

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN, J  
&  
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN, J

W.P.No.15635 of 2018 and  
WMP.NOs.18569 and 18570 of 2018

1.Lalith Kumar Jain  
2.Shanthi Lal M Jain .... Petitioners

Vs.

1.The Commissioner  
Greater Chennai Corporation  
Rippon Building  
Chennai- 600 003  
2.The District Revenue Officer/  
The Zonal Officer  
Greater Chennai Corporation  
Zone-VI, No.5, Anderson Road  
Ayanavaram, Chennai-23  
3.The Executive Engineer  
Greater Chennai Corporation  
Zone VI, No.5, Anderson Road  
Ayanavaram, Chennai-23 ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2<sup>nd</sup> respondent notice in (Z.O.VI.C.No.3302 / 2018) dated 05.06.2018 and quash the same and consequently direct the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to demolish the unauthorized portion of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floor and to permit the petitioner to occupy the authorized portion at No.1, Chokkavel Subramaniyan Swamy Koil Street, Choolai, Chennai- 600 112.

For Petitioner : Mr.S.Santhan

For Respondents : Mr.R.Sountharajan  
Standing counsel

## O R D E R

(Order of the Court is made by M.Sathyannarayanan.J)

This writ petition was moved by way of lunch motion yesterday and thereafter, it was directed to be posted along with W.P.No.4683 of 2018. Accordingly, both the matters are listed today.

2.W.P.No.4683 of 2018 was filed by Mr.J.Tulsi Ram against Respondents 1 to 3 and against the petitioners herein, praying for issuance of a writ of mandamus directing the respondents 1 to 3 to consider the petitioner's representation dated 12.02.2018 and further directing the respondents to break open the seal of the petitioner's shop in Door No.1, Chokkavel Subramaniya Swami Koil Street, Choolai, Chennai- 600 112, for taking the stocks and raw materials from the shop.

3. This Court, taking into consideration, the plea made by the petitioner, who was a tenant of the said shop and after taking note of the counter affidavit of the second respondent, has directed the second respondent to remove the lock and seal of the shop in occupation of the petitioner for the purpose of removing the stocks on 12.04.2018 between 10.30 am and 5 pm, with a direction that the officers shall remain present to oversee the same and thereafter, the shop in question, shall be once again resealed and locked after the expiry of the time. This Court, also taken note of the fact that respondents 4 and 5, though, obtained planning permission to put up ground + two floors, have proceeded to put further construction and unauthorizedly put up three more floors, directed the second respondent to proceed further by demolishing the unauthorized / offending construction in accordance with law, subject to legal interdict, if any, within eight weeks from the date of receipt of a copy the order. The writ petition was disposed of on 06.04.2018 with the above directions.

4. In compliance of the said order, the second respondent has issued a notice dated 25.05.2018 to the petitioners herein pointing out the above said order dated 06.04.2018 passed in W.P.No.4683 of 2018 and called upon them to pay the building demolition charges of Rs.18,00,000/- (Rupees Eighteen Lakhs only) in favour of "The Commissioner, Greater Chennai Corporation", within 7 days from the receipt of the notice. The petitioners in response to the same, has submitted their reply dated 01.06.2018 stating that as soon as they get funds, they will do demolition and till such time, not to take any precipitative action. The second respondent once again issued notice dated 05.06.2018 reiterating the earlier stand taken by them in the earlier notice dated 25.05.2018. The petitioners,

making a challenge to the notice dated 05.06.2018, has filed this writ petition.

5. The learned counsel appearing for the petitioners would submit that the petitioners have filed an appeal before the House and Urban Development Department and pending appeal, the House and Urban Development Department vide G.O.NO.(3D) No.30 dated 06.02.2017, has directed the petitioners to submit demolition plan duly approved by the Structural Engineer to the Corporation for rectification of Ground Floor (Part)+ stilt floor (Part) + 5 floors at Old Door No.1/101, New No.124, Avathara Pappair Road, Choolai in R.S.No.2071/13, Block No.31, Purasaiwalkkam Village, Chennai and the Corporation of Chennai was directed to examine the same and if the demolition plan confirms to the Development Regulations, the petitioner shall be granted time of six months to rectify the building under reference, after obtaining an undertaking from the appellants that during the period of 6 months provided for rectification, the premises shall not be put for occupational purpose.

6. It appears that the petitioner did not carryout the rectification within the time stipulated by the said Department and therefore, the second respondent has issued a notice dated 16.09.2017, wherein they have informed that inspection of the premises was on 16.09.2017 and it was found that no evidence for rectifying the work has been done and further informed the petitioner that necessary action would be taken as per the provisions of the Town and Country Planning Act and it was followed by notice dated 25.05.2018 and 05.06.2018, demanding a sum of Rs.18,00,000/- for carrying out the demolition.

7. The learned counsel appearing for the petitioners submitted that due to lack of funds, they are not in a position to carryout the demolition and prays for further time to rectify the defects pointed out.

8. However, the learned standing counsel appearing for the Corporation of Chennai would submit that the Government, while disposing of the appeal, has granted six months time to carrying out rectification and in spite of such a benevolence shown, the petitioners did not undertook the rectification and in order to comply with the directions by this Court on 06.04.2018 in W.P.No.4683 of 2018, notices have been issued calling upon the petitioner to pay a sum of Rs.18,00,000/- to carry out the demolition and if the petitioner fails to pay the same, the Corporation will carryout the demolition on their own and add the amount along with the Property Tax demand.

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

10. In W.P.No.4683 of 2018, which came to be disposed of on 06.04.2018, the details of the deviation / unauthorized construction put up by the petitioners have been stated and it is relevant to extract the same:

| SI.No | Description                                                                                                                                                                                        | As per approved plan | As on Site                                  | Deviation                                  |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------------------------|--------------------------------------------|
| 1     | Front Set Back @ Ground Floor & First Floor & II Floor                                                                                                                                             | 5'0"                 | Nil                                         | 5'0"                                       |
| 2     | Rear Set Back                                                                                                                                                                                      | 3' 3"                | Nil                                         | 3'3"                                       |
| 3     | Side Set Back (E) & Ground Floor @ First Floor, Second Floor & Third Floor                                                                                                                         | Nil                  | Nil                                         | Nil                                        |
| 4     | Side set back (W)                                                                                                                                                                                  | Nil                  | Nil                                         | Nil                                        |
| 5     | Size of the Building Breadth @ Ground Floor, First floor, second floor, third floor, fourth floor & fifth floor<br>Length @ Ground Floor @ Second Floor @ Third Floor @ Fourth Floor @ Fifth Floor | 21'0"<br>69' 0"      | 26' 0"<br>2'0"<br>77' 3"<br>2'0"<br>Balcony | + 5' 0" + 2' 0"<br>+ 8' 3" + 2' 0" Balcony |
| 6     | Floor Space Index                                                                                                                                                                                  | 1.44                 | 5.00                                        | 3.56                                       |
| 7     | Usage                                                                                                                                                                                              | Residential          | Residential and Commercial at Ground Floor  |                                            |
| 8     | No. of floors                                                                                                                                                                                      | GF + 2 Floors        | GF + Five floors                            | 3 Floors                                   |
| 9     | Plot coverage                                                                                                                                                                                      | 72.14%               | 100%                                        | 27.86%                                     |

11. A perusal of the order of the Housing and Urban Development dated 06.02.2017 would disclose that the petitioners were granted liberty to submit demolition plan duly approved by the Structural Engineer to rectify the unauthorized construction/deviation and to do the same, six months time was granted to the petitioners. However, the petitioners did not

carryout the rectification. Therefore, the second respondent had issued notices calling upon the petitioners herein to pay Rs.18,00,000/- to carry out the demolition. The only explanation offered by the petitioners is that they do not have resources or funds to carryout the said demolition.

12. The details of the deviation extracted would disclose that the petitioners, in utter violation of the sanctioned plan, not only deviated in respect of the portions for which planning permission has been given, but also put up three extra floors and the deviations also appear to be major in nature. Once the petitioner obtained planning permission, they are expected to put up a construction strictly in accordance with the sanctioned plan. Even there are minor deviations, it should have been within the condonable limits. However, the petitioners had not only violated the sanctioned plan with major deviations, but also put up additional construction and therefore, the Corporation of Chennai, has rightly taken action in compliance of the order passed by this Court on 06.04.2018 in W.P.No.4683 of 2018.

In the light of the facts and circumstances and the reasons assigned, this Court is of the opinion that the writ petition deserves to be dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

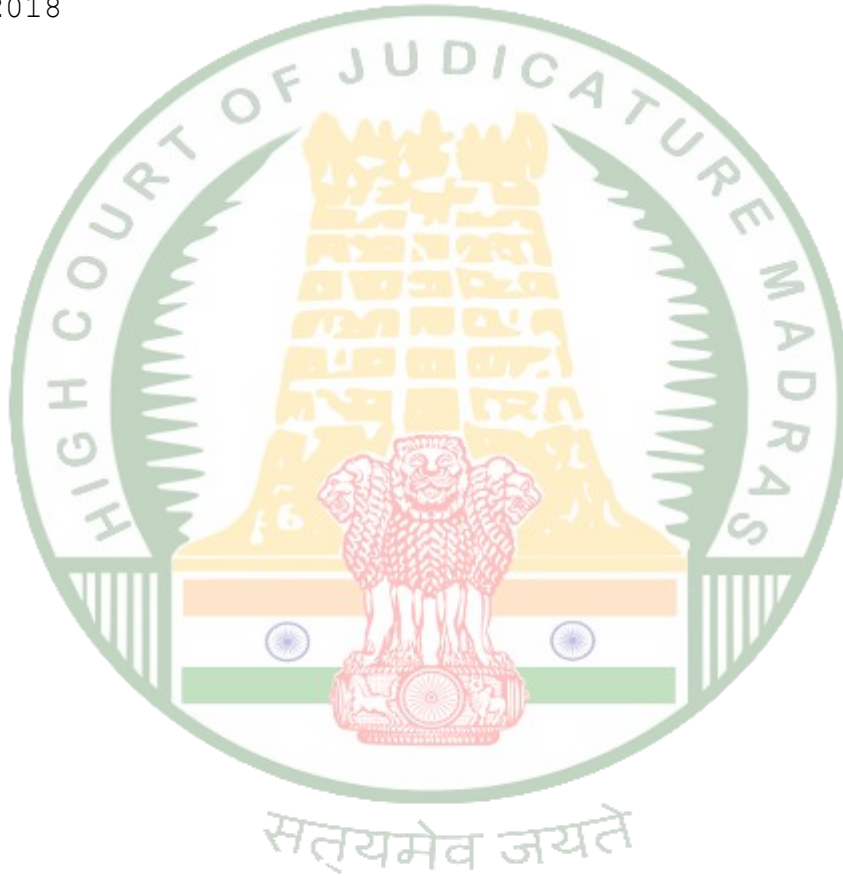
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+1cc to Mr.R.Sountharajan, Advocate sr.no.41003  
+1cc to Mr.S.Santhan, Advocate sr.no.40210

W.P.No.15635 of 2018 and  
W.M.P.No.17752 of 2018

nr 28/06/2018



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