

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM :

The Hon'ble Mr.JUSTICE M.SATHYANARAYANAN

AND

The Hon'ble Mr.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.14857 of 2018
and W.M.P.No.17581 of 2018

Sri Sambhavanath Jain Bhavan Trust,
Rep. by its Secretary, M.Vimalchand Jain. ... Petitioner

-vs-

- 1.The Secretary,
Govt. of Tamil Nadu,
Housing and Urban Development Dept.,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings, Chennai 600 003.
- 3.The Executive Engineer,
Zone-IV, Corporation of Chennai,
Perambur, Chennai 600 018. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to forbear the respondents 2 and 3 from initiating any coercive action of locking and sealing under the Tamil Nadu Town and Country Planning Act, with regard to the building put up at Plot No.122, 6th Cross Road, M.K.B.Nagar, Chennai 600 039, till the disposal of the appeal petition submitted by the petitioners dated 04.05.2018 under Section 80-A of the Town and Country Planning Act with the 1st respondent.

For Petitioner	:	Mr.Thomas T.Jacob
For Respondents	:	Mr.A.N.Thambidurai, Spl.G.P. for R-1
	:	Mr.K.Soundarrajan, Stng. Counsel for RR 2 and 3

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 on behalf of first respondent and Mr.K.Soundarrajan, learned counsel, accepts notice on behalf of respondents 2 and 3.

2.The petitioner claims to be the managing trustee of the petitioner Jain Trust and according to him, he purchased the property admeasuring to an extent of 4803 sq.ft. comprised in Survey Nos.755 Part and 757 part, Perambur Village, Perambur Taluk, vide registered sale deed bearing Document No.1698 of 2002 dated 23.05.2002 registered on the file of office of the Sub-Registrar, Purasawalkam. The petitioner would further state that he obtained planning permission vide No.PPA/WDCN04/05596/2014 dated 29.12.2015 and building permission vide No.PPA/WDCN04/05596/2014 dated 29.12.2015 and after obtaining due permission, started putting up a superstructure. It is also claimed by the petitioner that there are very many superstructures exist in the area, which are unauthorised or have deviations and however, to his shock and surprise, respondents 2 and 3 had issued locking and sealing and demolition notice dated 04.04.2018 to him and challenging the irregularity of the same, the petitioner-trust filed a special revision/appeal under Section 80-A of the Town and Country Planning Act, 1971, along with a petition for stay under Section 80-A (3) of the said Act.

3.Learned counsel for the petitioner would submit that despite the entertainment of the special revision/appeal along with the petition for stay, the third respondent has proceeded further to demolish and stop further construction. He points out that the deviations are minimal in nature and well within the condonable limits and till the disposal of the special revision/appeal, the second respondent may defer further proceedings and thus, prays for appropriate orders.

4.Learned Special Government Pleader appearing for the first respondent would submit that the special revision/appeal filed by the petitioner is still pending. The learned standing counsel appearing for respondents 2 and 3 would submit that the petitioner is very well aware of the fact that they have not put up the superstructure as per the sanction plan and having aware of the consequences of the deviations, has started putting up the deviated superstructure and therefore, action has been taken strictly in accordance with law.

5. In response to the said submissions, learned counsel appearing for the petitioner would submit that the superstructure is in completion stage and if demolition is carried out, the petitioner-trust will be put to irreparable loss and grave hardship.

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

7. It is relevant to extract the details of the deviations pointed out by the respondents in the impugned notice dated 04.04.2018.

S.No.	Description	As per plan	As per site	Deviated/ Unauthorised
1	Front Set back	1.50	1.25/1.38	Deviation in setback
2	Rear Set back	1.50	1.50	-
3	Side Set back 1	1.50	1.40/1.50	Deviation in setback
4	Side Set back 2	1.50	1.60	-
5	Stilt floor area	1) Two wheeler parking 19 Nos. (1.00x1.80) = 34.20 sqm. 2) Car Parking - 4 Nos. (2.50x5.00) = 50.00 sqm. 3) Generator room size (4.09x3.97), watchman room size (3.98 x 3.88) area 31.68 sqm 4) OTS size (5.77x1.75) area 10.10 sqm	In stilt floor OHT area 10.10 sqm is converted to parking usage	In stilt floor OHT area 10.10 sqm is converted to parking usage
6	First Floor	306.35 sqm	311.85 sqm	Floor deviation 5.50 sqm
7	Second Floor	306.35 sqm	311.85 sqm	Floor deviation 5.50 sqm

S.No.	Description	As per plan	As per site	Deviated/ Unauthorised
8	Terrace Floor	306.35	-	Work under progress
9	Balcony deviation in first floor and second floor	-	34.33 sqm	Balcony deviation in first and second floor

8.This Court, taking into considerations the above facts and circumstances and without going into the merits projected by the petitioner either in the special revision/appeal or in this writ petition, directs the first respondent to entertain the special revision/appeal along with the petition for stay if the papers are otherwise in order and shall take up the petition for stay at the first instance and give disposal in accordance with law within a period of six (6) weeks from the date of receipt of a copy of this order and till such time, the third respondent shall defer further decision in terms of the notice dated 04.04.2018. It is also made clear that the petitioner, till the disposal of the special revision/appeal by the first respondent, shall not complete the on-going construction, shall maintain status quo, as per the photographs submitted during the course of hearing of this writ petition and shall not create any third party rights in respect of the land and superstructure in question. The first respondent or the delegated official is also at liberty to take up the main special revision/ appeal and give disposal of the same in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order and communicate the same to the writ petitioner.

The writ petition stands disposed of accordingly. No costs. Consequently, W.M.P.No.17581 of 2018 is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Secretary,
Govt. of Tamil Nadu,
Housing and Urban Development Dept.,
Secretariat, Fort St. George,
Chennai 600 009.

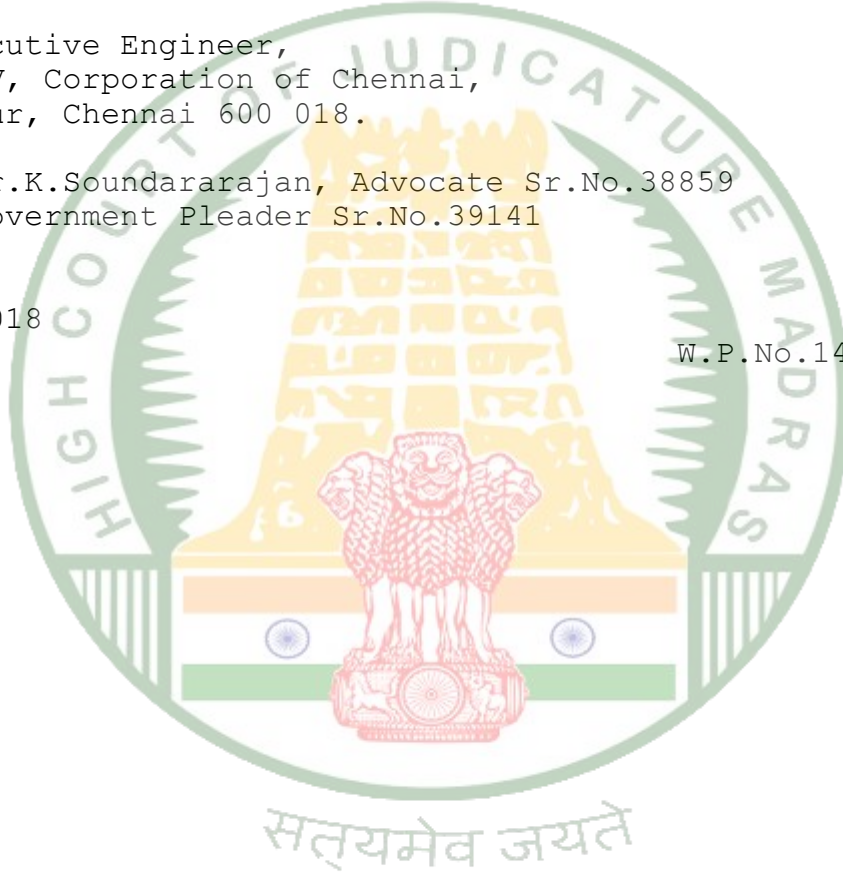
2.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai 600 003.

3.The Executive Engineer,
Zone-IV, Corporation of Chennai,
Perambur, Chennai 600 018.

+lcc to Mr.K.Soundararajan, Advocate Sr.No.38859
+lcc to Government Pleader Sr.No.39141

NMI (CO)
sm:28.6.2018

W.P.No.14857 of 2018



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