

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.15864 of 2020
and W.M.P.No.19721 of 2020

N.Sundaram

.. Petitioner

Versus

1.The Principal Secretary/Member Secretary,
Chennai Metropolitan Development Authority
Chennai 600 008.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai 600 003.

3.The Executive Engineer,
Zone XV, Greater Chennai Corporation,
No.120, Rajiv Gandhi Salai (OMR),

Sholinganallur,
Chennai 600 119.

4.P.Ponniah, I.A.S.,

District Collector, Thiruvallur (Formerly District Collector,
Kanchipuram)

.. Respondents

(R4 is suo motu impleaded vide order dated
05.11.2020 made in WP.No.15864/2020)

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the 3rd respondent from taking coercive action in respect of the building situated in S. No. 169/1 measuring 3.5 ares at Karapakkam Village, Kanchipuram District.

For Petitioner : Mr.S.Udhayakumar

For R1 : Mr.Emalias, Additional Advocate General
assisted by Ms.R.J.Radhika
Government Advocate

For R2 & R3 : Mr.M.Ganesan
Standing Counsel

ORDER

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

The deponent of the affidavit claims to be the Founder cum Managing Trustee of Sri Gangai Amman Charitable Trust and according to him, the Trust has constructed a famous Temple "Arulmigu Shri Gangaianman

Temple", which is located in S.F.No.169/1, Karapakkam Village, Gangaianman Koil Street, Chennai-600 097. According to the petitioner, the land on which the temple is in existence is classified as 'Meikkal Poromboke' and in order to augment the income of the said Temple, shops have also been constructed and it has been let out to the tenants. The petitioner would aver that he submitted a representation / petition dated 05.12.2017 with the 4th respondent, opting out an exchange proposal in the form of exchange of land admeasuring an extent of 4.5 ares (11cents) in S.F.No.59/3A, bearing Patta No.41. In view of the land in S.F.No.169/1, on which the Temple and other superstructures exist.

2. The learned counsel appearing for the petitioner would submit that the 4th respondent also made a positive recommendation, vide his communication dated 14.08.2018 in Na.Ka.No.14012/2018-N2, through the Additional Chief Secretary to Government / Commissioner of Land Administration, Chepauk 5 to the Secretary of Government, Revenue Department, Secretariat, Chennai-600 009, and in the light of the said positive proposal, it cannot be said that the temple as well as other

superstructures exist on the land by way of encroachments. It is the further submission of the learned counsel appearing for the petitioner that with regard to the alleged unauthorised construction in the form of temple as well as other superstructures, the 3rd respondent had initiated action and challenging the same, the Trust has filed an Appeal / Special Revision under Section 80-A of the Town and Country Planning Act, 1971, before the 1st respondent, who vide letter No.4819/UD-VII(2)/2017-3 dated 29.06.2017 has rejected the same and a Review Petition filed was also came to be rejected, vide communication of the 1st respondent dated 18.08.2020 in letter No.26069/UD-VII(2)/2018-1 and he would further add that necessary steps have also been taken to regularise the constructions and in the event of demolition of temple and other superstructures, it would definitely affect the religious sentiments of the people and prays for appropriate orders.

3. In compliance of the direction issued in the order dated 05.11.2020, Mr.P.Ponniah, I.A.S., Former Collector of Kanchipuram District, present Collector of Tiruppur District, is personally present through Video Conference.

4. This Court has drawn the attention of the learned Additional Advocate General as to the proceedings of the 4th respondent dated 14.08.2018 and put a query as to the steps taken to classify part of the land in S.F.No.169/1, which is classified as 'Meikkal Poromboke' as 'Grama Natham' and the learned Additional Advocate General apart from seeking further time to get instructions would submit that in future, in the event of conversion of any into Grama Natham (village site), proper care and caution would be taken, in the light of the fact that the said procedure is also subject to rampant, abuse and misuse and the said submission on instructions is placed on record.

5. Now coming to the core issue as to the removal / demolition of unauthorised construction, the endeavour made by the petitioner before the 1st respondent in the form of Special Revision as well as Review had ended in dismissal, vide proceedings dated 29.06.2017 and 18.08.2020.

6. A perusal of the affidavit filed in support of the Writ Petition would disclose that under the garb of augmenting the income of the Temple, some more unauthorised constructions have been put up in place and the constructions are also commercially exploited. The photographs of the unauthorised constructions have also not been placed before this Court.

7. The Hon'ble Supreme Court of India as well as this Court in very many orders, spreading over decades, had repeatedly pointing out the menace of unauthorised constructions and steps that have to be taken to regularise the same and despite such orders, the concerned officials / Heads of Departments, did not put in any effective machinery / preventive mechanism and that is why, there is continuous mushrooming of unauthorised / deviated constructions in the State of Tamil Nadu, more particularly in the Metropolitan City of Chennai as well as various City Municipal Corporations. It is relevant to extract the following paragraphs in the decision of the Hon'ble Supreme Court of India in **2019 (4) Scale 378 : 2019 manu SC 1467 (Municipal Corporation of Greater Mumbai and Others Vs. Sunbeam High Tech Developers Private Ltd.,):**

"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.

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."

8. In the light of the directions given in paragraph nos.21 and 22 of the above said judgment, the 1st respondent is directed to look into the same and come out with a detailed affidavit, as to the adoption of modern technology, proposed by the Hon'ble Supreme Court of India, in the above cited decision. Now coming to the case on hand, in the light of the above facts and circumstances, coupled with the facts that the prayer made by the petitioner for regularisation of the unauthorised construction undergone two tiers and came to be rejected, this Court is of the considered view that no indulgence can be shown to the petitioner, who indulged in such illegal acts.

9. In the result, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Call on 09.02.2021 and the 1st respondent is directed to file affidavit, in the light of the observations made by the Hon'ble Supreme Court of India in paragraph nos.21 and 22 of the above cited decision.

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[M.S.N.,J] [R.H., J]
30.11.2020

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Internet : Yes/No
Index : Yes/No

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4.P.Ponniah, I.A.S.,
District Collector, Thiruvallur (Formerly District Collector,
Kanchipuram)

Copyto:

The Director,
Rural Development and Panchayat Raj Departments,
Panagal Building, Chennai 600 015

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M.SATHYANARAYANAN, J.,
AND
R.HEMALATHA.,J
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