

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.14767 of 2018

and

W.M.P.Nos.17459 and 17460 of 2018

1.D.Rajappa
S/o.Duraisamy Naidu

2.R.Jayalakshmi
W/o.D.Rajappa

.... Petitioners

Vs

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai - 600 009.

2.The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi-Irwin Road,
Egmore, Chennai - 600 008.

4.The Executive Officer,
Naravarikuppam Town Panchayat,
Redhills, Chennai - 600 052.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from demolishing the premises of the petitioner at Survey No.86/100A 1B and 86/100A 1C, Naravarikuppam Village, GNT

Road, Red Hills, Chennai - 600 052, till the disposal of the petitioners' application dated 03.06.2018 and representation dated 06.06.2018 u/s.49 r/w section 56(3) of the Tamil Nadu Town & Country Planning Act, 1971, before the third respondent.

For Petitioners: Mr.K.Elangoo

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader
[R1, R2 & R4]
Ms.Veena Suresh, standing counsel [R3]

O R D E R

[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 for the respondents 1, 2 and 4 and Ms.Veena Suresh, learned standing counsel, accepts notice for the third respondent.

2. The present round of litigation is having a long and chequered history and a quite number of times, petitioners had approached this Court as well as the Honourable Supreme Court of India and successfully prevented the demolition of the offending superstructure which was used for commercial purposes.

3. The petitioners, in the affidavit filed in support of this writ petition, would aver among other things, that they are the lawful owners of the land and building at Survey No.86/2, Naravarikuppam Village, GNT Road, Red Hills, Chennai - 600 052, by virtue of sale deeds bearing document Nos.5074/1994 and 5132/1994 registered on the file of Sub-Registrar, Red Hills and they have also been issued patta Nos.486 and 487. The petitioners would further state that Survey No.86/2 was also divided as S.No.86/100 A1B and stands in the name of the first petitioner and the Survey No.86/100 A1C stands in the name of the second petitioner.

4. The petitioners, on an earlier occasion, had approached the third respondent (CMDA) seeking regularization of alleged unauthorised construction of commercial building and the benefit of G.O.Ms.No.121, Housing and Urban Development Department, dated 24.04.2002, was also sought. However, it was rejected on 16.03.2004 on the ground that the site was not commenced as on 13.08.2001 and as per Regularization Rule 3(1)(a), the application does not qualify for regularization.

5. The petitioners had approached the first respondent by filing an appeal u/s.113-A (6) of the Tamil Nadu Town and Country Planning Act, 1971 and the first respondent, vide communication dated 21.12.2004, has directed the third respondent to examine the request of the appellants as per the revised regularization scheme in G.O.Ms.No.121, Housing and Urban Development Department, dated 24.04.2002 and if found eligible, the proposal submitted by them may be examined as per the said Government Order.

6. Subsequently, the first respondent, vide G.O.(D) No.279 dated 02.06.2005, has rejected the appeal and challenging the legality of the same, petitioners had filed W.P.No.27623 of 2005 and a Division Bench of this Court having found that the order of rejection would disclose that construction itself was made after 31.03.2002, has concluded that the order of rejection correctly came to be passed and dismissed the writ petition, vide order dated 14.09.2006.

7. One B.Dhayalan has filed W.P.No.3248 of 2006 praying for issuance of a writ of mandamus directing the respondents 3 and 4 herein to demolish unauthorised construction put up by the petitioners, who were arrayed as respondents 4 and 5 therein and the Division Bench of this Court, vide order dated 22.09.2006, has taken note of the dismissal of W.P.No.27623 of 2005 and directed the respondents 2 and 3 therein to ensure demolition of the unauthorised construction put up by the petitioners herein. The petitioners herein filed Review Application No.63 of 2006 to review the said order and it was also dismissed on 05.01.2008. The petitioners challenging the legality of the original order dated 14.09.2006 in W.P.No.27623 of 2005 and the rejection of the review application, had filed SLP No.14415-14416 of 2008 and it was also dismissed under orders dated 02.03.2012. It is relevant to extract certain portions of the said order:

'In our considered view, the special leave petitions are wholly merit less and deserve to be dismissed because the finding recorded by the competent authority and the State Government that the petitioners had not completed the structural construction till 31.03.2002 is based on correct evaluation of the documents produced by the first authority. The very fact that the petitioners had made application on 31.10.2000 for regularisation of the building despite the fact that as on that date the construction had not even commenced shows that by taking advantage of the Rules framed by the State Government under Section 122(2) of the Act, they wanted to have an advance certificate for future illegal construction of the commercial building and we

have no hesitation to hold that the competent authority and the State Government did not commit any illegality by rejecting their application and the appeal and the High Court rightly declined their prayer for issue of a mandamus to the respondents to regularise the illegal construction of commercial building.

The special leave petitions are accordingly dismissed.

We hope and trust that in future the State Government will refrain from changing out off date specified in Rule 3 because that will only encourage those who make illegal/unauthorised constructions with the hope that in future they will succeed in persuading the Government to regularise the illegal construction. Such an exercise has the pernicious effect of destroying the concept of planned development of the urban area which is the primary object of the Act.'

8. Thereafter, the fourth respondent has issued a demolition notice calling upon the petitioners to demolish the unauthorised construction in Survey No.86/2, G.N.T.Road, Naravarikuppam Village and to restore the land to its condition before the said construction work took place, within seven days from the date of receipt of the notice and it is also followed by a locking, sealing and de-occupation notice dated 01.02.2013. The petitioners submitted an application seeking regularization under the Tamil Nadu Ordinance No.6/2012 promulgated by the Tamil Nadu Government on 16.07.2012 on the ground that their construction came into being prior to the cut off date i.e., on 01.07.2007 and therefore, prayed for regularization of the offending construction put up by them and also paid the necessary fees.

9. The petitioners also made a challenge to the notice dated 21.04.2016 issued by the fourth respondent by filing an appeal before the first respondent and it was received and acknowledged on 27.04.2016. In the mean while, B.Dhayalan, petitioner in W.P.No.3248 of 2006, has filed Cont.P.No.1893 of 2012 and it was taken along with W.P.No.3927 of 2013 filed by the petitioners and this Court, vide interim order dated 28.04.2016, has directed the petitioners to remove the chattels on making an application to the concerned authorities within a period of one week and the removal shall be done in the presence of authorities within a period of two weeks, if an application is made within the aforesaid period and thereafter, the consequential action of demolition of unauthorised construction, as prescribed under the provisions of law, shall follow.

10. The petitioners herein also filed one more writ petition in W.P.No.18157 of 2016 against respondents 1, 3, 4 herein and B.Dhayalan forbearing them from demolishing their commercial building namely, D.R.Super Market and Furniture, situated at Survey No.86/2, Naravarikuppam Village, G.N.T.Road, Red Hills, Chennai - 600 056 till pending disposal of the statutory appeal dated 27.04.2016 and vide final orders dated 19.05.2016, this Court had disposed of the writ petition directing the first respondent to pass orders in the stay petition filed along with the appeal on merits and in accordance with law, within a period of two weeks and dispose of the appeal within six weeks therefrom and petitioners are also at liberty to move an application to review the order passed in the contempt petition.

11. The petitioners filed W.P.No.19869 of 2016 against respondents 1, 3 and 4 and B.Dhayalan directing the respondents 1, 3 and 4 to remove the lock and seal put up by the petitioners and directing respondents not to take any coercive steps till the disposal of the statutory appeal and this Court, taking note of the pendency of the appeal, has directed that till the disposal of the appeal before the appellate authority is finally disposed of, the lock put up on the premises should be removed and the finality will be based on the outcome of the appeal. B.Dhayalan has filed S.L.P.No.17449 of 2016 challenging the said order and it was disposed of on 05.12.2016 and it is relevant to extract the same:

'Learned counsel for the rival parties agree that the impugned order is in the nature of interim direction sustainable till the disposal of the appeal filed before the Secretary to the Government, Housing and Urban Development Department. It is pointed out that the said appeal has been disposed of, inasmuch as, the same has since been dismissed on 28.04.2016. In view of the above, we are satisfied that instead special leave petition has been rendered infructuous, we accordingly direct that possession be restored as it existed prior to the passing of the impugned order dated 10.06.2016. Possession be restored today itself by 5 P.M. The special leave petitions are disposed of accordingly.'

12. The first respondent, vide communication dated 25.01.2017, also granted liberty to the petitioners to apply u/s.113(c) of the Tamil Nadu Town and Country Planning Act, 1917 and the private respondent in W.P.No.19869 of 2016 filed a contempt petition in Cont.P.No.1893 of 2012 alleging violation of the order dated 22.09.2006 passed in W.P.No.3248 of 2006 and the Division Bench of this Court, taking note of the fact that the fourth respondent herein had sealed the entire building on 05.12.2016 and also issued further notice in accordance with

law, granted three more weeks time and closed the contempt petition with liberty to revive, if the action is not completed.

13. Mr.B.Dhayalan has also sought clarification of the interim order dated 05.12.2016 passed in the S.L.P.No.17449 of 2016 and it was dismissed by the Hon'ble Supreme Court of India on 06.02.2017.

14. The fourth respondent had also issued a notice dated 24.02.2017, informing the petitioners that since the offending construction is going to be demolished, called upon them to pay a sum of Rs.12,11,000/- within 24 hours and remove the articles kept in the building. The petitioners have also filed W.P.No.5017 of 2017 challenging the notice of the fourth respondent herein dated 23.01.2017 and seeking a further direction to remove the lock and seal put up in the subject building and the Division Bench of this Court, taking note of the fact that the matter has reached finality before the Supreme Court and based on the direction issued by the Supreme Court, the building has been sealed and kept under lock, granted liberty to approach the Honourable Supreme Court seeking clarification or modification of the order already passed, if they are so advised.

15. The first respondent, vide G.O.(3D) No.133, Housing and Urban Development [UD-VII(1)] Department, dated 31.07.2017, has rejected the appeal filed by the petitioners and thereafter, the petitioners have submitted a representation dated 10.08.2017 to the third respondent praying for necessary action to de-seal the building so as to enable them to take further action to regularize the existing building as per the regularization scheme recently announced by the Government and also approached the Joint Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai - 600 009, vide representation dated 11.08.2017 to stay further proceedings since they are applying for regularization as per the Government Orders issued recently, as the building is in existence prior to July 2007 and followed by another representation dated 12.08.2017 submitted to the fourth respondent for regularization of the construction.

16. The fourth respondent, once again issued a notice dated 12.06.2017 informing the petitioners that since the commercial superstructure put up by the petitioners consists of ground and first floor, without obtaining planning permission and also in violation of the building rules, it will be demolished on 16.08.2017.

17. The petitioners have also made a challenge to the final order dated 09.03.2018 made in R.P.No.14 of 2018 as well as the order dated 03.01.2018 made in W.P.No.22058 of 2017 by filing S.L.P.No.6792-6793/2018 and it was dismissed on 16.03.2018 and it is relevant to extract the order:

'Heard the learned counsel appearing on behalf of the petitioners.

The Special Leave Petitions are dismissed.

Pending applications filed in the matter are also disposed of.

Learned counsel prays for some time to vacate the building.

We are not inclined to pass any order of extending time limit to vacate the Building.

However, the petitioners are at liberty to move the application before the concerned High Court for such relief.'

Thereafter, the petitioners filed W.M.P.No.10101 of 2018 in W.P.No.22058 of 2017, praying for time to demolish the subject building and also filed an additional affidavit dated 25.04.2018, seeking permission to take recourse u/s.56(3) of the Tamil Nadu Town and Country Planning Act, 1971. The Division Bench of this Court (Honourable Mr.Justice M.Venugopal and Honourable Mr.Justice S.Vaidyanathan), vide order dated 25.04.2018, has granted time till 10.06.2018 to comply with the directions of this Court passed in W.P.No.22058 of 2017, vide order dated 15.03.2018. The petitioners thereafter filed on-line PPA application on 03.06.2018 under Section 49 r/w Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971, praying for regularization of the construction and pending disposal of the said application, had submitted a representation dated 06.06.2018 to the third respondent to defer further action.

18. Mr.K.Elangoo, learned counsel appearing for the petitioners, has invited the attention of this Court to the various proceedings as well as various orders passed by this Court as well as the Honourable Supreme Court of India and would submit that as per the additional affidavit dated 25.04.2018, demolition of the front portion of the building has been carried out and due compliance has been effected as directed and in the light of the said compliance, till the disposal of the application filed u/s.49 r/w section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971, seeking for regularization of the construction, further proceedings shall be deferred.

19. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for respondents 1, 2 and 4, would submit that the petitioners so far were successful in preventing the demolition of the unauthorised superstructure and in the light of the observation made by this Court, vide order dated 25.04.2018 in W.P.No.10101 of 2018 in W.P.No.22058 of 2017, they are not entitled to any indulgence and further pointed out that the petitioners, knowing very well that an unauthorised construction exists in the form of superstructure used for commercial purposes, took the risk and proceeded with the construction and their endeavour to get the proceedings stayed has also ended in failure on very many occasions and further invited the attention of this Court to the order dated 16.03.2018 passed in S.L.P.Nos.6792-6793/2018, wherein the Honourable Supreme Court was not inclined to pass any order of extending time limit to vacate the building and granted liberty to move an application before the concerned High Court for such relief. Pursuant thereto, petitioners filed W.M.P.No.10101 of 2018 in W.P.No.22058 of 2017 seeking extension of time and this Court has also extended time till 10.06.2018 and the petitioners, in order to circumvent the order, have subsequently filed the application dated 03.06.2018 purported to be u/s.49 r/w section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971, to stay proceedings and prays for dismissal of this writ petition.

20. This Court has carefully considered the rival submissions.

21. This Court in the earlier paragraphs has narrated the sequence of events which led to the present litigation and every endeavour made by the petitioners to stop demolition of the unauthorised construction put up by them meant for commercial use, has been rejected and as rightly pointed out by the learned Special Government Pleader, the Honourable Supreme Court of India, vide order dated 16.03.2018 has expressly rejected the request made by the petitioners seeking extension of time to stay the demolition and in pursuant to the liberty granted, the petitioners have also approached this Court by filing W.M.P.No.10101 of 2018 in W.P.No.22058 of 2017 and vide order dated 25.04.2018, time was granted till 10.06.2018 and the petitioners under the guise of invoking Section 49 r/w section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971, once again wants to stay the proceedings.

22. It appears that the petitioners had taken advantage of the loopholes and going on instituting litigations to stay the demolition and the attempts made by them in that regard had ended in vain before this Court as well as before the Supreme Court. The petitioners, who have put up unauthorised commercial

structure, are very well aware of the consequence of putting up such construction and on their own risk and peril, proceeded with the same and also used the same for commercial purposes and it is not now open to them to say that till the disposal of the said application seeking regularisation of construction, further proceedings shall be stayed.

23. In the light of the above facts and circumstances, this Court is of the considered view that the petitioners are not entitled to any indulgence or equity and as such, the prayer sought for by the petitioners cannot be granted. If the petitioners are so advised, they are at liberty to invoke the provisions of the Right to Information Act to know about the status of application dated 03.06.2018 submitted to the third respondent.

In the result, the Writ Petition is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai - 600 009.
- 2.The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 3.The Executive Officer,
Naravarikuppam Town Panchayat,
Redhills, Chennai - 600 052.

+lcc to Mr.K.Elango, Advocate Sr.38205
+lcc to Government Pleader Sr.38700

W.P.No.14767 of 2018

srg 09/07/2017