

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.18607/2020 & WMP.No.23078/2020
[Video Conferencing]

C.Haridoss .. Petitioner
Versus

1.The State of Tamil Nadu
rep.by its Secretary to Government
Housing & Urban Development
Department, Fort St George, Chennai 600 009.

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

3.The Executive Engineer
Zone XI, Greater Chennai Corporation
No.33, Arcot Road, Valasarawakkam
Chennai 600087.

4.The Assistant Executive Engineer
Zone XI, Greater Chennai Corporation
Unit 34, Division 150,
Karapakkam, Old Panchayat Office
Chennai 600 116.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to De-occupation notice dated 20.10.2020 under Letter No.11/0001/2019 of the 2nd respondent herein, quash the same and consequently direct the respondents herein to consider the revised plan submitted by the petitioner for carrying on trade as per the provisions of law.

For Petitioner : Mrs.Al.Gandhimathi

For R1 : Mr.R.Vijayakumar
Additional Government Pleader

For RR2 to 4 : 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) Mr. R. Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mr. M. Ganesan, learned Standing counsel accepts notice on behalf of respondents 2 to 4.
- (3) The petitioner would state that the premises bearing Door No. 1/30, Chettiyar Agaram Main Road, which is also having a Unit of M/s. Sridevi Karumariyamman Fish Market, originally belonged to one P. Amarnath, who let out the said property in favour of the petitioner and three others by way of a Rental Agreement dated 30.08.2019 for the period from 30.08.2019 to 30.07.2020 and from the averments it is not clear as to whether the said Lease Deed/Rental Agreement has been registered or not? The petitioner further states that license was obtained on 15.07.2019 from the Revenue Department of Greater Chennai Corporation for 300 sq.ft., of the land in the said premises and the petitioner had also obtained Sanitary, Fire License etc., and carrying on the trade of selling fish.
- (4) M/s. Fomra Housing and Infrastructure Private Limited, having their office at No. 18A, AA Block, 3rd Street, Anna Nagar, Chennai-40, had filed WP.No. 26210 of 2019 against [1] the Commissioner, Corporation of Chennai, [2] Member Secretary, Chennai Metropolitan Development Authority, Egmore, Chennai-8 and the petitioner herein, praying for issuance of a writ of mandamus, directing the respondents 1 and 2 therein to consider the representation dated 28.05.2019 for removal/closure of the said Fish Market on account of nuisance and health hazard caused and it was disposed of on 17.09.2019 by a learned Single Judge of this Court, directing the respondents 1 and 2 to ensure that no unauthorised construction take place and more so, fish stall or any material causing nuisance to the residents. The said Company also approached the National Green Tribunal, Principal Bench at New Delhi by filing OA.No. 38 of 2019 [SZ] and a Joint Committee was appointed to cause inspection. The 4th respondent as well as the Assistant Engineer, Division 150, have caused joint inspection of the said premises and had issued the Stop Work Notice/Notice calling upon the petitioner for approved plan vide communication dated 29.11.2019, for which, the petitioner has also submitted his representation dated 07.02.2020, pointing out infraction on the part of the said Association. The said Notice was followed by De-occupation Notice dated 20.10.2020 and challenging the legality of the same, the petitioner herein filed a statutory appeal/revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1981,

before the 1st respondent and the same is said to be pending.

(5) Mrs. AL. Gandhimathi, learned counsel for the petitioner would submit that subsequently that the entire construction has been demolished and in real and technical sense, nothing more remain for further adjudication in the said appeal and in order to regularise the fish market, the petitioner submitted necessary application for grant of license and it is refused to be received by the respondents 3 and 4 citing pendency of the statutory appeal/revision and hence, prays for appropriate orders.

(6) Per contra, Mr. M. Ganesan, learned Standing counsel appearing for respondents 2 to 4 would submit that in compliance of the order passed in WP.No.26210 of 2019, inspection was caused and having noted that the petitioner is running an unauthorised fish market, action has been taken under the relevant provisions of the Town and Country Planning Act, 1971, for which the petitioner cannot make any grievance and challenging the De-occupation Notice, the petitioner has also filed a statutory appeal/revision and since it has been entertained, further steps could not be taken and prays for dismissal of this writ petition.

(7) This Court has considered the rival submissions and also perused the materials placed before it.

(8) It is relevant to quote the following provisions of the Chennai City Municipal Corporation Act, 1919. Section 304 speaks about the Licensing of Private Markets ; Section 304A speaks about the period of License ; Section 304B speaks about the Licensing Fee for Private Markets ; Section 305 prohibits Sale in unlicensed Private Markets, Section 306 confers powers upon the Commissioner in respect of Private Markets. Section 309 speaks about butchers, fish mongers and poulterers' License and Section 310 speaks about the powers to prohibit or regulate sale of animals and birds in public streets.

(9) It prima facie appears that the petitioner, is not only running a fish market without obtaining any license; but also in the process, has put up some structures which came to be demolished completely, according to the learned counsel for the petitioner. In the considered opinion of the Court, in the light of the said development, nothing remains for further adjudication in the statutory appeal/revision filed by the petitioner which is said to be pending before the 1st respondent. If the petitioner is so advised, he is at liberty to submit necessary application along with the prescribed fee by enclosing relevant and authenticated documents to the 2nd respondent and as and when such an application is received and if it is in order, the Commissioner/2nd respondent herein or the delegated authority shall put M/s. Fomra Housing and Infrastructure Private

Limited on notice and thereafter, dispose of the said application on merits and in accordance with law as expeditiously as possible and communicate the decision taken, to the petitioner as well as M/s.Fomra Housing and Infrastructure Private Limited.

(10)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government,
State of Tamil Nadu
Housing & Urban Development
Department, Fort St George
Chennai 600 009.
- 2.The Commissioner
Greater Chennai Corporation
Rippon Building, Chennai 600 003.
- 3.The Executive Engineer
Zone XI, Greater Chennai Corporation
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- 4.The Assistant Executive Engineer
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Unit 34, Division 150,
Karapakkam, Old Panchayat Office
Chennai 600 116.

COPY TO:-

The Managing Director,
M/s.Fomra Housing and Infrastructure Private Limited,
Having its office at No.18, AA Block,
3rd street, Anna Nagar, Chennai 600 040.

+1cc to Mr.M.Ganesan, Advocate, S.R.No. 41061

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No. 40995

WP.No.18607/2020

SVI (CO)

GN(18/01/2021)

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