

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.30759/2019 & WMP.Nos.30843 & 30845/2019

1.S.M.Fazal Mohammed

2.Mrs.N.A.Janeera

.. Petitioners

Versus

1.The Additional Secretary to Government
Housing and Urban Development Department
Fort St. George, Secretariat
Chennai 600 002.

2.The Executive Engineer
Zone IX, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

3.The Assistant Executive Engineer
Zone IX, Unit-24, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

4.The Assistant Engineer
Zone IX, Div.110, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

5.V.Ethirajan

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the impugned order of the 1st respondent in Letter No.2786/UD-VI[1]/2019-5 dated 10.07.2019 and to quash the same and consequently, direct the respondents 2 to 4 to grant planning permission for the building at old Door No.48-C, 112-A, New No.132, Kodambakkam High Road, Nungambakkam, Chennai 600 034.

For Petitioners:	Mr.S.Santhan
For R1	: Mr.V.Jayaprakash Narayan
	Government Pleader
For R2 to R4	: Dr.C.Ravichandran
	Standing Counsel

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 1st respondent and Dr.C.Ravichandran, learned Standing counsel accepts notice on behalf of the respondents 2 to 4.

(2) The petitioners claim to be the owners of the premises bearing old Door No.48-C, 112-A, New No.132, Kodambakkam High Road, Nungambakkam, Chennai 600 034 and they claim to have purchased the same through a registered Sale Deed dated 23.10.1996. A perusal of Annexure-IA to the Sale Deed would disclose that there exist a 500 sq.ft., superstructure in the ground floor. It appears that the private respondent has filed WP.No.28229/2017 alleging unauthorised construction on the part of the petitioners and this Court, vide order dated 05.12.2018, had disposed of the said writ petition and it is relevant to extract the operative portion of the said order:-

''...Also that, the respondents No.5 and 6 are directed to keep the disputed property, where unauthorised development was made in a Lock and Seal condition and in the sale property, they shall not create any third party rights or mortgage or carry out alterations or additions or let the property for occupation of tenants/strangers for Rent. In case, if the respondents No.1 to 3 come to definite conclusion that the unauthorised development made by the respondent No.5 and 6 require demolition, then, they are directed to take such action in this regard, in accordance with law. In respect of the violated portion of the building, Electricity and water supply connections shall be disconnected by the Area Engineer of TANGEDCO/TNEB and by the concerned officer of the Chennai Water Supply and Sewerages Board and in this regard, the Respondent No.1 to 3 shall intimate the aforesaid officers diligently and without fail. Further, for the expenses incurred towards demolition in respect of unauthorised construction put up by the respondents No.5 and 6, the respondents No.1 to 3, after meeting out the same, at the first instance can fasten the liability to the said expenses on the respondents No.5 and 6 by serving due notice to them and if they fail to pay requisite charges,

therefore, liberty is granted to the respondents No.1 to 3 to proceed under the ingredients of & No.45, The Revenue Recovery Act & No.45, as the case may be.

With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected WMP is closed.''

- (3) The 3rd respondent, in compliance of the above order, has issued a Notice dated 25.01.2019 calling upon the petitioners to commence the demolition of the unauthorised construction of stilt, First and Second Floors within seven days from the date of receipt of the notice and complete the same, failing which, the Greater Corporation of Chennai will carry out the demolition works as per the above cited direction and recover the cost from the petitioners. The petitioners, challenging the legality of the said Notice, had invoked the statutory remedy available to them under section 80-A of the Town and Country Planning Act, 1971, by filing Special Revision / Appeal before the 1st respondent and the 1st respondent, vide impugned order dated 10.07.2019, after taking note of the materials, found that the construction made, is wholly unauthorised and aggrieved by the said order, the petitioners have filed the present writ petition.
- (4) The learned counsel for the petitioner would submit that in the light of G.O.Ms.Nos.147 and 148 of the 1st respondent Department, the petitioners are entitled to apply for regularisation of the alleged unauthorised construction.
- (5) Per contra, Mr.V.Jayaprakash Narayan, learned Government Pleader, would submit that unless and until the petitioners establish the material fact that the offending construction / superstructure put up by the petitioners, the reasons assigned in the impugned order are sustainable and prays for dismissal of this writ petition.
- (6) Dr.C.Ravichandran, learned Standing counsel appearing for the respondents 2 to 4/Corporation of Chennai, would submit that in the light of the fact that the special revision/appeal filed by the petitioners, came to be dismissed, immediate and further action would follow.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.
- (8) It is relevant to extract the deviated and unauthorised constructions pointed out by the 3rd respondent in the Notice dated 05.01.2018:-

Sl.No	Description	As Per Plan	As Per Site	Deviated/Unauthorised
1	Ground Floor	-	15.15x9.90=149.98sq.m.	149.98 sq.m.
2	First Floor	-	11.46x15.06 = 172.32 sq.m.	172.32 sq.m.
3	Second Floor	-	11.46x15.06 = 172.32 sq.m.	172.32 sq.m.
4	Total		494.62 sq.m.	494.62 sq.m.

It thus appears that the entire superstructure is wholly unauthorised and the photographs made available at page No.59 of the typed set of documents would also disclose that there is no setback provision also. The petitioners in the grounds raised in the statutory appeal/revision before the 1st respondent took a stand that the official respondents ought to have given an opportunity to go for regularisation.

(9)The petitioners have failed to spell out any tenable reasons as to the right vested with them to put up the unauthorised construction. This Court can also take judicial notice of the fact that the City of Chennai is bristled with very many unauthorised/deviated structures and it is very hard to find any construction which has been put up strictly in accordance with the sanctioned plan / building permit. The unauthorised construction in the form of First and Second Floors also amounts to aerial encroachments.

(10)This Court, on an independent application of mind, is of the considered opinion that there is no error apparent, infirmity or perversity attached to the findings recorded by the 1st respondent in dismissing the statutory revision/appeal and finds no merit in the present writ petition.

(11)In the result, the writ petition stands dismissed at the admission stage itself. No costs.

(12)The respondents 2 to 4 are directed to take necessary steps as a follow up of their earlier notice dated 05.01.2018, after the present 2019-20 monsoon period is over. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Additional Secretary to Government
Housing and Urban Development Department
Fort St. George, Secretariat
Chennai 600 002.

2.The Executive Engineer
Zone IX, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

3.The Assistant Executive Engineer
Zone IX, Unit-24, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

4.The Assistant Engineer
Zone IX, Div.110, Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai 600 034.

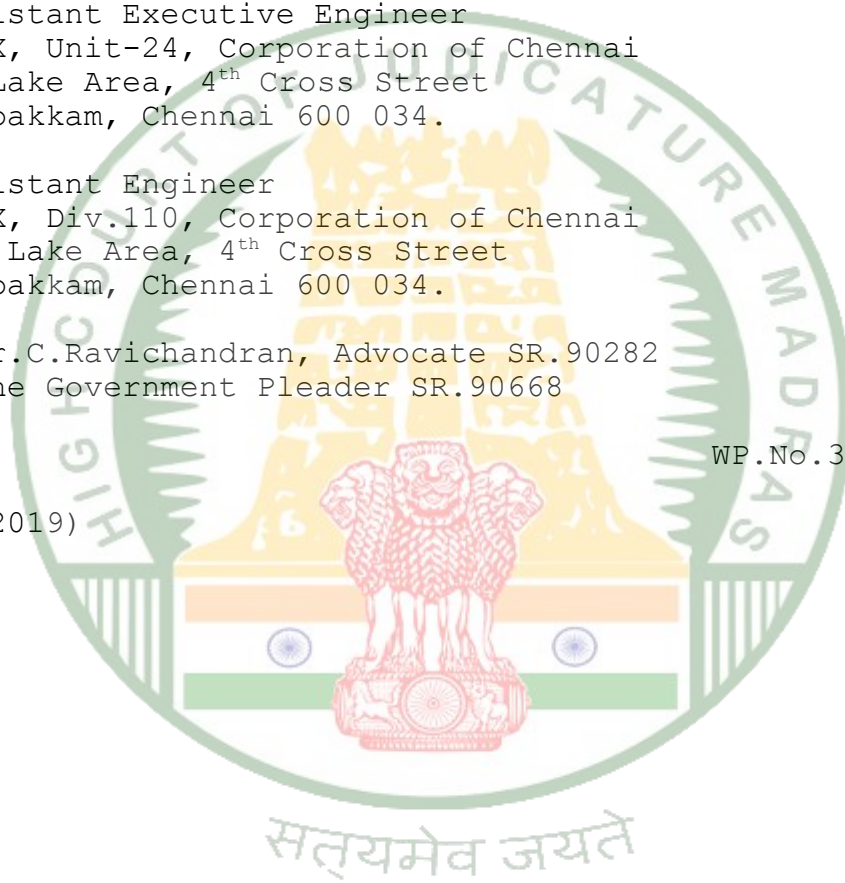
+lcc to Dr.C.Ravichandran, Advocate SR.90282

+lcc to the Government Pleader SR.90668

WP.No.30759/2019

MG(CO)

CB(06/12/2019)



WEB COPY