

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.19688 of 2017
and
W.M.P.No.21242 of 2017

Mr.N.Anbumuthu

.. Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
"Thalamuthu Natarajan Building",
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Commissioner,
Pammal Municipality (Grade-III),
Pammal, Chennai-600 075.
3. Mr.Dhanasekaran .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent herein to remove the illegal and unauthorised construction made by the third respondent.

For Petitioner : Mr.R.Rajesh Vivekananthan
For Respondents : Mr.Karthick Rajan for R-1
Mr.P.Srinivas for R-2
No appearance for R-3

ORDER

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

The Petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent herein to remove the illegal and unauthorised construction made by the Third Respondent.

2. Heard both sides. No counter affidavit is filed by the Respondent Nos.1 and 2. In respect of the Third Respondent, though a Counsel has entered appearance, there is no representation for him before this Court.

3. According to the Petitioner, the Third Respondent is the owner of Plot No.24, Anbazhagan Street, Anna Nagar, Pammal, Chennai-600 075. He had constructed a house in the Plot in question and it came to light that there were violations in the construction, and that the Petitioner gave a Petition to the Respondent Nos.1 and 2 to enquire about the unauthorised construction of the building. As a matter of fact, the First Respondent/Member Secretary, CMDA, Chennai, soon after receipt of the Petitioner's Petition, dated 05.06.2011, had directed the Second Respondent/Commissioner of Pammal Municipality (Grade-III) to take action on the said Petition as per the Proceedings, dated 14.06.2011 in Letter No.ES3/6461/2011. However, no action was taken by the Second Respondent/Municipality.

4. At this stage, the Learned Counsel for the Petitioner contends that the Third Respondent had commenced the construction in the First Floor during the month of August 2016 and since there were violations in the construction, the Petitioner gave the Petition to the Respondent Nos.1 and 2 to enquire about the said unauthorised construction of the building. The First Respondent/CMDA, after receiving the Petition, had directed the Second Respondent/Municipality to take action on the Petitioner's Petition, dated 08.08.2016, as per Proceedings, dated 21.10.2016.

5. It comes to be known that the Second Respondent/Commissioner of Pammal Municipality (Grade-III), through their Reply, dated 15.03.2017 (for the RTI Information sought for by the Petitioner on 20.02.2017), had stated that action was initiated. Further, the Petitioner sought certain information under the Right to Information (RTI) Act on 21.02.2017 and also on 06.03.2017 from the Second Respondent/Municipality. Again, the Second Respondent/Municipality furnished a Reply, dated 22.03.2017 and 23.03.2017, stating that action was initiated. Moreover, in respect of the information sought for by the Petitioner under the RTI Act on 21.02.2017, addressed to the First Respondent, the First Respondent has furnished Replies, dated 28.03.2017 and 15.06.2017, stating that the complaint received regarding the violation of the construction, was forwarded to the Second Respondent for action.

6. Apart from that, the Petitioner paid the requisite Fee of Rs.20/- before the Second Respondent/Municipality and secured approved Plan for the building in question. On a perusal of the

Plan, the Petitioner came to know that the Third Respondent, in violation of the permission granted, had constructed the building in the Ground Floor and First Floor, without leaving any place. Till date, the Second Respondent/Municipality had not taken any action and hence, the Petitioner has filed the present Writ Petition seeking for issuance of a Writ of Mandamus directing the Second Respondent/Municipality to remove the illegal and unauthorised construction made by the Third Respondent.

7. In response, the Learned Standing Counsel appearing for the Second Respondent/Municipality submits that in respect of the violations made by the Third Respondent, contrary to the Building Permission granted in No.55/16/F1, dated 05.04.2016, it is to be noted that the Third Respondent had put up construction in his property deviating from the sanctioned Plan and the Second Respondent/Municipality has issued a Final Notice, dated 23.03.2017 under Section 205(3) of the Tamil Nadu District Municipalities Act, 1920, addressed to the Third Respondent, granting 30 days time to rectify the defects and to bring the building in conformity with the sanctioned Plan, etc.

8. The Learned Standing Counsel appearing for the Second Respondent/Municipality fairly submits that the Second Respondent/Municipality will take necessary further action against the Third Respondent for putting up unauthorised building or unauthorised construction as per the ingredients of the Tamil Nadu District Municipalities Act, 1920, and further that, the Municipality will initiate criminal proceedings/prosecution in accordance with Law and in the manner known to Law against the Third Respondent.

9. At this juncture, this Court, worth recalls and recollects the decision of this Court reported in 2000 (Vol.44) MLJ (Cr1) 771 between Ooty Gate Hotel Vs. The Commissioner, Udagamandalam Municipality, Udagamandalam, wherein, at special page 772, it is observed as under:

"5. A plain reading of the above section (Section 317 of the Tamil Nadu District Municipalities Act) would contemplate notice under Sec.205 or Sec.215 of the Act and in spite of such notice made and direction given to alter or demolish a portion of the building for non-compliance further order under Sec.216 has to be made and in spite of such an order passed if the petitioner fails to obey such direction, only then the question of launching

prosecution in proof of which punishment as contemplated under Sec.317 of the Act would arise. "

10. It cannot be brushed aside that as per Section 347 of the said Act of 1920, if an offence is a continuous one, then a complaint is to be lodged within 12 months from the date of commencement of the offence. To put it succinctly, the Second Respondent/Municipality is directed to take necessary action against the Third Respondent, of course, in the manner known to Law and in accordance with Law and that action to be taken by the Second Respondent/Municipality, shall be taken to its logical end, in the manner known to Law and in accordance with Law. In this regard, the Second Respondent/Municipality is to scrupulously adhere to the well laid-down principles and also to the ingredients of the Tamil Nadu District Municipalities Act, 1920, and the other Rules and Regulations that are in force.

11. Viewed in that perspective, this Court disposes of the present Writ Petition by making the above observations and issuing directions. No costs. Consequently, W.M.P. is closed.

Assistant Registrar

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To

Sub Assistant Registrar

1. The Member Secretary,
Chennai Metropolitan Development Authority,
"Thalamuthu Natarajan Building",
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Commissioner,
Pammal Municipality (Grade-III),
Pammal, Chennai-600 075.

+1 cc to Mr.R.Rajesh Vivekananthan, Advocate, SR No.83393

+1 cc to Mr.Karthik Rajan, Advocate, SR No.83770

+1 cc to Mr.P.Srinivas, Advocate, SR No.84560

+1 cc to Mr.K.Jayaramn, Advocate, SR No.84621

W.P.No.19688 of 2017

ks(co)
ssm(21/12/18)