

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.33659 of 2016

R.Magesh

... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
2. The Assistant Health Officer,
Zone-6,
Corporation of Chennai,
Ayanavaram,
Chennai 600 023.
3. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai 600 032.
4. The Inspector of Factories,
Chennai North,
No.617, Bharat Kumar Bhavan,
Anna Salai,
Chennai 600 002.

5. M.Rajaram

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents herein to take appropriate action against the 5th Respondent in connection with the non-compliance of the provisions of the Chennai City Municipal Corporation Act and the Public Health Act, 1939 and the Factories Act, and stop such illegal activity at No.151, Paddy Field Road, Perambur, Chennai 600 011, more particularly described in the Schedule.

For Petitioner : Mr.S.Sivalinga Kesavan
for M/s.Prakash Goklaney

For Respondents 1 & 2 : Mr.K.Soundarrajan

For 3rd Respondent : Mrs.Rita Chandrasekar

For 4th Respondent : Mr.S.N.Parthasarathi,
Government Advocate

For 5th Respondent : Mr.M.Stalin

O R D E R

The Petitioner has come up with the present Writ Petition seeking a direction to the Respondents herein to take appropriate action against the 5th Respondent in connection with the non-compliance of the provisions of the Chennai City Municipal Corporation Act and the Public Health Act, 1939 and the Factories Act, and stop such illegal activity at No.151, Paddy Field Road, Perambur, Chennai 600 011, more particularly described in the Schedule.

2. When the matter is taken up for hearing, it is pointed out by the Learned Counsel appearing for the 5th Respondent and also by the Learned Counsel appearing for the Official Respondents that the 5th Respondent has closed his business in the premises in question. Learned Counsel appearing for the Official Respondents further submitted that the 5th Respondent has constructed the building in question in violation of the sanctioned Plan, in respect of the Ground, First and Second Floors and that action has been initiated against the 5th Respondent by the Official Respondents.

3. On a perusal of the Inspection Report produced by the Assistant Engineer, Ward - 70, Corporation of Chennai, it is seen that the 5th Respondent had obtained permission for constructing the building in question only in respect of Ground Floor and First Floor and that he has constructed the Second Floor unauthorisedly in violation of the sanctioned Plan. In the Report filed on behalf of the 1st Respondent, it is stated that the Petitioner had applied for regularization of the second floor with the Chennai Metropolitan Development Authority in the year 2002 and further proceedings would be initiated based on the result of the regularization application.

4. It is to be noted that with regard to set back, the First Bench of this Court, in W.P.No.18777 of 2014, by an order dated 08.11.2016, has held as under:

"8. ... We may add here that this Court

also is not granting interim orders (in such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

5. Also, the First Bench of this Court in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

6. Moreover, in the case of Babita Badasaria & others (AIR 2016 SC 1460), the Apex Court has held that unauthorized constructions/illegal constructions cannot be compounded by paying compounding fees. Also, in view of the directions issued by the Apex Court in Priyanka Estates International Pvt. Ltd. vs. State of Assam, (2010) 2 SCC 27, illegal constructions are required to be dealt with firm hands, otherwise the builders would continue to construct buildings beyond the sanctioned/approved Plan and they will go scot free.

7. In view of the foregoing, this Court is of the view that pendency of the 5th Respondent's application seeking regularization of the construction of the building in question, is not a bar for the authorities to lock and seal the violated portions of the building in question and also disconnect electricity supply to the violated portions of the building.

8. It is to be noted that as regards disconnection of electricity to the violated portions of a building, the Division Bench of this Court, by an order dated 07.11.2017 in W.M.P.No.30495 of 2017 in W.P.No.21639 of 2017, refused to restore the electricity supply to the premises in question therein and the same was confirmed by the Supreme Court in Petition for Special Leave to Appeal (C).No.33863 of 2017, by an order dated 05.01.2018.

9. It is made clear that the authority, who is dealing with the regularization application of the 5th Respondent shall pass appropriate orders after hearing the 5th Respondent and the Writ Petitioner, by adhering to the provisions of law, without any external influence.

This Writ Petition is disposed of with the above direction. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
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2. The Assistant Health Officer,
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4. The Inspector of Factories,
Chennai North,
No.617, Bharat Kumar Bhavan,
Anna Salai,
Chennai 600 002.

+1cc to Mr.Soundarajan, Advocate, S.R.No.14695

+1cc to Mr.M.Stalin, Advocate, S.R.No.14665

+2cc to Mr.Prakash Goklaney, Advocate, S.R.No.14587

+1cc to the Government Pleader, S.R.No.15417

W.P.No.33659 of 2016

VSN(CO)
RRK(02/03/2018)

सत्यमेव जयते

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