

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.01.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.23837 of 2017
and
W.M.P.No.25069 of 2017

1. V.Sundar
2. S.Vasanthi

.. Petitioners

Vs.

1. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai.
2. The Executive Engineer,
Greater Chennai Corporation,
Zone XI,
Chennai-600 087.
3. Asst. Executive Engineer,
Unit-32,
Greater Chennai Corporation,
Chennai.
4. Baskar Babu
(Respondent No.4 impleaded as
per order dated 01.11.2017 passed
in W.M.P.No.29080 of 2017
in W.P.No.23837 of 2017)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in Notice No.52/2017, dated 02.08.2017 passed by the Second Respondent and quash the same and consequently direct the respondents to regularise the construction of the shed situated at Plot No.11, KGP Garden, Varalakshmi Nagar, Maduravoyal, Chennai-600 095 owned to the petitioners on receipt of the requisite charges payable to the Greater Chennai Corporation.

For Petitioner : Ms.S.Vinodha for Mr.M.Rajendiran
For Respondents : Mr.V.C.Selvasekaran for RR-1 to 3

ORDER

(The Order of the Court was made by M.Venugopal, J)

The Petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in Notice No.52/2017, dated 02.08.2017 passed by the Second Respondent and quash the same and consequently direct the respondents to regularise the construction of the shed situated at Plot No.11, KGP Garden, Varalakshmi Nagar, Maduravoyal, Chennai-600 095 owned to the petitioners on receipt of the requisite charges payable to the Greater Chennai Corporation.

2. Heard both sides and perused the materials available on record. In respect of the Fourth Respondent, the Court notice got returned with an endorsement "Door Locked - Insufficient Address" and to avoid avoidable delay, fresh Notice to the Fourth Respondent is not ordered by this Court, to prevent an aberration of Justice and in furtherance of substantial cause of Justice.

3. According to the Petitioners, they purchased a property on 25.05.2000 from one Nagaraj in the name of the Second Petitioner, vide Document No.2390/2000 on the file of the Sub-Registrar, Virugambakkam, measuring an extent of 2200 Sq.Ft., comprising in Survey Nos.127/1 and 127/7C situated at Maduravoyal Village, Venkateswara Nagar, Ambattur Taluk, Thiruvallur District, within the limits of Maduravoyal Town Panchayat. The First Petitioner had purchased the property on 25.05.2000 from the said Nagaraj, vide Document No.2391/2000 on the file of the Sub-Registrar, Virugambakkam, measuring an extent of 6014 Sq.Ft. comprising in Suvey Nos.127/1 and 127/7C situated at Maduravoyal Village, Venkateswaran Nagar, Ambattur Taluk, Thiruvallur District, within the limits of Maduravoyal Town Panchayat.

4. The version of the Petitioners is that Patta and Chitta and other Revenue Records had been transferred in the name of the Petitioners and thereby, they are enjoying the property without any intervention. Apart from that, a Trust Deed was registered on 05.05.2003, vide Document No.1892/2003 on the file of the Sub-Registrar in the cadre of District Registrar, Virugambakkam and the same was cancelled on 22.02.2014, vide Document No.106/2014 on the file of the Sub-Registrar Office, Virugambakkam. Further, the Petitioners had constructed a shed in the First Petitioner's property and the Second Petitioner's property with an extent of 2000 Sq.Ft., which is kept as free access way to the shed. As a matter of fact, the shed was constructed with an intention to let out the premises to earn money by means of rent for the survival of the family.

Furthermore, their property was let out to NOVA Building Systems, a Partnership Concern and that is the only source of income for their family's survival. The said NOVA Building Systems had been registered under the Ministry of Micro and Small and Medium Enterprises and the said NOVA Building Systems got all documents, namely Certificate of Registration, Form D under the Commercial Tax Department, Government of Tamil Nadu.

5. It is the stand of the Petitioners that after completion of the work and the building let out to the said NOVA Building Systems, the Third Respondent had issued Stop Work Notice/Notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, calling for the approved plan. The Second Respondent has issued another Notice under Sections 56 and 57 of the said Act of 1971. In fact, the said Notice points out that the Petitioners will have to demolish the already completed unauthorised construction within 30 days from the date of receipt of the Notice, failing which, action will be taken under Sections 56 and 57 of the said Act of 1971. The Petitioners made a Representation on 15.07.2017 to the Second Respondent in person to show their willingness to pay the Regularisation Charges. However, the Second Respondent kept the said Representation pending without any progress.

6. At this juncture, the Second Respondent had issued the impugned De-Occupation Notice, dated 02.08.2017 and apart from that, the impugned De-Occupation Notice reveals that the Lock and Seal Notice was served on 06.07.2017 with 30 days limit, and hence, further enforcement action was taken under Sections 56 (2A) and 57 of the said Act. In short, the De-Occupation of the premises was to be carried out within ten days from the date of receipt of the De-Occupation Notice. In the aforesaid circumstances, the Petitioner has filed the present Writ Petition for the relief stated supra.

7. Per contra, it is the submission of the Learned Counsel for the Respondent Nos.1 to 3/Greater Chennai Corporation that the Fourth Respondent (impleaded party), on an earlier occasion, had filed W.P.No.43802 of 2016 before this Court praying for passing an order by this Court in directing the Respondents therein to take action on his Representation, dated 03.10.2016 and to take action on the Encroachment made in 40 Feet Road situated at Varalakshmi Nagar III Street (DDTP Vide LPDM.82/73), Maduravoyal, Chennai-600 095 in accordance with law, in which, this Court has passed the following order on 21.12.2016:

"3. In view of the aforesaid position, the third respondent is directed to carry out an inspection of the site and demarcate the area within fifteen days of the receipt of the order and thereafter, if any unauthorised construction is found, action

will be taken by the first two respondents in accordance with law after notice to all concerned within a maximum period of two months thereafter."

8. It is brought to the notice of this Court on behalf of the Respondent Nos.1 to 3 that pursuant to the aforesaid order passed by this Court in W.P.No.43802 of 2016, the Third Respondent therein, namely the Tahsildar, Koyambedu Taluk, Chennai, has passed an order dated 24.04.2017, stating that the Petitioners herein have purchased some portion of Lay-out Road and they have also obtained Patta and had put up shed which caused complete block of Road access and the Tahsildar had further enclosed the copy of the FMB Sketch and attested copy of the Lay-out Plan. Further, the Tahsildar, in his report, had observed the following:

"This Varalakshmi Nagar layout is actually located in S.No.127/1, 2, 3 Part, 4 Part, 7 Part and 128/1 of Maduravoyal Village. On the Southern side of Plot Nos.14 to 23, there is a 40' width approved layout road. This 40' layout road is situated in S.No.127/7 part. In this layout road some portion of land has been purchased by Thiru.Sundar and Vasanthi. They got pattas from Tahsildar, Ambattur originally and subsequently from the then Tahsildar, Maduravoyal."

9. The site in question was inspected by the Third Respondent and other Officials of the Greater Chennai Corporation on 06.05.2017, after receipt of the letter from the Tahsildar, Maduravoyal Taluk and after inspection of the site in question, a Stop Work Notice/Notice calling for approved plan under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1917, dated 08.05.2017 was issued to the Petitioners herein.

10. In view of the fact that the Petitioner had failed to comply with the aforesaid Notice, dated 08.05.2017, further action was initiated by issuing a Lock and Seal Notice, dated 06.07.2017 to the Petitioners herein. After expiry of the statutory period of the abovesaid Notice, further action was initiated by issuing the impugned De-Occupation Notice under Section 56(2A) and 57 read with Section 85 of the said Act of 1971, dated 02.08.2017.

11. The Learned Standing Counsel for the Respondents 1 to 3/Greater Chennai Corporaiton emphatically takes a plea that the Petitioners' request for regularisation of the unauthorised structure, cannot be granted, since the unauthorised building

construction is made only during the year 2017. As such, the said building cannot be considered for regularisation and collection of regularisation fees by the Greater Chennai Corporation.

12. As against the impugned De-Occupation Notice, dated 02.08.2017, passed by the Second Respondent, the Petitioners have a viable, effective, efficacious and alternative remedy of Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, which deals with the 'Special Powers of the Government'. The said 'Revision Petition' under Section 80-A is to be preferred within 30 days from the date of sealing and further that if the Revision Petition under Section 80-A is filed within the time limit, then the same shall be disposed of by the Government within 90 days from the date of its Receipt.

13. Be it noted that a 'Revision Petition' to be filed before the Government by the concerned aggrieved person, is not an 'Appeal' in real sense of the term. The Revisional Power is to be exercised with reference to the records of Planning Authority for the purpose of scrutiny and for arriving at an ultimate conclusion either to rescind or vary or annul or modify or reverse or remand it for fresh consideration by the Authority concerned.

14. In the instant case on hand, the Petitioners had not resorted to the re-course of preferring the said 'Revision Petition' as per Section 80-A of the said Act before the Government within 30 days from the date of sealing. As such, this Court grants permission to the Petitioners to prefer 'Revision Petition' as per Section 80-A of the said Act and also to file Condone Delay Application for not filing the said 'Revision Petition' within the time prescribed before the Competent Authority. The said Revision Petition is to be filed by the Petitioners within one week from the date of receipt of a copy of this order. If such Revision Petition is filed together with the Condone Delay Application, the the Competent Authority/Government, before dealing with the 'Revision Petition', shall consider the Condone Delay Application by taking a practical, pragmatic, purposeful, meaningful and rational approach, avoiding technicalities/hyper-technicalities and shall exercise his sound thinking Judicial discretion taking into consideration the time taken by the Petitioners in approaching this Court by filing the present Writ Petition and keeping in mind that even a meritorious case can be thrown out at the threshold by adopting a pedantic approach. It is open to the Petitioners to raise all factual and legal pleas before the Competent Authority/State Government in the 'Revision Petition' and when such 'Revision Petition' with Condone Delay Application/Petition is filed in the main Revision Petition, then the Competent Authority/Government shall deal with the

points raised by the Petitioners and render finding(s) in this regard. It is open to the Petitioners to prefer an Application for Stay as per Section 80-A(3) of Act 1971, along with the Revision Petition and seek appropriate remedy if they so desire/advised. In any event, the said Revision Petition as well as the Condone Delay Application to be filed, along with Stay Petition, if any filed, are directed to be disposed of within a period of eight weeks from the date of filing it.

15. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai.
2. The Executive Engineer,
Greater Chennai Corporation,
Zone XI,
Chennai-600 087.
3. Asst. Executive Engineer,
Unit-32,
Greater Chennai Corporation,
Chennai.
4. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St.George,
Chennai-600 009
(for favour of information and necessary follow-up action).

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.6215.

W.P.No.23837 of 2017

SVI (CO)
rrs 15/02/2019