

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

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

W.P.No.16083 of 2007

S.Leenas

... Petitioner

vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai.

2. The Commissioner,
Chennai Corporation,
Ripon Building,
Chennai - 3.

3. Parvathy

4. The Assistant Engineer,
TANGEDCO/TNEB,
Alwarpet, Chennai.

(R4 suo-motu impleaded by this Court
as per order dated 01.02.2018)

5. The Principal Secretary,
Tamil Nadu Housing and
Urban Development Department,
Fort St. George,
Chennai 600 009.

6. The Managing Director,
Tamil Nadu Water Supply &
Sewerage Board,
Anna Salai, Chennai 600 002.

... Respondents

(R5 & R6 suo-motu impleaded by this Court
as per order dated 21.03.2018)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents 1 and 2 to demolish the illegal construction of the building by the 3rd Respondent situated in Door No.151, Alwarpet Street, Alwarpet, Chennai, which is being constructed not in accordance with the Plan and specifications approved by the 2nd Respondent.

For Petitioner : Mr.S.Doraisamy
For 1st Respondent : Mr.N.Sampath
For 2nd Respondent : Mr.A.Nagarajan
For 3rd Respondent : Ms.R.M.Priyadarshini
for M/s.Subba Reddy
For 4th Respondent : Mr.P.R.Dhilip Kumar
For 5th Respondent : Mr.A.N.Thambidurai,
Special Government Pleader
For 6th Respondent : Mr.E.Janakiraman

O R D E R

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Counsel appearing for the respective Respondents.

2. In view of the fact that the Appeal preferred by the 3rd Respondent is pending as on date before the Principal Secretary, Housing and Urban Development Authority and it is not yet disposed of, this Court suo motu impleads the Principal Secretary, Tamil Nadu Housing and Urban Development Department, Fort St. George, Chennai 600 009 as the 5th Respondent in this Writ Petition.

3. According to the Petitioner, he is the owner of the property bearing Door No.152, Alwarpet Street, Chennai. The 3rd Respondent is the adjacent owner of the property bearing Old Door No.151 and New Door No.21 to the extent of 1600 sq. ft. They have a common pathway to the extent of 3' x 125', which is a residential area. There was an old house in S.No.151 and that the 3rd Respondent filed a application to the 2nd Respondent for permission to demolish and reconstruct the property in question suppressing the fact that there is a common passage of 3' x 125'. As a matter of fact, the 2nd Respondent, without proper verification, issued the building permission. After obtaining the sanction for demolition and reconstruction, the 3rd Respondent has demolished only a portion of it and started the construction.

4. The Learned Counsel for the Petitioner pointed out that as per the sanctioned Plan, following set back area should be left open:

Front set back - 8 ft.
Side set back - 3 ft. 3 inches
Rear set back - 15 ft.

However, the 3rd Respondent had not followed the Plan sanctioned by the 2nd Respondent. Furthermore, in complete violation of the sanctioned Plan, the 3rd Respondent had put

up construction in the entire area without leaving any set back. As per the permission granted by the 2nd Respondent, the 3rd Respondent ought to have left the open space as stated above. But, the 3rd Respondent has constructed in utter violation of the sanctioned Plan without leaving the open space indicated in the Plan. Since the construction is proceeding contrary to the sanctioned Plan, progress of construction is dangerous to human life in respect of the adjacent premises.

5. The Petitioner had issued notice to the 1st and 2nd Respondents on 13.05.2006 intimating about the illegal construction and requested to order stop work as provided under Section 245 of the Chennai City Municipal Corporation Act, 1919. However, no action was taken and therefore, he had given a telegram on 30.05.2006. In spite of the same, no action was taken.

6. The Learned Counsel for the Petitioner brings it to the notice of this Court that as per Section 244 of the Chennai City Municipal Corporation Act, 1919, the 2nd Respondent do have necessary power to take action against the person, who violates the Planning Permission, which is not in accordance with the Plan and specifications. Although, the Petitioner had specified and brought to the knowledge of the Respondents 1 and 2 for the illegal construction put up by the the 3rd Respondent, no action has been taken.

7. Hence, the Petitioner filed a Writ Petition in W.P.No.18345 of 2006 and this Court, on 19.06.2006 passed the following order:

"3. Considering the limited prayer now sought for by the learned counsel for the Petitioner, without going into the merits of the case, the 2nd Respondent is directed to consider and dispose of the representation of the Petitioner referred to above, on merits and accordance with law, within a period of six weeks from the date of receipt of the copy of this order. This order is passed without hearing the 3rd Respondent herein. In case, the 3rd Respondent is aggrieved, she is at liberty to approach this Court."

8. The Petitioner had communicated the aforesaid order dated 19.06.2006 passed in W.P.No.18345 of 2006 to the Respondents 1 and 2 on 30.06.2006, which was received by the Respondents 1 and 2 on 03.07.2006. But, the Respondents 1 and 2 did not implement the order of this Court dated 19.06.2006 made in W.P.No.18345 of 2006. Hence, the Petitioner filed Contempt Petition No.665 of 2006 and when the matter came up for hearing, it was represented on behalf of the 2nd Respondent that a notice was issued to the 3rd Respondent

under Sections 236, 356 (1) and (2) and the 3rd Respondent had obtained an order in W.P.No.30297 of 2006, quashing the said notice and thereafter, a fresh notice was issued on 28.11.2006. However, till date, the 2nd Respondent did not take any action. Hence, the Petitioner issued a representation to the 2nd Respondent on 07.04.2007 to proceed further to remove the illegal construction in accordance with law. However, no action was taken.

9. The Petitioner has filed the present Writ Petition seeking for issuance of a direction by this Court, in directing the Respondents 1 and 2 to demolish the illegal construction of the building put up by the 3rd Respondent situated in Door No.151, Alwarpet Street, Alwarpet, Chennai, which is being constructed not in accordance with the Plan and specifications approved by the 2nd Respondent/Commissioner, Corporation of Chennai.

10. On behalf of the 2nd Respondent, it is represented that the Assistant Executive Engineer, Unit 26, Zone - IX and the Assistant Engineer, Division - 122, Unit - 26, Zone - IX, Greater Chennai Corporation, inspected the site in question on 17.11.2017 and at the time of inspection, the 3rd Respondent has furnished the approved Plan copy vide PPA No.00393/2006 and building approval vide BA.No.00500/2006, dated 31.01.2006 for constructing ground floor and first floor.

11. The Learned counsel appearing for the 2nd Respondent/Corporation of Chennai, brings it to the notice of this Court that on scrutinizing the Plan, it was found out by the Corporation of Chennai that the 3rd Respondent had deviated the approved plan without leaving any setbacks and has also constructed a part in the second floor of the building. The measurements taken are as follows:

S.No .	Description	As per Plan	As per Site	Deviated/ Unauthorize d
1	Ground Floor	93.99 sq. m.	144.60 sq. m.	50.61 sq.m.
2	First Floor	93.99 sq. m.	144.60 sq. m.	50.61 sq. m.
3	Second Floor (Part)	-	52.47 sq. m.	52.47 sq. m.
4	Head Room	9.94 sq. m.	9.94 sq. m.	

The 2nd Respondent immediately took action by issuing Locking and Sealing and Demolition Notice under Sections 56 and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971 as amended by Act 61 of 2008, dated 21.11.2017, to the 3rd Respondent.

12. As against the Lock and Seal Notice, dated 21.11.2017 issued by the 2nd Respondent, the 3rd Respondent had preferred an Appeal before the Principal Secretary, Housing and Urban Development Authority, Fort St. George, Chennai under Section 80A of the Town and Country Planning Act, 1971 and the said Appeal is not yet disposed of. The fact that the 3rd Respondent preferred an Appeal against the Notice dated 21.11.2017 issued by the Executive Engineer, Corporation of Chennai, is not in dispute.

13. This Court deems it fit and proper in directing the Principal Secretary, Housing and Urban Development Authority, Fort St. George, Chennai to dispose of the Appeal preferred by the 3rd Respondent on or before 15.06.2018 by passing a reasoned, speaking order on merits and by hearing the Appeal on a day-to-day basis, without adjourning the matter in any event beyond seven working days at any point of time. It cannot be gainsaid that the Appellate Authority shall provide necessary opportunity of hearing to the 3rd Respondent as well as to the Petitioner and others concerned by adhering to the principles of natural justice, in true letter and spirit.

14. It is made quite clear that till the Appeal is disposed of within the time adumbrated by this Court, supply of electricity as also water supply shall be disconnected to the violated portions of the building in question and the violated portions shall be kept under lock and seal. In this connection, this Court suo motu impleads the Managing Director, Tamil Nadu Water Supply & Sewerage Board, Anna Salai, Chennai 600 002, as 6th Respondent in this Writ Petition. It is made clear that the 3rd Respondent shall not create any third party rights.

This Writ Petition is disposed of with the above direction(s) and observation(s). No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai.
 2. The Commissioner,
Chennai Corporation,
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Chennai - 3.
 3. The Assistant Engineer,
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Urban Development Department,
Fort St. George,
Chennai 600 009.
 5. The Managing Director,
Tamil Nadu Water Supply &
Sewerage Board, Anna Salai,
Chennai 600 002.
- + 1 cc to MR. S. Doraisamy, Advocate Sr.21456
+ 1 cc to MR. the Government PleaderSr.21842
+ 2 ccs to Mr.P.Subba REDdy, Advocate sr.21470
+ 1 cc to Mr. N. Sampath, Advocate sr.21324

W.P.No.16083 of 2007

(CS-VI)
EU(27/04/2018)

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