

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.31173/2019

&

WMP.No.31304/2019

N.Sivakumar rep.by the Power Agent
C.Natarajan

..Petitioner

Versus

- 1.The Additional Secretary [Technical]
Housing and Urban Development Department
Secretariat, Chennai 600 009.
- 2.The Commissioner
Greater Chennai Corporation
Ripon Buildings, Chennai 600 003.
- 3.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
- 4.Executive Engineer
Zone 13, Adyar, No.115,
Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.
- 5.Assistant Engineer
Division 179, No.65,
Velachery Main Road
Velachery, Chennai 600 065.
- 6.Junior Engineer
Div.179, No.65, Velachery Main Road
Velachery, Chennai 600 065.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to the proceedings in Letter

NO.13/00055/2019 Lock and Seal and Demolition Notice dated 16.08.2019 issued by the 4&5 respondents for the deviated construction of N.Sivakumar, residential building Plot No.145 & 146, Bhuvanewari Nagar 1st Main Road, Velachery, Chennai Pincode 600 042 and quash the same.

For Petitioner : Mr.G.Peranban
For Respondents: Mr.V.Jayaprakash Narayan,
Spl.Government Pleader for R1

Mr.K.Soundararajan,
for Respondents 2,4,5 & 6

Mr.Thiruvengadam for R3

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal. Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of the respondents 1 and 2 and Mr.Thiruvengadam, learned counsel accepts notice on behalf of the 3rd respondent.
- (2) Admittedly, the writ petitioner is the owner of 9 Flats and he is residing in one of the Flats. One Vallirajan, on an earlier occasion, filed WP.No.16943/2019 against the official respondents as well as against the writ petitioner herein, praying for issuance of a writ of mandamus, directing the Commissioner, Corporation of Chennai as well as the Member Secretary, Chennai Metropolitan Development Authority [CMDA], to dispose of his representation dated 27.02.2019 wherein the petitioner therein alleged that there was an unauthorised construction on the part of the 6th respondent therein / writ petitioner herein.
- (3) A Division Bench of this Court, vide order dated 21.06.2019, had disposed of the said writ petition, directing the 4th respondent, viz., the Zonal Executive Engineer, Zone-XIII, Corporation of Chennai, to consider and dispose of the representation on merits and in accordance with law within the stipulated time, after putting on notice, the 6th respondent therein / writ petitioner herein.
- (4) The 4th respondent in the said writ petition who is also arrayed as the 4th respondent herein, in compliance of the order, had issued the Lock and Seal and Demolition Notice dated 16.08.2019, bearing Letter No.13/00055/2019. The writ petitioner herein appeared to have preferred the statutory appeal/revision u/s.80-A of the Town and Country Planning Act,

1971, and apprehending that pendency of the statutory revision/appeal, further action is likely to be taken by the 4th respondent, the petitioner came forward to file the present petition.

(5) This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(6) It is relevant to extract the deviations pointed out by the 4th respondent, in the Lock and Seal and Demolition Notice, dated 16.08.2019, which is impugned herein:-

S.No	Description	As per approved plan	As on site	Deviation
1	Front Setback	1.52	1	0.52
2	Rear Setback	4.57	1	3.57
3	Side setback [South]	1.5	1.2	0.30
4	Side setback [North]	1.5	1.5	-
5	Total Area of Building	399.15	479.56	80.41
6	Height	7.24	7.24	-
7	Area at Ground Floor	185.96	239.78	53.82
8	Area at 1 st Floor	213.19	239.78	26.59
9	Area at 2 nd Floor	0	0	0
10	Floor Space Index	1.03	1.24	0.21
11	Usage	Residential	Residential	Residential
12	No.of Floor	2	2	

(7) The learned counsel for the petitioner would submit that the petitioner has also filed an application for regularisation of the unauthorised construction, under section 113C of the Town and Country Planning Act, 1971. In the considered opinion of the Court, the alleged pendency of the regularisation application said to have been filed under Section 113C of the Town and Country Planning Act, 1971, would not operate as automatic stay of the proceedings initiated by the 4th respondent.

(8) The petitioner, despite filing the statutory revision / appeal before the 1st respondent, challenging the Lock and Seal and Demolition Notice dated 16.08.2019, had filed the present writ petition praying for the very same relief and in the light of the alleged pendency of the statutory revision/appeal, the writ petition is not maintainable.

(9) At this juncture, the learned counsel for the petitioner on instructions, would submit that it would suffice to direct the 1st respondent to consider and dispose of the statutory appeal/revision preferred by the petitioner pending on the file of the 1st respondent and on the said submissions, this Court

heard the submissions of Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for the 1st respondent also.

(10) This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this writ petition, directs the first respondent to entertain the statutory revision/appeal dated 05.09.2019, if the papers are otherwise in order and give a disposal as expeditiously as possible.

(11) The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Secretary [Technical]
Housing and Urban Development Department
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6. The Junior Engineer
Div.179, No.65, Velachery Main Road
Velachery, Chennai 600 065.

+1 cc to M/s.G.Peranban, Advocate Sr.No. 92431

+1 cc to M/s.K.Soundararajan, Advocate Sr.No.92616

AKM/03.12.19/4P- 9C /

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