

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

WP.No.16816/2020 & WMP.Nos.20852 & 21563/2020

1.Habeeb Mohammed Siddique
2.A.K.M.Siti Raihana
3.Mohammed Firoze Kassim

..Petitioners

Versus

1. Principal Secretary,
The Government Housing and
Urban Development [UD[vi[1]]
Department, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development
Authority, Chennai 600 008.
3. Greater Chennai Corporation
representing by its Chairman
Rippon Building
Chennai 600 003.

..Respondents

Prayer:- 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 1st respondent in G.O.[D] No.54, of Housing and Urban Development [UD-vi[1]] Department dated 31.05.2019, quash the same, consequently direct the respondents to reconsider the appeal in respect of premises bearing Door No.636, Anna Salai, Thousand Lights and Old Door No.1, New Door No.6, Aziz Mulk 5th Street, Anna Salai, Thousand Lights, Chennai 600 006 as row houses/premises and in accordance with law.

For Petitioners:	Mr.G.Surya Narayanan
For R1	: Ms.R.J.Radhika
	Government Advocate
For R3	: Mr.M.Ganesan
	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 and is disposed of by this order.
- (2) Mrs.R.J.Radhika, learned Government Advocate accepts notice on behalf of the 1st respondent and Mr.M.Ganesan, learned Standing counsel accepts notice on behalf of the 3rd respondent.
- (3) The petitioners are the owners of the property/superstructures bearing Door No.636 and Old Door No.1, New Door No.6, Aziz Mulk 5th Street, Anna Salai, Thousand Lights, Chennai, admeasuring to an extent of 3036 sq.ft., as per the documents and 3020 sq.ft., as per Patta. The petitioners would further state that after purchase, they applied for Planning Permission for construction of Ground + First Floors, which was granted on 21.09.1987 under Permission No.353/1987 and Building Permission No.703/1987 dated 15.10.1987. It appears that the petitioners had put up Ground+ 2 Floors and having noted the violation, a Notice was issued by the then Madras Metropolitan Development Authority [now known as Chennai Metropolitan Development Authority] and the petitioners, aggrieved by the same, filed Appeal dated 21.11.1991 and the 1st respondent has rejected the Planning Permission for the 2nd building, vide order dated 12.03.1992. It is further averred that once again on 24.07.1995, a notice was issued pointing out unauthorised construction in the form of 2nd and 3rd floors in deviation of the sanctioned plan and though steps were taken by the petitioners to regularise the same, the same came to be rejected by the Government vide order dated 26.11.1996. According to the petitioners, since constructions came into being in the year 1987, the buildings were protected under the Court orders and prior to 27.07.2007, it is also protected by the Ordinance promulgated by the Government.
- (4) In the year 2010, the petitioners intend to demolish the existing building and wanted to raise a new construction and when the inspection was caused, a notice was issued for Locking and Sealing of the 4th floor and accordingly, the petitioners removed the construction of the 4th floor and the building now consists of only Ground + 3 Floors as existed during the year 1987.
- (5) The petitioners also submitted a representation on 21.08.2012 for removal of Locking and Sealing and to regularise the unauthorised construction and in this regard, also filed WP.No.14775/2012, wherein the concerned official respondents conceded that the construction was completed in the year 1987 and as such, it is protected by the Ordinance. Once again, an

attempt was made by the petitioners to regularise the deviated construction and it was rejected by the 3rd respondent vide communication dated 20.01.2014. A challenge was made to the same by filing an appeal/statutory revision under Section 80-A of the Town and Country Planning Act, 1971, and the same was rejected by the Government on 08.02.2019 and in lieu of the further representation made, the Appellate Committee in its Meeting held on 13.02.2019, rejected the appeal and it was communicated to the petitioners vide impugned order dated 31.05.2019 by the 1st respondent and making a challenge to the same, the present writ petition is filed.

- (6) The learned counsel for the petitioners would submit that since the buildings/superstructures came into being prior to 27.07.2007, they are having the benevolence under Section 113 [C] of the Town and Country Planning Act, 1971, and on instructions, would submit that if six months time is granted, the entire deviation pointed out in the earlier notices would be set right.
- (7) Per contra, Mr.M.Ganesan, learned Standing counsel appearing for the 3rd respondent / Corporation of Chennai would submit that once the petitioners obtained the Planning Permission, they are required to put up the construction strictly in accordance with the sanctioned plan and though permission was granted to put up Ground + First Floors, gradually the petitioners had put up unauthorised constructions upto four floors and admittedly, they have demolished only the 4th floor and the rest of the deviated structures remain even as on date and further points out that the first notice came to be issued by the then Madras Metropolitan Development Authority as early as on 12.03.1992 and even though more than 25 years had lapsed, the petitioners are yet to set right the deviated construction and taking note of the circumstances, the 1st respondent has rightly rejected the appeal vide impugned order and hence, prays for dismissal of this writ petition.
- (8) This Court has considered the rival submissions and also perused the materials placed before it.
- (9) Admittedly, the petitioners obtained Planning Permission for construction of Ground + First Floors and pointing out the unauthorised construction, the then Madras Metropolitan Development Authority [now Chennai Metropolitan Development Authority/2nd respondent herein] has issued a Notice on 24.07.1995 and despite pendency of various proceedings, the petitioners, in a brazen violation, has put up two more floors and the 4th floor put up by them, came to be demolished and the fact remains that the additional floors which are totally unauthorised, remain as on date.
- (10) The petitioners are not only guilty of violation of the Planning permission and in a brazen violation pending of various proceedings, also proceeded with the further construction which would exhibit their act in not complying

with the relevant laws, norms and Regulations. It is also to be noted at this juncture that if the Enforcement Authorities bestowed some part of their attention in the form of regular inspection, the unauthorised construction would not have come into being.

(11) The Hon'ble Supreme Court of India as well as this Court had passed numerous orders as to the rampant violations in construction of superstructures and despite that, the menace is going on day-by-day. The Hon'ble Supreme Court of India in the decision reported in 2019 [14] SCALE 378 [Municipal Corporation of Greater Mumbai and Others V. Sunbeam High Tech Developers Private Limited] while answering the issue as to whether if a Municipal Corporation demolishes structure in exercise of powers vested in it but in violation of procedure prescribed, can a High Court direct the owner / occupier of building to reconstruct the demolished structure, had taken note of the relevant statutory procedures as well as the factual aspect, observed as follows:-

'16. We make it clear that we do not approve the action of the Municipal Corporation or its officials in demolishing the structures without following the procedure prescribed by law, but the relief which has to be given must be in accordance with law and not violative of the law. If a structure is an illegal structure, even though it has been demolished illegally, such a structure should not be permitted to come up again. If the Municipal Corporation violates the procedure while demolishing the building but the structure is totally illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of law. However, we again reiterate that the illegal structure cannot be permitted to be re-erected.

17. Assuming that the structure is not illegal then also the Court will first have to come to a finding that the structure was constructed legally. It must come to a clear-cut finding as to the dimensions of the structure, what area it was covering and which part of the plot it was covering. In those cases the High Court, once it comes to the conclusion that the structure which has been demolished was not an illegal structure, may be justified in permitting reconstruction of the structure, but while doing so the Court must clearly indicate the structure it has permitted to be constructed; what will be

the length of the structure; what will be its width; what will be its height; which side will the doors and windows face; how many number of storeys are permitted etc. We feel that in most cases the writ court may be unable to answer all these questions. Therefore, it would be prudent to permit the structure to be built in accordance with the existing by-laws. Directions can be issued to the authorities to issue requisite permission for construction of a legal structure within a time bound period of about 60 days. This may vary from case to case depending upon the nature of the structure and the area where it is being built.

18. Blanket orders permitting re-erection will lead to unplanned and haphazard construction. This will cause problems to the general public. Even if the rights of private individuals have been violated in as much as sufficient notice for demolition was not given, in such cases structures erected in violation of the laws cannot be permitted to be re-erected. We must also remember that in all these cases, the High Court has not found that the structures were legal. It has passed the orders only on the ground that the demolition was carried out without due notice. As already indicated above, compensation for demolished structure or even the cost of the new structure to be raised, if any, can be imposed upon the municipal authorities which should be recovered from the erring officials, but in no eventuality should an unplanned structure be permitted to be raised.

19. Times have changed. Technology has advanced. However, the legal fraternity continues to live in a state of status quo. Sopan's case (supra) was decided on 09.02.1996. More than two decades have elapsed. The Courts must not be hidebound by old decisions and the law must develop in accordance with changing times.

20. All concerned viz., the State, the Municipal authorities and the High Court need to take note and advantage of advancement in technology. We have been informed that disputes with regard to the dimensions and nature of the structure arise especially in those cases where rural or suburban areas are included at a later stage in

the municipalities. Some of these structures have no sanctioned plans. The Development Control and Promotion Regulations for Greater Mumbai, 2034, provide that no permission shall be required to carry out tenantable repairs to the existing buildings which were constructed with the approval of the competent authority, or are in existence since 17.04.1964 in respect of residential structures, and 01.04.1962 in respect of non-residential structures, as required Under Section 342 of the MMC Act. We have already noted what is meant by tenantable repairs. This is explained in Section 342 of the MMC Act. Only repairs envisaged in the explanation are permitted to be carried out without permission and all other repairs have to be carried out with permission. Since these old buildings do not have plans it is difficult to find out whether the construction carried out is actually tenantable repairs or the structures are being constructed/reconstructed for which permission is required.

21. There is no difficulty to find a solution to this problem if the State is inclined to do so. Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.

22. All over the country we find that when people raise illegal constructions it is claimed that the said construction has been existing for long. The answer is to get Geomapping done. The relevant technology is Geographic Information System (GIS). If on Google Maps one can get a road view, we see no reason as to why this technology cannot be used by the municipal

corporations. At the first stage we direct that all the cities in Maharashtra where the population is 50 lakhs or more the municipal authorities will get Geomapping done not only of the municipal areas but also of areas 10 Kms. from the outer boundary. This can be done by satellite, drones or vehicles. Once one has the whole city geomapped it would be easy to control illegal constructions. We further direct the State of Maharashtra to ensure that sufficient funds are made available to the municipal corporations concerned and this exercise should be completed within a period of one year from the date of this order.''

(12) The Hon'ble Apex Court also suggested as to the adoption of the latest technology, viz., Geomapping and despite the availability of the said technology, respondents 2 and 3 hardly made any headway in that regard. In the light of the mushrooming unauthorised constructions exist in the City of Chennai, it may be impossible for respondents 2 and 3 to depute officials or cause individual inspection and the solution appears to be in the form of adopting modern technology, especially Geomapping [as suggested by the Apex Court in the above cited decision].

(13) It is also a well settled position of law that the Court would come to the aid of the person who abide by the Rule of Law and a perusal and a thorough consideration of the materials placed before this Court, would indicate that the petitioners have no respect for the law and in brazen violation of the Planning Permission, added further constructions pending various proceedings/notices issued for demolition of unauthorised construction and as such, they are also not entitled to any equity.

(14) It is also relevant to extract the details of the violation enumerated in the impugned order:-

S. No	Rule	Description	Required	Provided	Extent of violation
1	26[4] Table	Front Set Back [Min]	6.0 m	Nil	Less by 6.0m
2	26[4] Table	Side Set Back [1] Min	6.0 m	Nil	Less by 6.0m
3	26[4] Table	Side Set Back [2] Min	6.0 m	Nil	Less by 6.0m
4	26[4] Table	Rear Set Back [Min]	6.0 m	0.27 m	Less by 5.73m

S. No	Rule	Description	Required	Provided	Extent of violation
5	26[3], 27[3] D, 26[4]D	Floor Space Index [Max]	1.50 m	3.734	Excess by 2.234
6	26[7], 27[6]	Car Parking [Min]	10 car	Nil	Less by 10 Cars
7	26[7], 27[6]	Two Wheeler Parking [Min]	13 Two wheelers	Nil	Less by 13 two wheelers
8	Driverway	Car Parking	3.0 m	Nil	Less by 3.0m
9	Turning Radius	Car Parking	4.0 m	Nil	Less by 4.0m
10	29[5]	Splay	1.5x1.5m	Nil	Less by 1.5x1.5m

The 1st respondent/Appellate Authority also noted the observation of the Appeal Committee that no rectification have been done by the owner to rectify the violations in the existing Ground + 3 Floors [commercial building [Lodge and Restaurant]] as per the latest Inspection Report. In the considered opinion of the Court, the Appellate Authority in exercise of the statutory powers under Section 80-A of the Town and Country Planning Act, 1971, has exercised the function properly and in a fair manner and in the absence of any infirmity or error apparent on the face of the record, this Court is unable to interfere with the said order.

(15) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

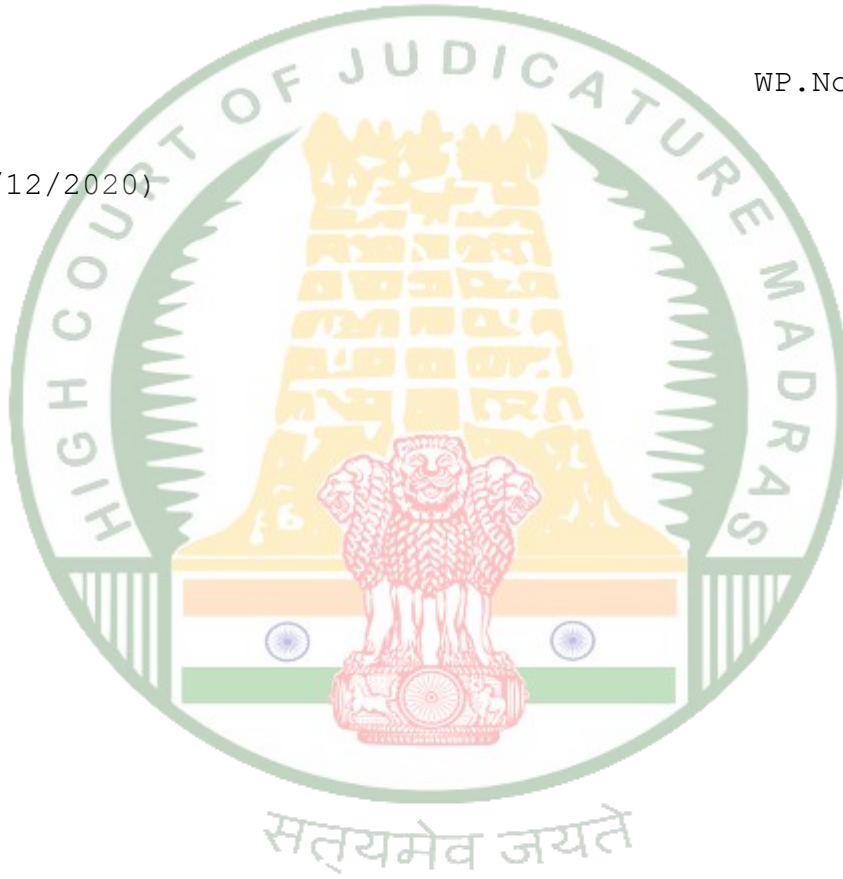
1. Principal Secretary,
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3. The Chairman
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Rippon Building
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+1cc to Mr.M.Ganesan, Advocate, S.R.No.39606
+1cc to M/s.Jayasudha Suryanarayanan, Advocate, S.R.No.39394
+1cc to the Government Pleader, S.R.No.39331

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