

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.8696 of 2019

P.Saravanan

.. Petitioner

-vs-

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Egmore, Chennai-600 008.

2.The Executive Engineer,
Zone-XI, Greater Chennai Corporation,
120, Rajiv Gandhi Salai,
Sholinganallore,
Chennai-119.

3.M/s.Karan Constructions,
No.6, Nanjunda Rao Salai,
Injambakkam,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 and 2 to forthwith lock and seal the unauthorised building put up by the 3rd respondent at Door No.6, Dr.Nanjunda Rao Salai, Injambakkam, Chennai.

For Petitioner : Mr.Prashanth Nadaraj
for M/s.AL.Ganthimathi

For Respondents : Mr.V.C.Selvasekaran
for respondent Nos.1 and 2
Mrs.P.Bagyalakshmi
for respondent No.3

ORDER

(Order of the Court was made by DR.VINEET KOTHARI,J.)

The petitioner/complainant, Thiru P.Saravanan, son of
R.Panchanathan, No.8/5, Ragav Arcade, Balu Street,

Thiruvananthapuram, Chennai-41, has filed this writ petition in this Court complaining against the alleged unauthorised/irregular construction being raised by respondent No.3 - M/s.Karan Constructions. Notice was issued to respondent No.3 - M/s.Karan Constructions in the present case by a Co-ordinate Bench of this Court on 10.06.2019.

2. The learned counsel for the petitioner, Mr.Prashanth Nadaraj, submitted that earlier the petitioner has approached this Court by way of W.P.No.30016 of 2018 seeking direction to respondent No.1/Chennai Corporation to consider his representation/complaint dated 12.10.2018. The said writ petition was disposed of by the Co-ordinate Bench of this Court noticing the fact that the Chennai Corporation has initiated action against the unauthorised construction and, therefore, no further orders were necessary. The writ petition, accordingly, was disposed of by this Court on 20.12.2018.

3. Respondent No.3 - M/s.Karan Constructions has also filed writ petition in this Court viz., W.P.No.32516 of 2018, which came to be disposed of by the Co-ordinate Bench of this Court headed by Hon'ble the Chief Justice on 06.12.2018 relegating the petitioner therein to avail appeal remedy before the concerned Secretary of Housing and Urban Development Department, Secretariat, Chennai, under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Accordingly, respondent No.3 - M/s.Karan Constructions appears to have filed a Revision under Section 80-A of the Act before the Secretary of the Housing and Urban Development Department.

4. The learned counsel appearing for respondent No.3, Mrs.P.Bagyalakshmi, has produced before us a copy of the letter bearing Letter No.25833/UD-VII(2)/2018-1, dated 16.9.2019, passed by the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai-9, after hearing M/s.Karan Constructions; the authorities of Chennai Metropolitan Development Authority and the Corporation of Chennai and the operative portion of the said letter is quoted below:

"5. After careful consideration of the request of the appellant, the Government hereby grant three months' time to rectify the defects and obtain revised planning permission and the building can be de-sealed for 3 months with the following conditions:-

- i. Appellant must obtain demolition approved plan from Local Body for showing the rectification proposed to make the construction comply with earlier approved plan or current rules in force.

- ii. The Local Body to approve the demolition plan within 10 days from the date of application.
- iii. The Local Body must de-seal the building after approval of demolition plan for a period of three months and to examine the site condition with respect to the approved plan and to send a report to the Government.
- iv. The appellant must carry out the rectification, as per approved demolition plan and to submit Planning Permission Application as per site condition.
- v. The building shall not be used for any purpose other than rectification.
- vi. After demolition, fresh approval must be obtained, if the building remains different from earlier approval.
- vii. The enforcement notice is stayed for a period of three months given for rectifications. If rectification is done, the notice will become infructuous.
- viii. Any violation in the conditions will result in re-sealing, without any further notice."

5. The learned counsel appearing for respondent No.3 has therefore submitted that since the remedy under Section 80-A of the Act has been availed by respondent No.3 - M/s.Karan Constructions and de-sealing has been directed by the said Additional Secretary subject to the conditions which the said respondent will comply, the present writ petition has become infructuous.

6. However, the learned counsel appearing for the petitioner submitted that the petitioner was never heard by the said Additional Secretary (Technical) under Section 80-A of the Act.

7. The learned counsel appearing for the Chennai Corporation, Mr.V.C.Selvasekaran, submitted that if respondent No.3 does not comply with the conditions stipulated in the letter dated 16.9.2019, they will be again entitled to seal the premises in question of respondent No.3. However, they are bound to de-seal the property for a period of three months as directed by the Additional Secretary (Technical).

8. We have heard the learned counsel.

9. Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 reads as under:

"80-A. Special Powers to Government.- (1) Notwithstanding anything contained in section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2-A) of section 56 or under sub-section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing;

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of the receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they may deem fit, pending the exercise of the powers under sub-section (1) in respect thereof."

10. Apparently, the said special power has been inserted by Tamil Nadu Act 61 of 2008 with effect from 10.12.2008, besides the revisional power already conferred under Section 80 of the Act, that the Director of the Town and Country Planning, on his own motion or on application, can call for and examine the record of any officer subordinate to him and pass appropriate orders in the matter. Special powers have been conferred upon the Government under Section 80-A of the Act notwithstanding anything contained in Section 80 of the Act in cases where sealing of the premises under Section 56(2-A) or under Section 57(4) has been undertaken and if it appears to the competent authority of the State Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, the said competent authority may pass appropriate orders.

11. The power under Section 80-A of the Act is undoubtedly a quasi-judicial power to be exercised by the competent authority of the State Government and, therefore, they could not have disposed of the revision/appeal in the form of a letter as it appears to have been done vide the letter dated 16.09.2019. The concerned parties, including the complainant, ought to have been heard by the said Additional Secretary (Technical),

particularly, when the complainant has filed repeated writ petitions before this Court challenging the impugned construction raised by respondent No.3 - M/s.Karan Constructions.

12. Therefore, we are of the opinion that the tenor of the letter dated 16.09.2019 passed by the Additional Secretary (Technical) could only be treated as interlocutory order passed in the proceedings under Section 80-A of the Act. The said proceedings ought to have been kept pending by the Additional Secretary (Technical) not only for the compliance of the conditions stipulated for directing de-sealing of the premises in question in paragraph 5 of the said letter/communication quoted above, but also for hearing the concerned parties by the Additional Secretary (Technical) before disposing of the revision proceedings under Section 80-A of the Act.

13. Therefore, we direct that the said letter dated 16.09.2019 of the Additional Secretary (Technical), Housing and Urban Development Department, shall be treated only as interlocutory order and the parties, including the complainant; the applicant therein viz., M/s.Karan Constructions, Chennai-115; the respondents-Chennai Metropolitan Development Authority and the Greater Chennai Corporation be heard in this matter. We further direct that the parties will be heard by the Additional Secretary (Technical), Housing and Urban Development Department, after the stipulated period of three months and after appropriate hearings provided to them, the said authority shall pass a final order under Section 80-A of the Act.

14. With these observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

bbr

To:

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Egmore, Chennai-600 008.

2.The Executive Engineer,
Zone-XI, Greater Chennai Corporation,
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Sholinganallore,
Chennai-119.

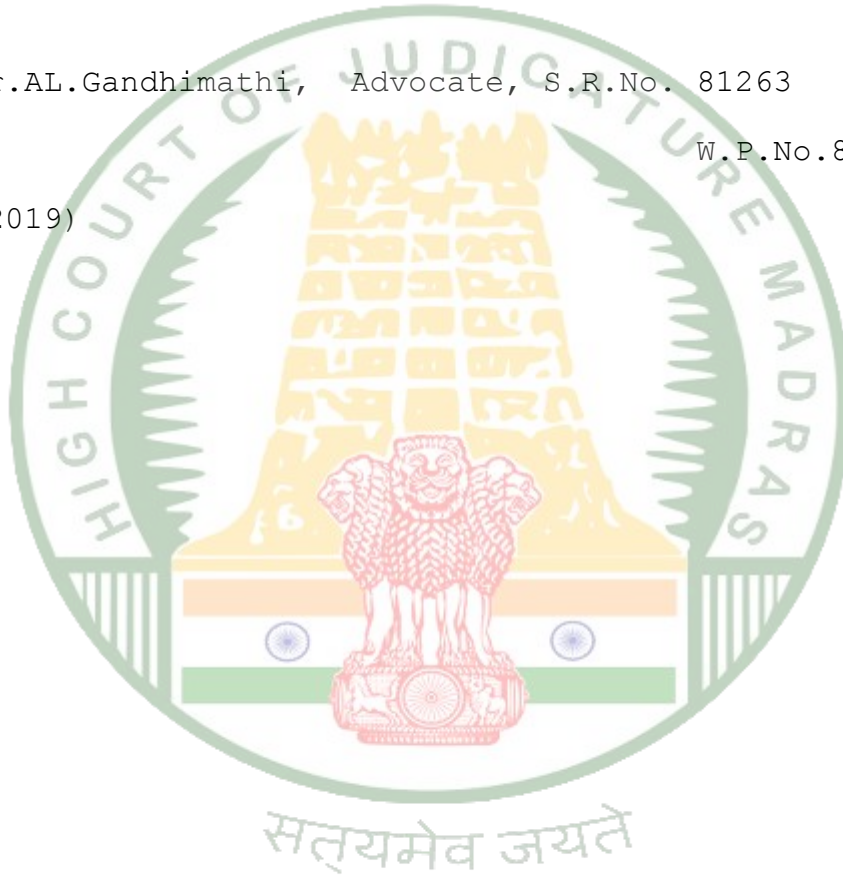
Copy of the order may also be marked to:

The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Chennai-9.

+1cc to Mr.AL.Gandhimathi, Advocate, S.R.No. 81263

W.P.No.8696 of 2019

RP(CO)
GN(30/09/2019)



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