



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.739 of 2018 and
W.M.P.Nos.900 and 4396 of 2018

M.Lalith Kumaar

.. Petitioner

v.

1 The Principal Secretary,
Housing and Urban Development,
St. George Fort,
Chennai - 9.

2 Sri Zalawad Jain Welfare Trust,
Having Kalyana Mandapam in the
Name of Sri Mathikundaben Rathilal Shal
Kapadia Bhavan LakhtarWala,
Represented by its Trustee
No.15/16, Vepery Church Road,
Vepery, Chennai - 7.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent proceedings made in Letter No.861/UD-VI(2)/2016-1, dated 2.2.2016, quash the same, further direct the 1st respondent to comply the direction issued by this Hon'ble Court in W.P.No.10329 of 2015 on the file of this Hon'ble Court dated 09.04.2015 within the stipulated period as may be fixed by this Hon'ble Court.

For Petitioner : Mr.J.Sudhakaran

For Respondents: Mr.V.Jayaprakash Narayanan
Government Pleader (i/c) - for R1

Mr. Srenik S. Jain - for R2



O R D E R
(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

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The above Writ Petition has been filed the petitioner to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 2.2.2016 of the 1st respondent, to quash the same and consequently direct the 1st respondent to comply with the direction issued by this Court in W.P.No.10329 of 2015, dated 09.04.2015, within a stipulated time.

2. It is the case of the petitioner that the 2nd respondent put up illegal construction and therefore, necessary action should be taken by the authorities for removing the same. Further, the petitioner filed a Writ Petition in W.P. No.10329 of 2015 to issue a Writ of Mandamus, directing the 1st respondent to dispose of the impleading petition dated 09.03.2015 at the first instance, before proceeding with the appeal preferred by the 2nd respondent against the proceedings dated 19.11.2014 on the file of the Executive Officer, corporation of Chennai, Zone V, Chennai in the light of the petitioner's representation dated 23.03.2015. The Division Bench of this Court, by order dated 09.04.2015, disposed of the Writ Petition directing the 1st respondent to consider the impleading petition before deciding the appeal filed against the Demolition Notice dated 19.11.2014.

3. The learned counsel appearing for the petitioner submitted that the 1st respondent, while passing the order dated 02.02.2016, has not considered the impleading petition as directed by the Division Bench of this Court in W.P.No. 10329 of 2015 .

4. However, on a careful consideration of the materials available on record, it could be seen that as against the Locking and Sealing and Demolition Notice dated 19.11.2014, the 2nd respondent preferred an appeal dated 27.01.2015 to the 1st respondent and the said appeal was disposed of by the 1st respondent on 31.12.2015 as pre-mature.

5. The Writ Petition in W.P.No. 10329 of 2015 was filed by the petitioner only in respect of the appeal filed by the 2nd respondent against the notice dated 19.11.2014. In the said Writ Petition, the Division Bench gave a direction to the 1st respondent to consider the impleading petition filed by the petitioner at the first instance before deciding the appeal.



6. So far as the impugned order dated 02.02.2016 is concerned, the said order was passed in an appeal filed by the 2nd respondent as against the De-occupation Notice dated 31.12.2015. As against the De-occupation Notice dated 31.12.2015, the 2nd respondent preferred the appeal on 12.01.2016. Therefore, it is evident that this appeal was not pending at the time of disposal of the Writ Petition in W.P.No. 10329 of 2015 on 09.04.2015.

7. The petitioner has challenged only the order dated 02.02.2016 in this Writ Petition. When no direction was given by the Division Bench with regard to the appeal filed by the 2nd respondent as against the De-occupation Notice dated 31.12.2015, the contention of the petitioner is liable to be rejected. If the impleading petition was not considered by the 1st respondent as directed by this Court, the petitioner should have only challenged the order dated 31.12.2015 and not the present impugned order dated 02.02.2016.

8. In these circumstances, we find no error or irregularity in the order passed by the 1st respondent. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Rj

To
The Principal Secretary,
Housing and Urban Development,
St. George Fort, Chennai - 9. 005.

+1cc to Mr.J.Sudhakaran, Advocate SR.No.56025

+1cc to Mr.P.Subba Reddy, Advocate SR.No.56344

+1cc to Government Pleader SR.No.56569

W.P. No.739 of 2018 and
W.M.P.Nos.900 and 4396 of 2018

RV (CO)
GMY (07/08/2019)