a catena of decisions, held that the Open Space Reserve (OSR) area and set back(s) are lung space. We have also recently held in many cases that the set backs cannot be regularised. Since the appeal is pending and orders are yet to be passed, the appellate authority, this Court, without rendering any finding on the merits of the writ petition, except to the extent that no regularisation has got to be done in respect of the set backs in respect of the plan granted by the authority under Section 80-A or under any of the provisions of the Act 1971 / Rules or any scheme, finds that the plea taken by the writ petitioner insofar as the relief sought for in this writ petition with regard to unauthorised construction, is acceptable. Litigants are trying to mislead the Court by stating that the area is meant for row house/contiguous one, when it is not so. If such a false statement is established, no regularisation of any sort is permissible and the building has to be razed to the ground, as the Apex Court has held that the person approaching the Court with unclean hands, are not entitled to relief.

9. At this stage, learned counsel for the third respondent submitted that even the petitioner has also constructed building in violation of the approved plan. If that is the case, it is needless to state that the authority concerned shall take immediate steps against the writ petitioner, who cannot have the benefit of illegality.

10. The Writ Petition is disposed of with the above observations and direction. No costs. Consequently, W.M.P. is closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.
2. The Zonal Officer,
Zone VII, Corporation of Chennai Division,
Ambattur, Chennai-600 053.

- 1 CC to Mr. Mr.V.Devendhiran Advocate SR.NO.1064
1 CC to Mr. M.STALIN Advocate SR.NO.694
1 CC to Mr. R.ARUNMOZHI Advocate SR.NO.711

WP.NO.19676 OF 2017

VC (30/01/2018)

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