

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.05.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P. No.14211 of 2019 and
W.M.P. No.14280 of 2019

B.Mamitha

... Petitioner

vs.

1.The Additional Secretary,
(Technical),
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Member Secretary
Chennai Metropolitan
Development Authority,
"Thalamuthu Natarajan Building",
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 028.

3.The Regional Deputy Commissioner(C),
Corporation of Chennai,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

4.The Assistant Executive Engineer,
Ambattur Zone 7,
Greater Chennai Corporation,
Ambattur, Chennai-600 053.

5.The Commissioner,
Corporation of Chennai,
Chennai-600 003.

6.Mahalakshmi @ Latha

7.Chairman,
Tamil Nadu Electricity Board,
Chennai-600 002.

... Respondents

(R7 suo motu impleaded by order of this Court dated 09.05.2019)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to Letter No.23999/UD-7(1)/2018-3, dated 16.04.2019 and quash the same.

For Petitioner : Ms.Sridevi

For Respondents: Mr.R.Govindasamy,
Special Government Pleader
for R1

Mr.P.S.Ganesh for R2

Mr.G.Anantharangan
for R3 to R5

O R D E R

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

Mr.R.Govindasamy, learned Special Government Pleader takes notice on behalf of the 1st respondent; Mr.P.S.Ganesh, learned Standing Counsel takes notice on behalf of the 2nd respondent; Mr.G.Anantharangan, learned Standing Counsel takes notice on behalf of respondents 3 to 5.

2.The petitioner has come forward with this writ petition, challenging the order of the Additional Secretary, Housing and Urban Development Department, who is the authority under Section 80-A of the Tamil Nadu Town and Panchayat Planning Act 1971, whereby the request of the petitioner has been rejected and the Greater Chennai Corporation was directed to continue with the notice dated 09.10.2018. The petitioner, while making submission, stated that there is an un-authorized construction, however, there is an application pending for regularization under Section 113-C of the Act. This Court, vide order dated 06.02.2019, while dealing the similar issue with regard to the illegal construction has held that even though the Section 113-C has been upheld, the G.O. Ms. Nos.110 and 111 dated 22.06.2017 issued in the said provision cannot stand in the eye of law and that in respect of the illegal construction, demolition should take place, in fact, in paragraphs 12 and 13, this Court has observed as follows:

12. The insertion of Section 113-C of the Act and the subsequent Government Orders appear to be a helping hand only to encroachers, who, at a later point of time, would daringly say that though they have encroached the land, park, Odai, OSR, etc.,

they are entitled to regularisation in terms of the above Section and the subsequent GOs. The Government, while issuing such guidelines, should ensure that the land, park, Odai, OSR, etc., are protected with utmost care and the Government should also take strict measures to curtail the encroachers with iron hand.

13. Looking at any angle, it can be said that the insertion of Section 113-C is violative of the decision of the Hon'ble Apex Court in the case reported in (2000) 7 SCC 425 (referred to supra) and on that score, G.O.Ms.Nos.110 and 111 have to be struck down / scrapped, in view of the fact that those Government Orders are completely in violation of the decision of the Apex Court, which had considered the grant of regularisation as an one time measure only. The Government also seems to be encouraging illegal encroachments and unauthorized constructions, as a close reading of the Report No.8 of 2017 of the Comptroller and Auditor General of India would reveal that the Corporation is solely responsible for such encroachments in all places and in the report, it was stated as under:

"Rampant encroachment of road margins in Chennai, with an average of 3.4 incidences of encroachments per kilometre of road length, went largely unchecked due to inaction on the part of Greater Chennai Corporation.

Encroachments on water bodies accounted for 49 per cent of the total objectionable encroachments. Jurisdictional issues and lack of coordination between Revenue and Water Resources Departments contributed to the rise in encroachments on water bodies."

Therefore, we are of the view that G.O.(Ms) Nos.110 & 111 dated 22.06.2017 are not valid and cannot stand in the eye of law.

3. A similar issue was considered by the Bombay Hight Court, wherein they refused to entertain the regularization. When the matter was taken up to the Hon'ble Supreme Court, the

Government, while challenging the Section 113-A, has made a statement that they wanted to regularise the building as an one time measure and the same cannot be repeated. Thereafter, Section 113-C was introduced and the same has been upheld by this Court. In view of the order dated 06.02.2019 of this Court mentioned supra, Section 113-C can remain in the Statutes, but, without any purpose.

4. As G.O. Ms. Nos.110 and 111 dated 22.06.2017 has been held to be bad, the illegal construction will have to go. The contention that the petitioner was not given an opportunity, cannot be accepted as she was given an opportunity and she did not appear. As it is a finding of fact that illegal construction has been admitted, we find no error in the order of the Appellate Authority dated 16.04.2019. The authority concerned, who has to remove the encroachments, need to follow the decision of this Court rendered in W.P.No.27499 of 2018 made vide order dated 16.10.2018. Relevant portion of the said order reads as under:

"12. Since it is represented by the learned counsel for the Petitioner that many Appeals are pending, this Court suo motu impleads the Commissioner, Corporation of Chennai, Ripon Building, Chennai as necessary party to this Writ Petition and passes the following directions:

(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 drill the roof of the building and make a big hole so that the building cannot be occupied any more."

5. This Court directs the Corporation to continue demolition of illegal structure before the end of June 2019 and electricity supply and water supply shall be disconnected within a week from the date of receipt of a copy of this order.

6. As Electricity Board is a necessary party, this Court

suo moto impleads the Chairman, Tamil Nadu Electricity Board, Chennai - 600 002 as party Respondent to the above Writ Petition.

The writ petition stands dismissed with the above direction. Consequently, connected W.M.P. is closed. No costs.

Sd/-
Assistant Registrar (VO)

//True copy//

Sub Assistant Registrar

vga/aeb

To

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Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

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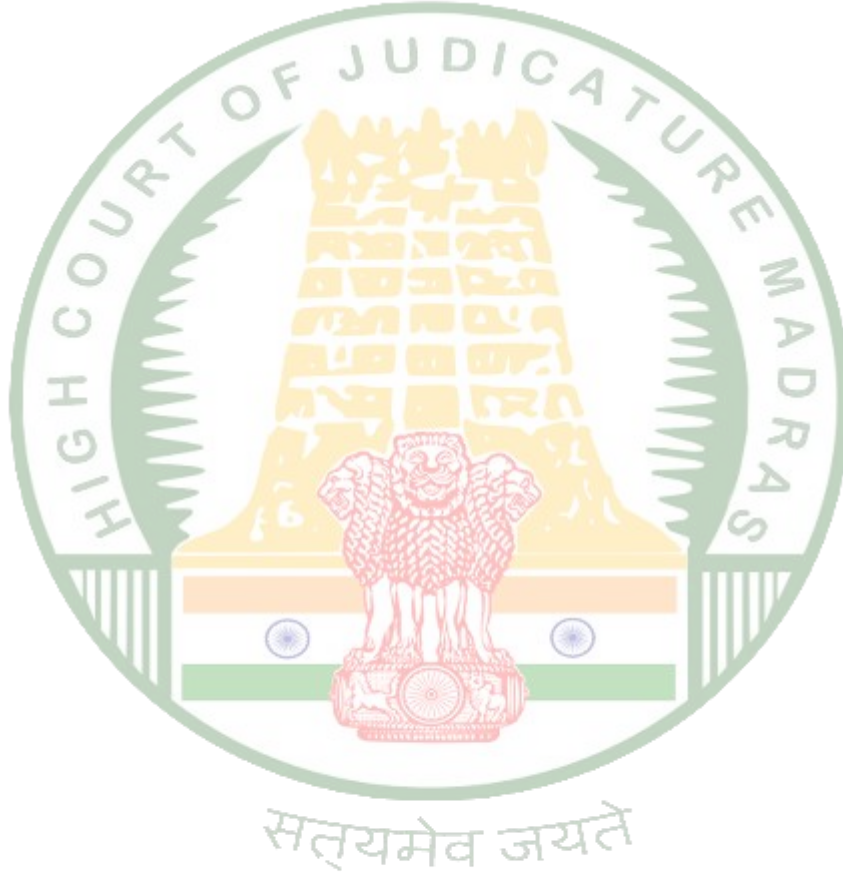
+1cc to Mr.S.Sridevi, Advocate SR.No.43512

+1cc to Mr.G.Anantharangan, Advocate SR.No.43498

+1cc to Government Pleader SR.No.43639

W.P. No.14211 of 2019 and
W.M.P. No.14280 of 2019

SR(CO)
GMY(17/06/2019)



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