

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.12.2018

Coram

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

&

THE HON'BLE MS.JUSTICE P.T.ASHA

W.P.No.34627 of 2018

AND

WMP.Nos.40146 & 40149 of 2018

J.Arivalagan

... Petitioner

-vs-

1.The Government of Tamil Nadu
rep. By its Secretary
Housing and Urban Development Department
Fort St. George
Chennai - 600 009

2.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai - 600 103

3.The Zonal Officer
Corporation Zone No.VIII
Anna Nagar, Corporation of Chennai
Shenoy Nagar, Chennai - 600 030

4.The Executive Engineer/Zonal Office VIII
Greater Chennai Corporation
2nd Cross Street (East) Pulla Avenue
Shenoy Nagar, Chennai - 600 030

5.Mrs.Viji

6. Tamil Nadu Electricity Board / TANGEDCO,
Rep. by its Chairman,
Anna Salai, Chennai -2.

7. Chennai Metropolitan Water Supply and Sewerage Board,
Rep. by its Managing Director,
Chennai.

.. Respondents

(R6 and R7 were suo motu impleaded by this Court on 27.12.2018)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the Executive Engineer Zone Office VIII, Greater Chennai Corporation 2nd Cross Street (East) Pulla Avenue, Shenoy Nagar, Chennai - 600 030, the 4th respondent herein culminating in notice No.Zone E-VIII ward 96/336/2018 dated 11.12.2018 and quash the same and further direct the respondents not to take any coercive steps to demolish the construction put up in Old Door No.13, New No.16, T.S.No.21/1, Palayakara Street, II Lane, Ayanavaram, Chennai - 600 023.

For Petitioner : Mr.K.Balakrishnan

For R1 : Mr.V.Shanmuga Sundar
Spl. Govt. Pleader

For R2 to R4 : Mr.V.C.Selvasekaran

For R5 : Mr.K.Manikandan

O R D E R

(Order of the Court was made by S.VAIDYANATHAN, J.)

The petitioner has come forward with the aforesaid prayer stating that he is the owner of the premises bearing New Door No.16, Old No.13, Palayakara Street, II Lane, Ayanavaram, Chennai measuring an extent of 726 sq.ft of land and put up a superstructure in 550 sq.ft area.

2. According to the petitioner, he has constructed a building and also made an application before the Authorities under the Town and Country Planning Act, 1971 seeking regularization. According to the petitioner, he has approached this Court earlier and this Court by an order dated 29.08.2013 disposed of the writ petition with certain observations. The relevant paragraph is paragraph No.8 and the same reads as follows:

'8.We have passed this order at the admission stage without notice to the fourth respondent, but based on her complaint alone, action has been taken by the statutory body. In the circumstances, in the fitness of things, the petitioner is directed to place the relevant materials before the third respondent herein within a period of 10 days from today and it is for the third respondent to consider the petitioner's claim. Insofar as the records pertaining to the title of the property is

concerned, it is for the private parties to establish their respective rights before the appropriate forum. In the meantime, the second respondent herein, viz., Zonal Officer Corporation Zone No.VIII (Anna Nagar), Corporation of Madras, Shenoy Nagar, Chennai 600 030 is directed to remove the lock and seal so as to permit the occupants to re-enter their premises. The petitioner is hereby informed that if any step is taken by him to carry out further construction or modification of the building, it would be seriously viewed by this Court, which may even go to the extent of recalling the order passed by this Court.'

3. Aggrieved by the encroachment and illegal construction, a civil suit was filed by the petitioner's neighbour, the fifth respondent herein, who is also having less than 400 sq.ft of land. According to the petitioner, the building said to have been constructed by the fifth respondent is also having of extent of less than 500 sq.ft. Photographs produced by the petitioner would make it very clear that the building constructed by the petitioner is having Ground Floor + two floors and balcony in the first floor. Admittedly, there is no sanction plan.

4. Mr.Selvasekaran, learned standing counsel, who is appearing for the Corporation, would submit that the petitioner and the fifth respondent cannot construct a building as both of them are not having the required extent of land i.e., 800 sq.ft and above, for sanctioning a building plan. Admittedly, the construction has been made without any sanction plan and contention of the petitioner that Regularization Petition is pending cannot be a solution to the issue raised by the writ petitioner. He cannot try to put a cart before the horse. If there is any illegal construction, more particularly, if there is no sanction plan, the entire building has got to be demolished. Already action has been initiated on 11.12.2018. Apart from that, the petitioner has lost the civil Suit in O.S.No.3503 of 2013 by virtue of judgement and decree dated 15.03.2018.

5. The fifth respondent is also before this Court. If there is no sanction plan with regard to the petitioner as well as the fifth respondent, both the buildings have got to be demolished immediately. Respondent Nos.6 and 7, who are suo motu impleaded as parties to this writ petition by this Court today, shall ensure disconnection of electricity and water supply to both the premises within 24 hours from the date on which the copy of this order is made ready. No application for regularization shall be entertained by the Authorities, if there is no sanction plan. In this case, there is no plan and no plan could be sanctioned to

the site in question and therefore, the appeal, if any, under 1971 Act is deemed to have been closed.

6. The directions issued by the Hon'ble Division Bench of this Court in the case of Mehraj Begum vs. The Government of Tamil Nadu, rep. By its Secretary to the Government, Housing and Urban Development Department, Fort St. George, Chennai 600 009 and others [W.P.No.27499 of 2018] decided on 16.10.2018 more particularly in Paragraph No.12(b)(c) have to be scrupulously followed in letter and spirit within 48 hours from now and compliance report to be filed on 31.12.2018. For the sake of brevity, Paragraph No.12(b)(c) of the said judgment is extracted below:

"12(b) If the respondents are unable to demolish the building, then it is left open to them to demolish / remove all the doors, windows, glasses, toilet seats and bidets, kitchen cooking platform, waterline pipes running into domicile from water tank or sump or any other mode to wash basins, kitchen and rest rooms, including the tap / shower.

(c) In the event of the building being found locked or closed by the occupants, the respondents shall d the roof of the building and make a big hole so that the building cannot be occupied any more.

7. The Chairman, Tamil Nadu Electricity Board, Chennai and the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, Chennai / R6 & R7 are expected to communicate this order to the concerned Assistant Engineer / Officials in the place in question to disconnect the Electricity and Water supplies to the place in question.

With the above observation, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (V/O)

//True copy//

Sub Assistant Registrar

vsm/gpa/ar

To:

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Housing and Urban Development Department
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Chennai - 600 009
 - 2.The Commissioner
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2nd Cross Street (East) Pulla Avenue
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 5. The Chairman,
Tamil Nadu Electricity Board / TANGEDCO,
Anna Salai, Chennai -2.
 6. The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
Chennai.
- +1cc to Mr.K.Balakrishnan, Advocate SR.No.90044
- +2cc to Mr.K.Manikandan, Advocate SR.No.90040
- +1cc to Government Pleader SR.No.90104

W.P.No.34627 of 2018 and
WMP.Nos.40146 & 40149 of 2018

KAK(CO)
GMY(31/12/2018)

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