

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.11802 of 2004

T.Tamizharasu

... Petitioner

vs.

1. The Commissioner,
Chennai City Municipal Corporation,
Ripon Building,
Chennai 600 003.
2. The Assistant Executive Engineer (U)
Corporation of Chennai,
Zonal Office - IX,
K.K.Nagar, Chennai - 78.
3. R.Ramamurthy ... Respondents

(R3 impleaded vide order dated 23.03.2005 in W.P.M.P.No.618 of 2005 in W.P.No.11802 of 2004)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus, calling for the records relating to the proceedings made in No.938, dated 03.02.2004 issued by the 2nd Respondent and the consequential provisional order No.95, dated 16.02.2004 under Section 256(1) & (2) of the Act and the confirmation order No.101, dated 16.03.2004 issued by the 1st Respondent under Section 256(3) of the Act and quash the same and forbear the Respondents from initiating any further action under Sections 380 and 381 of the Act.

For Petitioner : Mr.G.Ethirajulu

For Respondents 1 & 2: Mr.V.C.Selvasekaran

For 3rd Respondent : Mr.P.B.Ramanujam
& Mr.P.B.Balaji

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the proceedings dated 03.02.2004 issued by the 2nd Respondent and the consequential Provisional order No.95, dated 16.02.2004 under Section 256(1) & (2) of the Act and the confirmation order No.101, dated 16.03.2004 issued by the 1st Respondent under Section 256(3) of the Act and forbear the Respondents from initiating any further action under Sections 380 and 381 of the Act.

2. According to the Petitioner, he is the absolute owner of the property bearing Flat No.4-B, MIG Flats, Ground Floor, P.T. Rajan Salai, K.K.Nagar, Chennai 600 078. Due to non-availability of sufficient space, the Petitioner wanted to extend the Flat, which is situated in the Ground Floor and he approached the other co-owners to give No Objection for putting up additional construction in the Ground Floor. Accordingly, the Owners of Flat Nos.4-A, 4-C and 4-D, jointly gave 'No Objection Certificate' to the Tamil Nadu Housing Board, so as to enable the Petitioner to put up additional construction. Hence, in this regard, the Petitioner made a representation dated 04.11.2003 to the Tamil Nadu Housing Board and after verification of all the records, the Housing Board issued 'No Objection Certificate' vide proceedings dated 09.11.2003, for the proposed additional construction in the Block. In terms of the 'No Objection Certificate', the Petitioner also submitted the Building Plan for the additional construction and the same was approved by the 1st Respondent, vide Proceedings dated 05.01.2004 and 10.02.2004, respectively.

3. Immediately, on receipt of the Approved Plan, the Petitioner commenced the construction, but, one of the co-owners, viz. Ramamurthy, the 3rd Respondent herein, who is in occupation of Flat No.4-D, in spite of giving 'No Objection' to the Petitioner to proceed with additional construction, with a malafide intention, made a complaint against the Petitioner. Based on the said complaint, the 2nd Respondent vide Office Proceedings No.938, dated 03.02.2004 issued a Notice under Section 236 of the Chennai City Municipal Corporation Act, holding that the requirements of Sections 234 to 241 of the Act, have not been complied with. On receipt of the said notice, the Petitioner immediately sent a Telegram to the 1st Respondent on 13.02.2004 and brought to his notice that he commenced the building construction work only after getting 'No Objection Certificate' from the Tamil Nadu Housing Board and after getting Plan Approval from the Chennai Corporation. He also brought to the notice of the 1st Respondent that the construction is not unauthorised and also requested the Respondents to withdraw the Proceedings.

4. In spite of the same, the 1st Respondent herein, vide his Proceedings dated 16.02.2004 issued Provisional Order under Section 256(1) of the Act, holding that the Petitioner has commenced the construction without Building Plan and also called upon the Petitioner to show cause as to why the Provisional Order should not be confirmed under Section 256(2) of the Act. The Petitioner has also given a formal explanation on 09.03.2004. However, the 1st Respondent herein issued another Notice on 16.03.2004 under Section 256(3) of the Act, alleging that provisional order has been confirmed, holding that no satisfactory cause has been shown and also directed the Petitioner to carry out the order, failing which, steps will be taken to cause necessary works under Section 380 and 381 of the Act and further imposed a fine.

5. For the sake of convenience, Sections 236 and 256 of the Chennai City Municipal Corporation Act, 1919, are extracted hereunder:

236. Prohibition against commencement of work without permission.--2

[(1)]The construction or re-construction of building shall not be begun unless and until the commissioner has granted permission for the execution of the work. 3 [(2) While granting permission under sub-section (1), the commissioner may specify in writing, the precautions to be observed with reference to the construction or re-construction by the person making the application under sub-section (1) of section 234 and such person shall be responsible for the due observance of the precautions.]

256. Demolition or alteration of building 1 [* * *] work unlawfully commenced, carried on or completed.--

(1) If the commissioner is satisfied--

(i) that the construction or re-construction of any building 1 [* * *],--

(a) has been commenced without obtaining the permission of the commissioner or where an appeal or reference has been to the 2 [standing committee], or

(c) is being carried on, or has been completed otherwise than in accordance with

the plans or particulars on which such permission or order was based, or

(ii) that any alterations required by any notice issued under section 244 have not been duly made, or

(iii) that any alternation of, or additions to, any building or any other work made or done for any purpose in, to, or upon any building, has been commenced or is being carried on or has been completed in breach of section 225, he may make a provisional order requiring the owner or the builder to demolish the work done, or so much of it as, in the opinion of the commissioner, has been unlawfully executed, or to make such alterations as may, in the opinion of the commissioner, be necessary to bring the work into conformity with the Act, rules, by-laws, direction or requisition as aforesaid, or with the plans or particulars on which such permission or order was based, and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building.

(2) The commissioner shall serve a copy of the provisional order made under subsection (1) on the owner of the building 1 [* *] together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the commissioner the commissioner may confirm the order with any modification he may think fit to make [and such order shall then be binding on the owner.]

6. Learned Counsel for the contesting 3rd Respondent submitted that based on the complaint given by him, action has been initiated by the Corporation, as there are illegalities in the construction raised by the Petitioner and contended that the Petitioner cannot assail the impugned order on the ground of technicalities.

7. Learned Counsel appearing for the Respondent/Corporation of Chennai, submitted that the Respondents herein issued Notices to the Petitioner under Sections 236, 256(1) & (2) and 256(3) of the Chennai City Municipal Corporation Act, since he had deviated from the sanctioned Plan. But, the Petitioner has failed to comply with the terms of the notice issued to him. Learned Counsel further stated that for violation, no action has been initiated under the Town and Country Planning Act, 1971 and that the authorities will go and inspect the site in question based on the complaint given by the 3rd Respondent and if any violations/deviations are pointed out by the Authorities, the Petitioner would be asked to set right the same.

8. In reply, learned Counsel for the Petitioner submitted that the building has been constructed in accordance with the sanctioned Plan much prior to 2007 within the time stipulated in the Plan and he has no objection for the authorities in inspecting the site and point out the defects, to enable the Petitioner to rectify the same. He further submitted that the Petitioner is not interested in litigating further, as he intends to lead a peaceful life.

9. Taking note of the submissions made by the learned counsel on either side, this Court is of the view that it is open to the Respondent/Corporation to inspect the site in question and by doing so, if any violations/deviations are found, a fresh notice may be issued to the Petitioner in terms of Town and Country Planning Act, 1971, after hearing the Petitioner and the contesting 3rd Respondent and thereafter, a decision may be taken.

This Writ Petition is disposed of with the above directions and observations. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

(aeb)

To :

1. The Commissioner,
Chennai City Municipal Corporation,
Ripon Building,
Chennai 600 003.

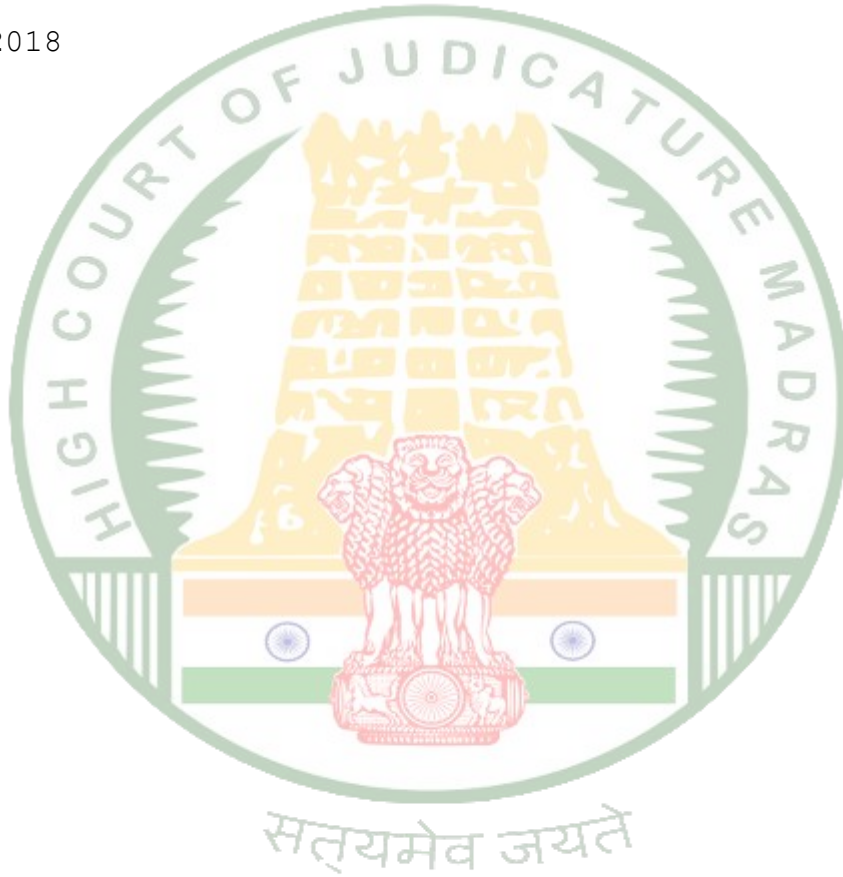
2. The Assistant Executive Engineer (U)
Corporation of Chennai,
Zonal Office - IX,
K.K.Nagar, Chennai - 78.

+ 1 cc to Mr.G.Ethirajulu Advocate,SR.4458

+ 1 cc to Mr.P.B.Ramanujam Advocate,SR.4487

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