

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.29847 of 2019

Abitha Banu

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep. by its Additional Secretary (Technical)
Housing and Urban Development Department
Secretariat, Fort St.George
Chennai.

2.The Commissioner
Greater Chennai Corporation
Chennai – 600 003.

3.The Executive Engineer
Corporation of Chennai
Zone VIII
2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai – 600 030.

4.A.Pari

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records

relating to the order passed by the first respondent in Letter N.26295/UDVI (1) 2018-4, dated 01.10.2019, which has been received by the petitioner's counsel on 15.10.2019 and quash the same.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.V.Jayaprakash Narayan
Special Government Pleader for R1
Mr.V.C.Selvasekaran for R2 & R3

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner was issued with the De-occupation Notice dated 21.12.2018 by the third respondent under Section 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 and the contents of the said notice would disclose that the residential building at Door No.113, Periyar Pathai West Street, Arumbakkam, Chennai – 600 106, is wholly an unauthorized one and it is relevant to extract the tabular column given in the said De-Occupation Notice :

S.No.	Description	As per plan	As per site	Deviated / Unauthorised
1	Ground Floor	Nil	283.00 sqm	Unauthorised
2	First Floor	Nil	283.00 sqm	Unauthorised

2.1 Challenging the said notice, the petitioner has filed an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 [in short "TCP Act"], before the Appellate Authority viz., the first respondent. The contents of the appeal memorandum would disclose among other things that one Appavoo (now deceased) had entered into an agreement with the petitioner to sell the scheduled mentioned property on 08.04.2003. Later, the petitioner became aware of the fact that in respect of the very same property, Appavoo has executed Power of Attorney in favour of one Gunaseelan, on 18.05.1998. Besides that, Appavoo had also executed a Power of Attorney in favour of the petitioner on 12.08.2003 in respect of the lands in Survey Nos.3 & 4, admeasuring an extent of 3375 sq.ft, and the earlier Power of Attonery executed in favour of Gunaseelan, came to be cancelled through another registered Cancellation of General Power of Attorney bearing document No.769 of 2003.

2.2 Be that as it may, the petitioner came to know that a portion of the property in Survey No.4, in which sale agreement was made in her favour, belonged to one Nadarajan, due to which a dispute arose between them, and finally an additional sum of Rs.1,25,000/- was also said to have been paid by the petitioner and

her husband, in lieu of executing the Power of Attorney in their favour. In due course, Appavoo lodged a complaint against the petitioner before R-5 Choolaimedu Police Station, and after enquiry, it was closed.

2.3 This apart, Appavoo's earlier Power Agent Mr.Gunaseelan had filed a Suit in O.S.No.4190 of 2003 on the file of the VII Assistant City Civil Court, Chennai and the same was dismissed. Thereafter, Appavoo also filed a suit for permanent injunction in O.S.No.1134 of 2005 on the file of the XIII Assistant City Civil Court, Chennai, and the said Suit was also dismissed.

2.4 The memorandum of appeal also reads that Appavoo has also filed yet another Suit in O.S.No.10171 of 2010 on the file of the Principal Judge, City Civil Court, Chennai, claiming himself to be the owner of the said property and the said Suit is still pending. Pending the Suit, Appavoo died and his legal heirs namely the fifth respondent and his daughter contested the Suit.

2.5 The Appellate Authority viz., the first respondent after affording opportunity to the petitioner and on going through the materials placed before it and on appreciating the memorandum of

grounds, has taken out the fact of litigation pending before it as well the issue on adjudication and has noted that the Ground floor + First floor constructed in the said premises is totally an unauthorized one and found that there was no merit in the Special Revision/Appeal filed by the petitioner and dismissed the same, vide impugned order and making a challenge to the same, the present writ petition has been filed.

3. Mr.A.R.Nixon, learned counsel appearing for the petitioner would vehemently contend that in the light of the dismissal of very many Suits instituted at the instance of Appavoo, who has also persuaded the Corporation Officials to issue the De-Occupation Notice, the proceedings initiated by the third respondent are not at all benefited. It is the further submission of the learned counsel appearing for the petitioner that attempts made by Appavoo, in launching criminal prosecution had ended in failure and subsequently, he is also no more and in the light of the pendency of Civil Suit in O.S.No.10171 of 2010 on the file of the Principal Judge, City Civil Court, Chennai, it is not open to the Corporation to issue De-Occupation notice and prays for setting aside the impugned order issued by the first respondent and allowing of the writ petition.

4. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader accepts notice on behalf of the first respondent, Mr.V.C.Selvasekaran, learned counsel accepts notice on behalf of the respondents 2 and 3. It is pointed out by the learned respective counsels appearing for the official respondents that the contents of the De-Occupation Notice dated 21.12.2018, would disclose that the Ground floor and First floor of the residential building at Door No.113, Periyar Pathai West Street, Arumbakkam, Chennai – 600 106, each measuring 283.00 sqm are wholly unauthorised.

5. When this Court has put a specific question to the learned counsel appearing for the petitioner as to the said fact, the learned counsel is unable to come out with any plausible answer and in fact, rather questioned the *locus standi* of the third respondent to issue such a notice.

6. It is open to the officials of the Corporation of Chennai to initiate *suo-motu* action against the offenders, once they trash the orders of the authorities, with regard to the unauthorised construction and the officials are also empowered with every right under law and in exercise of jurisdiction, to issue De-Occupation,

Lock and Seal Notice in respect of the premises which are wholly unauthorised. The Appellate Authority, viz., the first respondent, had taken into consideration the memorandum of grounds of appeal and also the fact that the contents of the De-Occupation Notice would also disclose that the entire superstructure is unauthorised.

7. In the considered opinion of the Court, the pendency of the Civil Suit and dismissal of the earlier Suits filed by Late.Appavoo, has no bearing upon the action being initiated by the Corporation of Chennai, against the unauthorised construction, as they are provided with statutory powers to do so, under the provisions of Chennai City Municipal Corporation Act, 1919.

8. The first respondent, in the impugned order, had taken note of the grounds raised by the petitioner and has rightly exercised it's jurisdiction strictly in accordance with law under Section 80-A of the TCP Act and therefore, this Court is not inclined to interfere with the said order, in exercise of it's jurisdiction under Article under 226 of the Constitution of India.

9. In the considered opinion of the Court, there is no infirmity or error apparent on the face of the record in the impugned order

passed by the first respondent and finds no merit in this writ petition. Therefore, this writ petition is dismissed at the admission stage itself. No costs.

[M.S.N., J.] [N.S.S., J]
17.10.2019

Index : Yes / No
Internet : Yes/No
Speaking order / Non-speaking order

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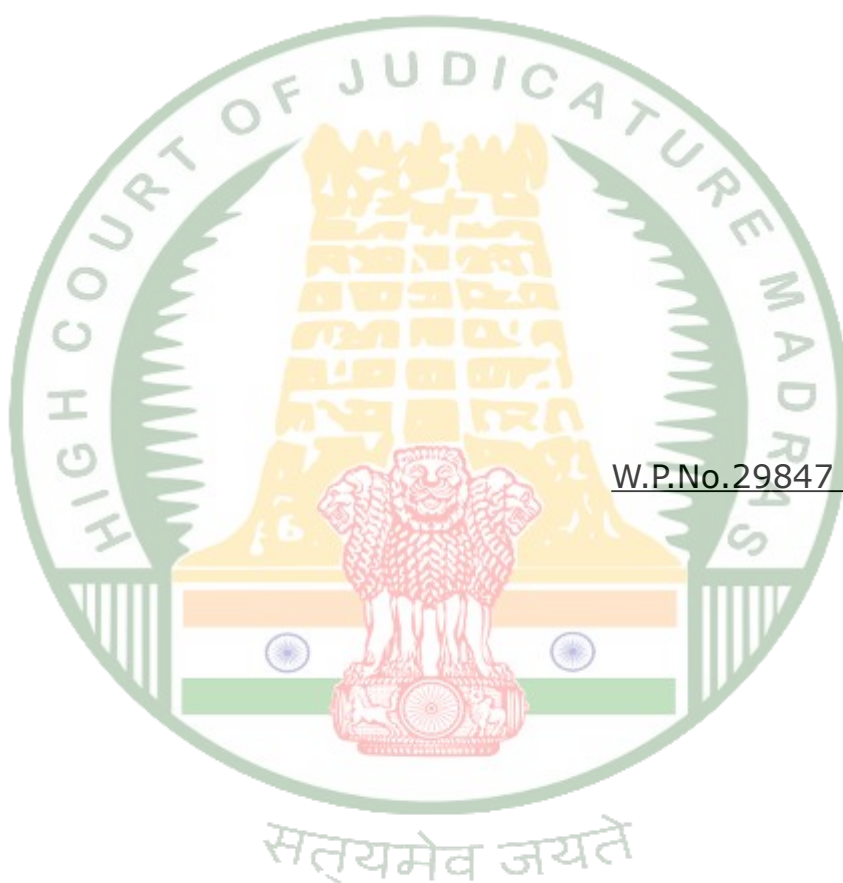
- 1.The Secretary
Housing & Urban Development
Fort St.George, Chennai.
- 2.The Member Secretary
CMDA
Thalamuthu Natarajan Building
Egmore, Chennai – 600 008.
- 3.The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai – 600 003.
- 4.The Executive Engineer – Zone X
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai – 600 024.
- 5.The Assistant Executive Engineer – Unit 31
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai – 600 024.
- 6.The Assistant Engineer – Division 134
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai – 600 024.

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[Order of the Court was made by M.SATHYANARAYANAN, J.]

The matter is listed by way of being-mentioned at the instance of the learned counsel for the petitioner, who has filed an affidavit dated 21.10.2019 vide Sr.No.33160 of 2019.

2. The learned counsel appearing for the petitioner would submit that the writ petition, challenging the order of the 1st respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act 1971, came to be dismissed on 17.10.2019 and in the light of the fact that the petitioner is Partha wearing lady living in the premises in question along with her husband, daughter, son-in-law, grand daughter aged 1 ½ years and a 6 months old grand son and that apart their two children are also studying in Elementary / Middle School level prays for one year to vacate the premises in question for the purpose of demolition by the Corporation officials.

M.SATHYANARAYANAN, J.,
and
N.SESHASAYEE, J.

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3. However the said plea is strongly opposed by the 4th respondent who is appearing as party-in-person and would submit that right over the property in his favour has been finally adjudicated and declared in the Suit in O.S.No.107/2010 and the said fact is seriously disputed by the learned counsel appearing for the petitioner who would submit that the suit is pending.

4. This Court has considered the arguments advanced during the hearing of the writ petition and having found no merits has dismissed the Writ Petition. It is a well settled position of law that this Court cannot act as a appellate body over it's opinion in respect of it's common order and even assuming for the sake of arguments, it is exercising review jurisdiction, still the scope of review is very limited. Therefore, this Court is not inclined to pass any orders on the affidavit of the petitioner

dated 21.11.2019 in Sr.No.33160/2019.

[M.S.N,J] [N.S.S,J]
07.11.2019

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Note:Issue order copy in the main writ petition on 11.11.2019.

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