

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.22353 of 2005
and
W.P.M.P.No.24365 of 2005

B.Mohan Kumar

..Petitioner

vs

1.The Commissioner
Corporation of Madras
Chennai - 3.

2.The Assistant Engineer
128, Division Corporation office
KK Nagar, Chennai - 78

..Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records on the file of the 1st respondent in proceedings No.S.No.7349 dated 13.06.2005 and quash the same as illegal, incompetent, irregular and Unconstitutional.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.V.C.Selvasekaran for R1 & R2

O R D E R

The notice issued by the 1st respondent in proceedings No.7349 dated 13.06.2005 is under challenge in the present writ petition.

2.The impugned notice was issued under Section 256(1) and (2) of the Chennai City Municipal Corporation Act (Tamil Nadu Act IV of 1919). The first portion of the impugned notice is a provisional order passed by the Commissioner Corporation, stating that the writ petitioner was ordered to demolish the said unlawfully executed work as per the details on the reverse to bring work to in conformity with the act, by-law, rule, direction or requisition as aforesaid or with plan said permit

on which such permission or orders were based. A notice under Section 256(2) was issued along with the above provisional order providing an opportunity to the writ petitioner to show cause within 7 days on receipt of the order, why the said order issued under Section 256(1) should not be confirmed. Thus, the opportunity provided to the writ petitioner to submit his explanations and explain the positions had not been utilized and contrarily, the writ petitioner has chosen to file the present writ petition.

3. The learned counsel appearing on behalf of the writ petitioner commenced his arguments by stating that the writ petitioner is a practising lawyer in the City. The writ petitioner has not put up any illegal construction. Contrarily, he has demolished the old roof and repaired the same. Thus, the repairing works undertaken by the writ petitioner cannot be construed as a new/additional construction as stated in the impugned notice. The learned counsel for the writ petitioner reiterated by stating that the writ petitioner has not committed any violation and he was doing repairing works in respect of the building owned by him.

4. It is contended that the notice itself is untenable as no descriptions are provided in respect of any such violations or details of violations in the notice. On that ground also, the writ petition is to be allowed.

5. At the outset, the writ petitioner states that the details on the reverse mentioned in the notice is not served on the writ petitioner, the writ petitioner has not violated any building rules, the writ petitioner has not encroached any public land and the writ petitioner is an innocent person and he was practising law as a law abiding citizen.

6. The respondents filed a counter affidavit, stating that the petitioner has constructed his building during the period of erstwhile Virugambakkam Panchayat in the land belongs to Taluk Board, which is evident by the Revenue records. During the year 2003, the petitioner has put up an additional construction in the first and second floor and also constructed three shops in the eastern side of his property. One Mr.K.Raghu, the neighbour of the petitioner, has made a representation to the Government as well as to the Corporation of Chennai praying to remove the encroachment made by the writ petitioner in the public land. On receipt of the complaint from the said person, action has been initiated against the encroachments by issuing notice under

Section 220 of the Chennai City Municipal Corporation Act, 1919 to the petitioner on 11.03.2005 itself. Since the petitioner had not complied with the notice, action has been initiated by issuing a notice under Section 256(1) and (2) of the Chennai City Municipal Act 1919. During the Month of May 2005, the petitioner had demolished a part of his building, abutting the car shed and put up an unauthorized construction by extending about 380 sq.ft. with covered car parking cum verandah hall in the ground floor. The officials of Greater Chennai Corporation has initiated action against the said unauthorized construction by issuing a notice under Section 236 of Chennai City Municipal Corporation Act, 1919 dated 06.05.2005 and served on 11.05.2005. Since the petitioner has not complied with the above notice and also further action has been initiated against the unauthorized construction by issuing a notice under Section 256(1) and (2) of the Chennai City Municipal Corporation Act, 1919 on 11.06.2005 and served to the owner on 28.06.2005. On account of the interim stay granted in the writ petition, the respondents are unable initiate further action pursuant to the notice issued by the competent authorities.

7. When the matter was listed for hearing, the learned counsel for the respondents made a submission that during the First week of January 2019, the officials of the Chennai Corporation inspected the building, which is in question in the present writ petition. It is contended that the violations are still exists and therefore, the writ petition is liable to be dismissed and the respondents must be allowed to continue the proceedings in accordance with the provisions of the Chennai City Municipal Corporation Act.

8. The learned counsel for the respondents states that on 11.06.2005, the petitioner failed to comply with the notice and on account of the failure on the part of the writ petitioner to comply with the notice, further action was initiated by issuing show cause notice under Section 256(1) and (2) of the Chennai City Municipal Corporation Act. Further action failing to show cause under Section 256(3) of the Chennai City Municipal Corporation Act and followed all further action for demolition of the unauthorized construction to be initiated under Section 378 of the Chennai City Municipal Corporation Act 1919. Any order passed under Section 256(3) of the Act is an appealable order under Section 366 of the Act. On 02.09.2008, the Government passed an order in G.O.Ms.No.190, Housing and Urban Development Department by approving the Second master Plan for Chennai Metropolitan Area(CMA) and as per the delegations of powers of the Chennai Metropolitan Development Authority at present, the enforcement action as against unauthorized and

deviated constructions in respect of slit + 2 floors are taken as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

9.The learned counsel for the respondents produced the photographs and on a perusal of the said photographs, as stated in the counter affidavit, additional constructions are found. However, the fact regarding the encroachments and additional constructions are to be verified with reference to the Planning permission if any granted in favour of the writ petitioner and by verifying the revenue records available with the revenue officials. Undoubtedly, the details of the encroachments, the details of the violations of building constructions are to be ascertained with reference to the records available and the authorities competent shall initiate all further actions only by verifying the records and by ascertaining the facts regarding the violations and the encroachments.

10.This Court is of an opinion that the writ petitioner being a practising lawyer is bound to follow the rule of law. Any violation by any person, more specifically in the matter of encroachments are to be viewed seriously. There cannot be any leniency in respect of encroachers of public land. Public properties are to be protected by the officials and eviction of encroachers are to be done by following the procedures as contemplated. The authorities, if committed any negligence or dereliction of duty, suitable actions are to be initiated against such officials also.

11.In the present case on hand, actions were initiated pursuant to the complaint given by one Mr.Raghu. Notice was issued to the writ petitioner, providing an opportunity to him to submit his explanations/objections in respect of the violations and encroachments. Instead of submitting his explanations, the writ petitioner has chosen to file the present writ petition and the matter is pending for the past 13 years.

12.No writ proceedings can be entertained against the notice in a routine manner. A writ can be entertained against a notice only on certain exceptional circumstances, where show cause notice has been issued by an incompetent authority having no jurisdiction or if an allegation of mala fides are raised or if the notice is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised, is to be impleaded as a party respondent in the writ proceedings in his personal

capacity. In the absence of any one of these legal grounds, no writ petition can be entertained against the show cause notice.

13. Intermittent intervention in administrative proceedings are not desirable. Only in the event of any gross injustice, the High Courts would be intervening with such notices. In all other circumstances, the competent authorities must be permitted to proceed with the initiation of the proceedings by following the procedures as contemplated. In the event of intermittent interventions, actions initiated are not only diluted and by taking undue advantage of the delay, the offenders are attempting to escape from their liability. The writ petitions filed are kept pending for years together before High Courts. The interim orders are in force for more than a decade. If such is the situation, all the offenders of building rules and other provisions of the Act are escaped on account of the lapse of time. Such a practice is to be certainly monitored and in such cases, where notices are under challenge in the writ proceedings, High Courts are bound to consider the same at the earliest possible and allow the officials to proceed that the actions in accordance with law.

14. The present case is one of that, where the notice was issued during the year 2005. The matter is kept pending for about 13 years and on account of the interim stay, the writ petitioner is allowed to continue in the building without any interruption. During the inspection conducted by the Corporation officials in January 2019 also, the Building constructed in violation of building rules still exists and accordingly, all further actions are to be initiated. The complaint raised by the writ petitioner that the details regarding the violations and encroachments are not provided are also to be addressed by this Court.

15. Undoubtedly, the officials have to conduct a detailed inspection by measuring the building and by identifying the encroachments and communicate the same and accordingly, proceed with all further actions.

16. In this view of the matter, the following orders are passed:

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The respondent Corporation is directed to inspect and take measurements and identify the

encroachments and violations and communicate the same to the writ petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the details of the violations and encroachments, if any, in respect of the building belongs to the writ petitioner, the writ petitioner is bound to submit his explanations / objections if any, along with the documents within a period of two weeks from the date of receipt of a copy of the details from the Corporation.

(3) The respondents are directed to consider the explanations/objections if any submitted by the writ petitioner along with the materials and documents available on record and initiate all further actions to demolish the unauthorized construction and to evict the persons from the portion of the encroachments, if any, by following the procedures as contemplated under law.

(4) The respondents are bound to identify all such encroachments in the nearby area also and if there are other encroachments, the actions are to be initiated under the provisions of the Chennai City Municipal Corporation Act for eviction of all such encroachers by following the procedures as contemplated under law and there cannot be any discrimination in respect of evicting the encroachers from the public land. Public lands are to be protected and the same are to be utilized for the welfare of the public and to implement the public schemes. This being the principles to be followed and encroachment being a social evil, the authorities competent are bound to evict the encroachers by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act and other statutes in force.

17. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

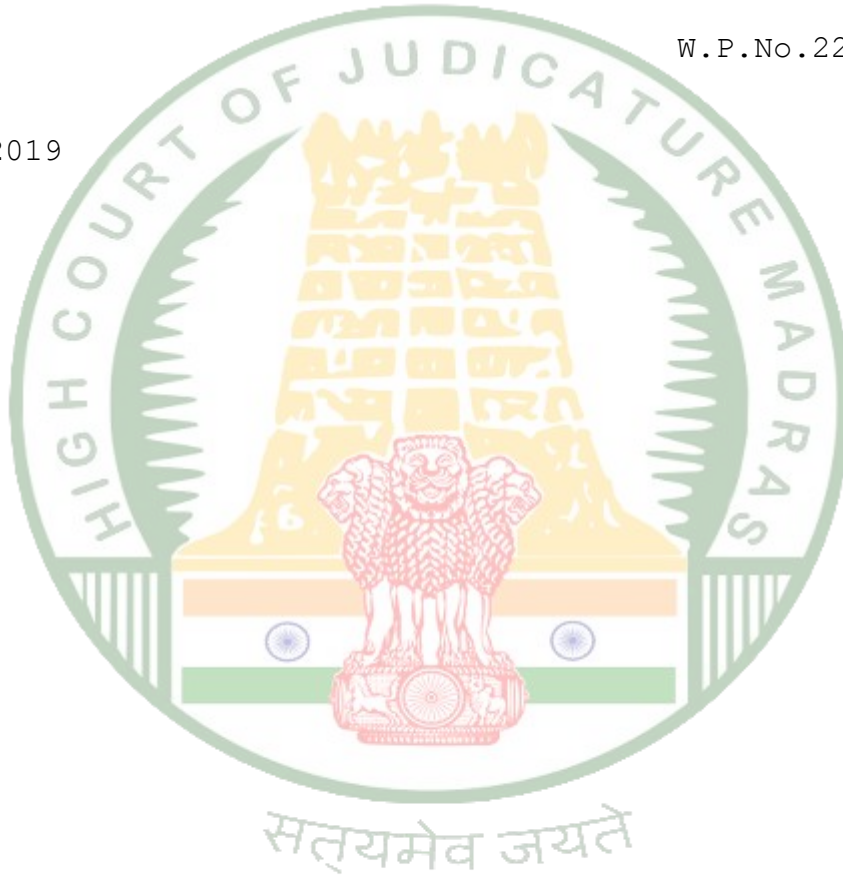
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KK Nagar, Chennai - 78

+lcc to Mr.V.Raghavachari, Advocate sr.no.7469

W.P.No.22353 of 2005

ssi(co)
nr 25/02/2019



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