

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.21455 of 2016

Gerard George

... Petitioner

Vs

1. The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount Cum Pallavaram,
Chennai - 600 016

2. Baskar Sagayaraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the First Respondent to initiate action against the Second Respondent for putting up an unauthorised construction behind the Petitioner's property under Section 239 of the Cantonment Act, 2006 based upon the representations of the petitioner dated 15.04.2016 and lastly on 03.06.2016.

For petitioner : Mr.R. Bharanidharan

For R.1 : Mr.Mohan for
M/s King & Patridge

For R.2 : Mr.K. Thirumalai

ORDER

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

Heard the Learned Counsel for the Petitioner, Learned Counsel for the First Respondent/Cantonment Board.

2. In respect of the Second Respondent, Learned Counsel Mr.K. Thirumalai has entered appearance, however, no counter is filed on his behalf.

3. According to the Petitioner, he and his wife are the owners of the house situated in 4/42, St. Patrick's Church Main Road, 2nd Lane, St. Thomas Mount, Chennai - 600 016, which was purchased by means of a registered Sale Deed dated 18.08.1992, measuring 3425 sq.ft along with building in the said land and have been in possession of the same.

4. The stand of the Petitioner is that in the year 2013, the Second Respondent had one day raised a small construction behind the Petitioner's property in the road margin, thereby obstructing the air and light to the Petitioner's property. On being questioned, the Second Respondent gave a reply that the land belongs to the Church and as such, no one can question him. Immediately, the Petitioner made a representation in the year 2013 to the First Respondent/The Chief Executive Officer, Cantonment Board, Chennai, complaining about the unauthorised construction and encroachment made by the Second Respondent. The First Respondent on 11.10.2013 issued a Notice to remove the unauthorised construction under Section 235 of Cantonment Act, 2006, calling upon the Second Respondent to remove the unauthorised construction within a period of seven days. Subsequently, the Petitioner was periodically following up the construction of the Second Respondent and that the First Respondent has promised to take action against the Second Respondent based on the complaint made by him. However, till date, no action has been taken by the First Respondent.

5. Furthermore, it comes to be known that the Second Respondent had commenced to construct a house and hence, the Petitioner made a representation before the First Respondent on 03.06.2016, mentioning about the earlier representation and the Show Cause Notice issued to the Second Respondent and also about the fresh construction put up by the Second Respondent. But the First Respondent had not initiated action and was allowing the Second Respondent to proceed with the illegal construction. The Petitioner left with no other alternative remedy except to approach this Court, has filed the present Writ Petition praying of passing of an order, directing the First Respondent/The Chief Executive Officer to initiate action against the Second Respondent for putting up an unauthorised construction behind the Petitioner's property under Section 239 of the Cantonment Act, 2006 based upon the representations of the petitioner dated 15.04.2016 and lastly on 03.06.2016.

6. Per contra, it is the submission of the Learned Counsel for the First Respondent that the Second Respondent had put up the unauthorised construction in GLRS No.290 and further, the First Respondent/Cantonment Board had initiated action against the Second Respondent for such unauthorised construction. In reality, the First Respondent/Cantonment Board vide Letter

No.STM/Work/8/1918 dated 28.06.2016 issued Notice under Section 247 of the Cantonment Act for unauthorised construction put up by the Second Respondent in Ground Floor measuring 430 sq.ft with Masonry walls and Asbestos sheet roofing.

7. At this stage, the Learned Counsel for the First Respondent points out that the Second Respondent issued a Legal Notice dated 02.07.2016 to the First Respondent mentioning that he had instituted a Civil Suit for permanent injunction in O.S.No.367 of 2016 on the file of District Munsif Court, Alandur, wherein, the Second Respondent had sought a relief in respect of his property being disturbed pending the Civil Suit.

8. Continuing further, the Learned Counsel for the First Respondent proceeds to bring it to the notice of this Court that the First Respondent had issued Notice vide Letter No.STM/Work/8/2051 dated 04.07.2016, as per Section 239 of the Cantonment Act for stoppage of building work in GLRS No.290, No.4/39-J3, 3rd Land, St.Patric Church Road, St. Thomas Mount, Chennai. It is represented on behalf of the First Respondent that the Second Respondent, without applying for and obtaining any sanction from the First Respondent/Cantonment Board, has put up construction, violating Floor Space Index (FSI) Rules. As such, the Second Respondent was issued with Notice dated 04.07.2016 to stop the construction work.

9. As a matter of fact, the Petitioner was informed of the action by the First Respondent against the unauthorised construction through Communication dated 04.07.2016. Later, the First Respondent had initiated action against the Second Respondent as per Section 247 of the Cantonment Act, 2006 dated 28.06.2016. Besides this, Learned Counsel for the First Respondent points out that since the property falls outside the notified bazaar area, the concurrence from the Cantonment Board is required as per Section 237 of the Cantonment Act, 2006 and as such, after placing the Agenda, further action will be taken under Section 248(1) of the Cantonment Act, 2006. Also that, the Act provides for mandatory assistance of police officers to the officers of the Cantonment Board to carry out its statutory duties, as envisaged under Section 315 of the Cantonment Act, 2006.

10. The pith and substance of the stand of the First Respondent is that the First Respondent had initiated action in respect of the unauthorised construction/unauthorised development made by the Second Respondent and after issuance of notice to the Second Respondent, under Section 248 of the Cantonment Act, 2006, it is represented before this Court that the First Respondent will execute the demolition with the assistance of police officials, if necessary.

11. Be it noted, that as against the Orders of the First Respondent dated 28.06.2016 and 04.07.2016, the Second Respondent, has a remedy to prefer an appeal before the Appellate Authority, as per Sec.340 of the Cantonment Act, 2006, however, the Second Respondent has not resorted to the remedy of preferring a statutory appeal. Even as against the Notice issued by the First Respondent under Section 248 of the Cantonment Act, 2006 to the Second Respondent (Notice to be issued to the Second Respondent), the Second Respondent, as a remedy of preferring appeal as per Section 340 r/w Schedule V of the Act.

12. The learned Counsel for the First Respondent refers to the Order of the Division Bench of this Court dated 13.4.2017 in W.P.No.14244 of 2016 between one P. Mohan and The Chief Executive Officer, Office of the Cantonment Board, and five others, wherein, at Paragraph No.5, it is, among other thing, observed as under:

"5.....

The Deputy Commissioner, St. Thomas Mount District Police, shall render necessary assistance to Respondent No.1 for eviction of the unauthorised occupants in terms of Section 315 of the Cantonment Act, 2006."

13. The Learned Counsel for the First Respondent brings it to the notice of this Court that the Second Respondent had put up unauthorised construction, for which, Notice was issued and action has been initiated under relevant Rules, it cannot be gainsaid that the First Respondent, being the watch dog under the Cantonment Act, 2006, is to carry out its task scrupulously, especially, keeping in mind of the necessary ingredients of the Cantonment Act, 2006 and to take necessary action in respect of the unauthorised construction. Further, the First Respondent shall take action to its logical end, of course, in the manner known to Law and in accordance with Law.

14. In view of the fact that the First Respondent filed a categorical counter, wherein, it is mentioned that after placing Agenda before the First Respondent, further action of demolition will be taken as per Section 248(1) of the Cantonment Act, 2006, this Court directs the First Respondent/The Chief Executive Officer, Cantonment Board, St. Thomas Mount cum Pallavaram, Chennai - 600 016 to take resultant follow up action after the outcome of the Agenda placed before the First Respondent Board on 29.01.2019 and to take necessary resultant action in respect of the unauthorised construction put up by the Second Respondent to its logical end, of course, in the manner known to Law and in accordance with Law and in any event, within a period of six weeks from the date of receipt of copy of this Order. If the

First Respondent is in need of any police assistance in regard to the demolition of unauthorised construction put by the Second Respondent, then the First Respondent shall seek necessary police assistance from the Jurisdictional Police Officer viz., Deputy Commissioner, St. Thomas Mount District Police, who, based on the request of the First Respondent, shall render his assistance in carrying out the task, to be performed by the First Respondent.

15. With the above observation and direction, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

- 1) The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount Cum Pallavaram,
Chennai - 600 016
- 2) The Deputy Commissioner,
St. Thomas Mount District Police,
Chennai.

+1 cc to M/s.King & Partridge, Advocate, S.R.No.8870

W.P.No.21455 of 2016

PPA(CO)
SSM(06/03/2019).

सत्यमेव जयते

WEB COPY