

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.21974 of 2019 and

W.M.P.No. 21212 of 2019

E.M.PR.Muthappan

.. Petitioner

v.

1 The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2 The Executive Engineer - IX,
Greater Chennai Corporation,
No.1, 4th Cross street,
Lake View Road,
Chennai - 600 034.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the respondents to hand over possession of the unauthorized portion of the building at Door No.82/22, North Mada Street, Mylapore, Chennai - 600 004 based on petitioner's representation dated 15.05.2019.

For Petitioner : Mr.S.Santhan

For Respondents : Mr.V.C.Selvasekaran

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

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus to direct the respondents to hand over possession of the building at Door No.82/22, North Mada Street, Mylapore, Chennai, based on his representation dated 15.05.2019.

2. It is the case of the petitioner that ground and first floor building in the rear side, measuring an extent of 900 sq.ft., was put up in the year 1935-1936 and later, the petitioner constructed second floor above the ground plus first floor of the old building, which was existing in the rear portion. According to the petitioner, the building was constructed with the approved plan constructed in the year 1983. During the course of construction, the respondent-Corporation issued a notice dated 17.08.2015 under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, to stop work. Thereafter, another notice was issued on 01.09.2015 to remove the unauthorized construction put up by the petitioner. Subsequently, the authorities demolished the unauthorized construction put up by the petitioner. However, the possession remained with the Corporation of Chennai. In such circumstances, the petitioner has filed the Writ Petition seeking for re-delivery of the possession in respect of the property in dispute.

3. The 2nd respondent filed a counter wherein it has been stated that in the case of the petitioner come forward to make a request to handover possession by giving an undertaking that he is ready and willing to go for a development of the existing old building by way of getting approval for demolition and reconstruction, until such time, the petitioner will neither put to use nor make any physical alteration so as to bring it fit for habitation, the respondent-Corporation will consider the request of the petitioner.

4. In view of the averments stated in the counter affidavit, the petitioner approached the 2nd respondent and gave a letter of undertaking dated 03.09.2019, wherein it has been stated as follows:-

"Hence, I hereby give an undertake that in the event of Greater Chennai Corporation handing over rear portion of the unauthorized construction possession I assure that will not make or carryout any nature of or in any form so as to physically alter the demolition carried out by the Greater Chennai Corporation and in future if there is any proposal or intention to develop the old building in the front portion by way of demolition and reconstruction until such time I will abide by the undertaking given by me. Hence, I request you to handover the possession of the unauthorized portion which has become totally incapable of habitation in order to protect the old structure."

5. Mr.V.C.Selvasekaran, learned counsel appearing for the respondents submitted that in view of the undertaking dated 03.09.2019 given by the petitioner, the respondents may be directed to handover possession of the property to the petitioner. However, the petitioner may be directed not to put up any further construction till approval is granted by the authorities.

6. In view of the submissions made by the learned counsel for the respondents, the respondents are directed to consider the letter dated 03.09.2019 of the petitioner for handing over possession of the property to the petitioner. However, we make it clear that the petitioner shall abide by the undertaking given by him in the letter dated 03.09.2019 till approval is granted to him.

With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Commissioner,
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Rippon Buildings,
Chennai - 600 003.

2 The Executive Engineer - IX,
Greater Chennai Corporation,
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+1cc to Mr.S.Santhan, Advocate, S.R.No. 76406

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GJ(CO)
CS/06/09/2019