

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.2411 of 2018
and
C.M.P.No.19524 of 2018

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.
- 2.The Zonal Officer,
Zone - VIII,
Greater Chennai Corporation,
No.36B, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.
- 3.The Executive Engineer,
Zone - VIII,
Greater Chennai Corporation,
No.36B, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.
- 4.The Assistant Executive Engineer,
Zone - VIII,
Greater Chennai Corporation,
No.36B, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.
- 5.The Assistant Engineer,
Zone - VIII,
Greater Chennai Corporation,
No.36B, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030. .. Appellants/Respondent

vs.

1.H.Lakshmi

2.Dr.Simon Hercules,
Faith Multi-Speciality,
No.33/17, Sannathi Street,
Villivakkam, Chennai - 600 049. .. Respondents/6th Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 30.08.2018 passed in W.P.No.6609 of 2017.

Prayer in WP No.6609/2017 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 3rd respondent to remove the Generator which was placed in front of the petitioner premises abutting the front wall of her house property by encroaching the land belonging to the Chennai Corporation

For Appellants : Mr.Vijayanarayan
Advocate General
Assisted by Mr.V.C.Selvasekaran

For Respondents
R1 : Mr.P.Sharath Nair
for Mr.V.Raghupathi
R2 : Mr.R.Manickavel

JUDGMENT

(Judgment of this Court made by T.S.Sivagnanam,J.)

This writ appeal has been filed by the Commissioner, Greater Chennai Corporation and four others challenging the order passed in W.P.No.6609 of 2017 dated 30.08.2018. The said writ petition was filed by the first respondent herein, who is the owner of the property in Villivakkam. The first respondent/writ petitioner prayed for a direction to the third appellant to remove the generator which has been placed in front of the first respondent premises abutting the front wall of her house property by encroaching the land belonging to the Chennai Corporation. The generator was put up by the second respondent who is running a Multi-Speciality hospital in first and second floor of the same premises which has been assigned the door number, namely, Door No.33/17, Sannathi Street, Villivakkam. The first respondent/writ petitioner is residing in ground floor in the building which has been given a separate door number, namely, Door No.33/16. When the writ petition was heard, the learned Writ Court took up certain other matters for consideration and issued certain directions which are general in nature.

2.The learned Advocate General appearing for the appellants submits that the directions issued by the Court, more particularly, in paragraph 38 of the impugned order are in the nature of directions issued in Public Interest Litigation and such direction could not have been issued in a writ petition filed by a private party expressing a grievance against her tenant who according to her put up a generator in the land owned by the Corporation of Chennai abutting the first respondent's/writ petitioner's front wall of her house property.

3.At this juncture, it would be necessary to refer to the directions contained in paragraph 38 of the impugned order, which is as follows:

"38.In view of the fact that the rampant corruptions are increasing day-by-day in Chennai Corporation, this Court is of an opinion that adequate steps are required for the effective implementation of Anti Corruption Laws to control and minimise the corrupt and illegal activities in Government offices, organisations and more specifically, in Greater Chennai Corporation. Accordingly, the following directions are issued:-

(i) The first respondent-Commissioner, Greater Chennai Corporation, is directed to transfer all the Officials presently serving in the "Vigilance Cell", Greater Chennai, an en masse within a period of four weeks;

(ii) The Commissioner, Greater Chennai Corporation, is directed to consult the Director General of Police, who in turn, shall depute adequate number of new set of Police Officials with proven integrity and honesty in their service, enabling the "Vigilance Cell" of the Corporation of Chennai to function more effectively and meaningfully;

(iii) The Commissioner, Greater Chennai Corporation, is directed to set up the Vigilance Booths in the front Offices of all the Corporation Offices/Buildings and CC TV Cameras, within a period of four weeks, enabling the common man to provide informations and submit complaints in respect of illegalities, irregularities and corrupt activities in Chennai Corporation functionings and projects and such Vigilance Booths are to be widely published;

(iv) The Vigilance Booths installed must be under the direct control and supervision of the Commissioner of Greater Chennai Corporation and all informations and complaints are to be

registered and communicated to the Commissioner for appropriate actions;

(v) The Commissioner, Greater Chennai Corporation is directed to instal adequate Display Boards and affix notices in all the Corporation Offices/Buildings, stating that "offering corruptions and receiving corruptions are serious offences. "The corrupt activities infringes the rights of all other citizen". "The corrupt activities affects the development of our Great Nation" and other suitable phraseologies or informations as decided by the Commissioner of Greater Chennai Corporation, also shall be displayed;

(vi) The Commissioner, Greater Chennai Corporation is directed to publish the evil consequences of all illegalities and corrupt activities through visual and electronic media, so as to create awareness amongst the common man;

(vii) The "Vigilance Cell", functioning in Greater Chennai Corporation, shall form the Special Secret Teams, so as to conduct surprise checks and inspections in respect of the implementation of building approvals and all other activities and functionings of Chennai Corporation;

(viii) The Special Teams must be functioning under the direct control of the Commissioner of Greater Chennai Corporation and the Vigilance Officer;

(ix) The Commissioner of Greater Chennai Corporation is directed to issue consolidated instructions to all the officials/employees of Chennai Corporation to furnish the particulars and details of properties, both movables and immovables, in their name and in the names of their family members, including their dependants, within a period of twelve weeks from the date of receipt of a copy of this order;

(x) The Commissioner of Greater Chennai Corporation, on receipt of such particulars shall verify the same along with the particulars provided by such officials/employees, at the time joining into the Corporation Service, the discrepancies and the differences, if any, found shall be investigated by the "Vigilance Cell" and by the Competent Authorities and appropriate prosecutions and actions are to be initiated, both under the Penal Laws and under the Discipline and Appeal Rules;

(xi) The Commissioner, Greater Chennai

Corporation, is directed to constitute Special Teams and the Vigilance Teams for conducting inspections and enquiries of all the ongoing building projects and the violations, unauthorized constructions are to be immediately dealt with in accordance with law. In the event of identifying any such large scale violations and unauthorized constructions, appropriate disciplinary actions are to be initiated against the Junior Engineers, Assistant Engineers, Executive Engineers and Zonal Officers concerned and there cannot be any leniency in this regard to be shown. The officials concerned are to be held responsible for all such violations in their jurisdiction. The said exercise is to be done, within a period of twelve weeks from the date of receipt of a copy of this order;

(xii) The Commissioner, Greater Chennai Corporation, is directed to conduct Review Meetings with the officials of Chennai Corporation, within four weeks and issue consolidated instructions/ suitable orders to identify all encroachments, unauthorized and unlawful occupations of Corporation lands, buildings, etc., and initiate appropriate actions for eviction of encroachments, unlawful and unauthorized occupations, by following the procedures contemplated under the Encroachments Act and all other relevant Statutes and the Rules, as applicable to the Corporation of Chennai."

4. When the writ appeal was taken up for admission, the Hon'ble Division Bench granted an interim order on 27.11.2018. The operative portion of the order reads as follows:

"3. This Court, in the course of the arguments, has invited the attention of the learned Advocate General to the conclusions arrived by the learned Single Judge in Paragraph No.38 of the order dated 30.08.2018 and the learned Advocate General, on instructions, would submit that it would be suffice to stay the operation of Paragraph No.38 (i) and (ii) of the order for the present and also submitted that steps have already been taken to comply with the rest of the directions and also seeks time to file a comprehensive status report with supporting documents.

4. It is also brought to the knowledge of this Court by the learned Advocate General that the Corporation is also having a vigilance

mechanism and the vigilance cell is being head by a Police Officer in the rank of Deputy Superintendent of Police and he is assisted by two Inspectors of Police and that this Court has also put a specific question to the learned Advocate General as to how many persons are employed in the Corporation of Chennai and it is the response of the learned Advocate General that 17,000 employees / workmen are in the services of the Greater Chennai Corporation.

5. In the considered opinion of this Court, the vigilance cell consist of one Deputy Superintendent of Police and two Inspectors of Police to deal with the issue relating to alleged act of some of the Corporation employees and monetary and other considerations is wholly inadequate and therefore, as directed by the learned Judge in Paragraph No.38 (ii) of the order, necessary communication is to be sent to the Director General of Police for deputing adequate number of police personnel to effectively man the vigilance cell and for doing so, the learned Advocate General prays for some time.

6. In the light of the above facts and circumstances, coupled with the submission by the learned Advocate General and materials placed, this Court is of the considered view that a prima facie case has been made out for grant of stay of Paragraph No.38 (i) of the impugned order. Hence, there shall be a stay of further proceedings / operation of Paragraph No.38 (i) of the impugned order dated 30.08.2018 till 07.01.2019.

7. As undertaken by the learned Advocate General, a comprehensive Status report / Compliance report is to be filed as to the compliance of the rest of the directions issued by the learned Judge in Paragraph No.38 of the impugned order.

8. Call on 07.01.2019. Status report / Compliance report by then. The Status Report shall also contain the number of vacancies to be filled up in each Cadre, so that appropriate directions can be passed to fill up the vacancies expeditiously."

5. In terms of the directions issued by the Hon'ble Division Bench, status report has been filed and on perusal of it, we find that the directions contained in paragraph 38(iii) to 38 (xii) of the impugned order have been complied with. A typed set of papers have been filed along with status report

furnishing photographs as to how the directions have been implemented. We are satisfied with the status report filed by the appellants so far as it relates to the compliance of the directions contained in paragraph 38(iii) to 38(xii) of the impugned order. Thus, two of the directions contained in paragraph 38 alone requires to be seen as to whether such directions could have been issued, that too, in a writ petition filed by a private party expressing a grievance against her tenant.

6. We will take up the direction issued in paragraph 38(ii) of the impugned order, wherein the learned Writ Court had directed the first appellant, Commissioner of Greater Chennai Corporation to consult the Director General of Police, who in turn shall depute adequate number of new set of Police officials with proven integrity and honesty in their service, enabling the "Vigilance Cell" of the Corporation of Chennai to function more effectively and meaningfully. In our view, for the purpose of implementation of this direction, it is first necessary that requisite number of additional posts are to be sanctioned.

7. The learned Advocate General has placed before us a letter written by the Commissioner, Greater Chennai Corporation to the Principal Secretary to Municipal Administration and Water Supply Department in G.D.C.No.E3/31350/2002 dated 23.01.2019. In the said letter, it has been pointed out that the Government in G.O.(Ms).No.134, Municipal Administration and Water Supply (MC3) Department, dated 10.09.2011 has revised the strength of the vigilance cell with one post of Vigilance Officer in the rank of Deputy Superintendent of Police, two posts of Vigilance Inspector in the rank of Inspector of Police, five Head Constables allocated from Special Police Squad, one Superintendent (Office), one Assistant, one Junior Assistant, one Typist and one Office Assistant and in all 14 posts. In the said letter, there is a reference to the directions issued in the impugned order in paragraph 38(ii) and 38(vii) and it was pointed out that the limits of Greater Chennai Corporation has extended from 174 sq.kms to 426 sq.kms by merging 42 local bodies (9 Municipalities, 8 Panchayats and 25 Village Panchayats) as 15 Zones and 200 Wards. Further, it has been stated that the Chennai Corporation has been divided into three regional offices as North, Central and South each comprising of 5 zones. Further, the appellants would admit that large number of complaints are received from various sources such as Chief Minister's Special Cell, Special Officer of Greater Chennai Corporation, Municipal Administration and Water Supply Department, General Public, etc. to be enquired by the Vigilance Officer.

8. In view of the same, it was stated that the present

strength of one Vigilance Officer and two Vigilance Inspectors is not sufficient to cope up with the current scenario and it is proposed to increase the strength in Vigilance Wing. Therefore, the Commissioner of the Greater Chennai Corporation requested the Government to create additional strength in the Vigilance Cell by re-allocation of one Inspector, four Sub-Inspectors and ten Constables from Vigilance squad. Therefore, there has been a request to the Government to issue an order to revise the strength of the Vigilance Cell of the Greater Chennai Corporation. The existing strength, additional strength sought for and the total strength after new sanction and the approximate monthly expenses to be incurred after increasing the strength have been furnished in a tabulated format in the said letter. The Corporation has also undertaken to surrender the remaining post of three Head Constables and forty Constables after re-allocation and sanction of additional strength as requested by them. Therefore, it is stated that there is no financial implication to the Greater Chennai Corporation and requested to create additional strength of Police Officials as mentioned in the letter in the Vigilance Cell subject to ratification by the Council of Greater Chennai Corporation at the earliest and the request made by the Commissioner, Greater Chennai Corporation may be treated as most urgent.

9.The learned Advocate General submitted that the request made by the Commissioner of Corporation is under active consideration of the Government and if additional posts are sanctioned, then it will strengthen the Vigilance Cell and the vigilance administration can be effectively conducted.

10.It is not clear as to what is the stage of the proposal since it has been forwarded only on 23.01.2019. In any event, the request made by the Greater Chennai Corporation appears to be fully justified. Any administration which has a large work force definitely requires a robust vigilance mechanism. We are informed that there are about 650 Class I & II officers/employees, 4980 Class III employees and 11973 Class IV employees. It is admitted that there are about 6579 vacancies in various categories which are yet to be filled up. As admitted by the Commissioner, Greater Chennai Corporation in the letter addressed to the Government dated 23.01.2019, the limits of the Greater Chennai Corporation has extended from 174 sq.kms to 426 sq.kms by merging 42 local bodies. Therefore, it is appropriate for the State Government to consider and approve the request made by the Commissioner, Greater Chennai Corporation.

11.Considering the need for creation of additional post, this Court is inclined to fix a time limit within which the Government may take a decision on the request made by the Commissioner dated 23.01.2019. Therefore, in our considered

view, the direction issued by the learned Writ Court in paragraph 38(ii) has been complied with and we direct the Principal Secretary to Government, Municipal Administration and Water Supply Department to consider the proposal submitted by the Commissioner, Greater Chennai Corporation dated 23.01.2019 and pass appropriate orders within a period of two months from the date of receipt of a copy of this judgment. We make it clear that even in the interregnum, the code of conduct comes into force, this will not be a bar to consider the proposal submitted by the Commissioner since the request will ultimately sub serve public interest.

12.Now, we move to consider the correctness of the decision in paragraph 38(i) of the impugned order. We agree with the submission of the learned Advocate General that the writ petition filed by a private party expressing a grievance against her tenant regarding location of generator in public land could not be converted into a Public Interest Litigation. The Court would be empowered to issue directions concerning the writ petitioner's case regarding the encroachment of property of the Corporation of Chennai by her tenant, but however, we find that the direction contained in paragraph 38(i) is in the nature of a direction which may be issued in a Public Interest Litigation. If circumstance warrants such a direction, that can be done only by the Division Bench headed by the Hon'ble The Chief Justice or by the Division Bench authorized by the Hon'ble The Chief Justice. Apart from that, we find that there is no clinching materials which was available on record to conclude that all the officials in the Vigilance Cell are not aboveboard and therefore, there should be en-masse transfer. The learned Advocate General informs that there are only three officers in the Vigilance Cell who have joined the posts recently. For better administration of the vigilance mechanism periodical shifting of officers is required as there may be a tendency to develop acquaintance with the officials working in the Department. In fact, it is common knowledge that Vigilance Department of various organisations are revamped regularly in the interest of better administration.

13.We also note that there are certain observations made by the learned Writ Court, more particularly, in paragraph 36, where certain observations in strong terms have been made against the Commissioner of Greater Chennai Corporation. However, we find that the Commissioner was not impleaded in his personal capacity in the writ petition nor he was noticed before the observations/findings were recorded. Therefore, those observations has to be necessarily eschewed. We should not be mistaken as if we are making a statement that the Head of the Department should be complacent in his attitude. The Head of the Department has a duty and responsibility to ensure efficient

administration of his Department and the officers working in his Department and wherever there is an allegation of corrupt practices, it needs to be dealt with an iron hand. We feel that this observation would be sufficient to enable the Commissioner to take stock of the situation. Furthermore, we are also agree with the submission of the learned Advocate General that the direction issued to en-masse transfer of the officers served in the Vigilance Cell without notice to them is not tenable. Thus, for the above reasons, we are of the considered view that the direction issued in paragraph 38(i) of the impugned order requires to be deleted and accordingly the same stands deleted. We reiterate that effective steps should be taken to have a robust vigilance cell in the Corporation of Chennai, officers should be periodically changed and the activities of the vigilance cell should be closely monitored by the Commissioner of Greater Chennai Corporation.

14.The learned Advocate General further submitted that the Greater Chennai Corporation apart from having a Vigilance Cell has got an Enforcement Cell. The duties assigned to the Vigilance Cell is to enquire into the complaints of corrupt practices by officers and employees of the Corporation of Chennai. The duties assigned to the Enforcement Cell is to strictly implement the laws and ensure that unauthorized constructions in violation of the building plan are not done. We can take judicial notice of the fact that more often the Enforcement Cell has been ineffective, it is only when a neighbour, who may be a disgruntle element, approaches this Court by way of Public Interest Litigation that matter assumes significance and the enforcement mechanism of the Corporation is triggered into action. Therefore, the Commissioner of Greater Chennai Corporation while implementing the order in the writ petition for creating robust Vigilance Cell should also ensure that Enforcement Cell is also effective and aboveboard. The Enforcement Cell should be periodically reviewed at various stages, officers should be shuffled probably transferred within various zones of Corporation, etc. This observation is made by us in addition to what we have stated above.

15.The learned counsel appearing for the first respondent/writ petitioner submitted that they are aggrieved by the action of the Corporation of Chennai in shifting the generator and virtually putting the generator inside the first respondent's house. The first respondent/writ petitioner has not filed an appeal as against the order passed in the writ petition, the Corporation of Chennai has not filed an appeal as against the direction issued to them to shift the generator and they have complied with the order by shifting the generator. Therefore, in the appeal filed by the Corporation as against the direction issued in paragraph 38(i) and 38(ii), the first

respondent/writ petitioner cannot canvas her grievance. However, we do not propose to foreclose the rights either of the first respondent/writ petitioner or the second respondent/6th respondent to independently pursue their grievance because of disposal of this appeal and it will not be a bar for either of them to do so.

16. For all the above reasons, the writ appeal is allowed to the extent indicated above and the direction issued in paragraph 38(i) of the impugned order is modified/alterd to the extent indicate. Before parting, we make an observation that it is not sufficient to the respondent Corporation to comply with the conditions in paragraph 38(iii) to 38(xii), it is their duty to ensure that the same is effectively implemented and periodical checks should be made to ensure the same. As observed by us earlier, the general observations made in the order about the Commissioner and his officers and about the State administration stands eschewed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

cse

To

1. The Commissioner,
Greater Chennai Corporation,
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MR (CO)
GMY (04/04/2019)



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