

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2020

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.19484 of 2020

D.John Immanuel

.. Petitioner

Versus

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai 600 009.

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
Chennai 600 005.

3.Corporation of Chennai
rep.by its Commissioner,
Ripon Buildings, Chennai 600 009.

4.The Executive Engineer,
Corporation of Chennai
Zone XI, No.123, Arcot Road,
Valsarawakkam, Chennai 600 087.

5.The Assistant Engineer,
Corporation of Chennai,
Zone XI, Division-148, Unit 33,
Sanathi Street, Nerkundram,
Chennai 107. .. Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent Corporation pertaining to the impugned order dated 10.11.2020, 5237/UD-VI(1)/2020-1 and to quash the same and be pleased to direct the 3rd respondent Corporation to permit the petitioner to remove the debris and unauthorised constructed work in the premises, bearing Municipal Door No.4, Angamuthu Salai, Periyar Nagar, Nerkundram, Chennai 600 107.

For Petitioner : Mr.A.Gunaseelan

For R1 : Mr.M.Elumalai
Additional Government Pleader

For R2 : Mr.S.Prabhu

For R3 to R5 : Mr.M.Ganesan

ORDER

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

Heard the submission of the learned counsel appearing for the petitioner and Mr.S.Prabhu, learned standing who counsel accepts notice on behalf of the 2nd respondent and Mr.M.Ganesan, learned Standing Counsel who accepts notice on behalf of the respondents 3 to 5.

2. Admittedly the petitioner had purchased land and superstructures, bearing Door No.9/301, admeasuring an extent of 600 sq.ft of land comprised in S.F.No.403, Nerkundram Village, Ambattur Taluk, Thiruvallur District, through an unregistered Sale Deed dated 27.03.2017 from one S.Mari wife of Mr.S.Selvam and that apart also purchased land and superstructure in Door No.9/299, in the very same Village, through an unregistered Sale Deed dated 27.03.2017, from the same person. The land in S.F.Nos.403 and 418 of Nerkundram Village, Ambattur Taluk, Thiruvallur District, is classified as 'Eri Ulvai' (waterway).

3. The respondents 4 and 5 having noted that the superstructures exist at Door No.4, Angamuthu Salai, Periyar Nagar, Nerkundram, Chennai 600 107, with a built up area in ground floor of 144 sq.m, is totally unauthorised, issued a Lock and Seal notice dated 20.12.2018, for which the petitioner has submitted his response and also filed the Statutory Revision / appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 ('TCP Act') before the 1st respondent.

4. In the interregnum, lock and seal has been put up on the premises and aggrieved by the same, the petitioner has filed W.P.No.4642/2020, against the present official respondent, praying for Writ of Mandamus, directing the respondents 3 and 4 therein to unlock the premises bearing Municipal Door No.4, Angamuthu Salai, Periyar Nagar, Nerkundram, Chennai 600 107 and it came to be disposed of on 27.02.2020, by granting liberty to the petitioner to submit fresh representation, along with a copy of the order and further directed to consider and dispose of the same within a stipulated time.

5. The Statutory Appeal / Revision preferred before the 1st respondent also came to be rejected by the impugned communication dated 10.11.2020, stating among other things that the land and building had been purchased through unregistered Sale Deeds and that apart, the petitioner is not a direct allottee of the Tamil Nadu Slum Clearance Board and moreover, the Greater Chennai Corporation has also reported that the said building is put up for the use of prayer hall / church and complaints have been received against the use of the said unauthorised building from the resident Association and in this regard, a Writ Petition is also pending. The petitioner challenging the legality of the same, has filed this Writ Petition.

6. The learned counsel appearing for the petitioner would submit that due to heavy rain, the roof of the superstructure got suddenly collapsed and to secure and safeguard the family members, the petitioner had demolished the superstructure and started constructing a dwelling house consisting of two rooms and bathroom measuring approximately 500 sq.ft. Since the construction materials have been stored inside the premises which is kept

under lock and seal, he may be permitted to remove the same under the supervision of the respondents 4 and 5.

7. Mr.S.Prabhu, learned Standing Counsel appearing for the 2nd respondent has drawn the attention of this Court to the contents of the impugned order passed by the 1st respondent and would submit that admittedly the petitioner had purchased two items of properties through unregistered Sale Deeds and that apart the land in question has been classified as 'Eri Uluvai' and therefore the question of allotment / post facto approval of the possession of the petitioner would not arise at all for consideration.

8. The learned Standing Counsel appearing for the respondents 3 to 5 would submit that since the 1st respondent has taken into consideration all the materials and after thorough application of the mind to the same, has rightly reached the conclusion, and dismissed the Statutory Appeal / Revision, the scope of judicial review to interfere by this Court in exercise of it's power under Article 226 of the Constitution of India, is very limited and prays for dismissal of this Writ Petition.

9. This Court has considered the rival submissions and also perused the materials placed before it.

10. It is not in serious dispute that the petitioner through the aforesaid two unregistered Sale Deeds had purchased the land and superstructure and also put up unauthorised construction. A perusal of the contents of the impugned order passed by the 1st respondent would disclose that the petitioner also started using the said premises for prayer hall / church / religious activities, without any prior permission. The respondents 4 and 5 having concluded that the superstructure is wholly unauthorised, put up the lock and seal and challenge made to the same before the 1st respondent also came to be dismissed, by citing tenable reasons.

11. Now coming to the limited scope of prayer sought for by the petitioner for removal of building materials and also removal of debris, this Court heard the submission of the respective learned standing counsel appearing for the respondents 2 to 5.

12. It is open to the petitioner to submit representations to the respondents 2, 4 and 5, within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website, as to the removal of building materials said to have been kept inside the premises, so also removal of debris in and around the superstructure in question and as and when the said representations are received, the 2nd respondent or delegated officials of the respondents 3 to 5, shall consider and dispose of the said representations, in accordance with law, within a further period of two weeks thereafter and communicate the decision taken, to the petitioner. Insofar as the impugned order is concerned, this Court finds no merit.

13. In the result, the Writ Petition is dismissed, subject to above observations. No costs.

[M.S.N.,J]

[R.H., J]

21.12.2020

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Internet : Yes/No

Index : Yes/No

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