

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.19556 of 2020

and W.M.P.Nos.24173 & 24176/2020

S.M.H.Shiek Mohammed .. Petitioner

Versus

1. Secretary to the Department of Housing and
Urban Development,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.

2. Member Secretary,
Chennai Metropolitan Development Corporation,
Thalamuthu Natarajan,
Maligai, Egmore, Chennai 600 008.

3. The Commissioner,
Greater Chennai Corporation,
Park Town, Chennai 600 003.

4. The Executive Engineer,
Zone - 10, Ward nO.127,
Greater Chennai Corporation,
Koyambedu Zone, Chennai 600 092.

5.Mrs.T.Sundari

6.A.Muthu

.. 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 pertaining to the issue of the Letter in proceedings NO. 10/ 00014/ 2020 as per notice under Section 56 Sub section 2(A) and 57 read with section 85 of the Tamilnadu Town and Country Planning Act 1971 (As amended by act 61 of 2008), dated 07.12.2020 duly issued by the Executive Engineer, Zone 10, Ward No.127, Greater Chennai corporation , Kumaran Nagar, Virugambakkam, chennai-600092, extending 15 days time to deoccupy the said premises and quash the same and consequently direct the 1st respondent to dispose of the said appeal duly taken by the petitioner under Section 80A of the Town and Country Planning Act and similarly regularize the construction as per the regularization application dated 11.04.2019 duly taken out by the petitioner to the CMDA / the 2nd respondent herein.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
assisted by Mr.Ashokkumar.D

For Respondents : Mr.M.Elumalai
Additional Government Pleader for R1

Mr.A.Thiruvengadam, Standing Counsel for R2

Mr.M.Ganesan, learned Standing
Counsel for R3 & R4

ORDER

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

Ms.L.Jayalakshmi and four others, filed W.P.No.5901 of 1998, against the Collector of Chennai and seven others, in which the petitioner herein is arrayed as the 7th respondent. The said Writ Petition was filed for a Writ of Mandamus, directing the official respondents 1 to 4 to remove the encroachments made by the respondents 6 and 7, on the public layout road in Kumaran Nagar in S.F.Nos.117/2, 118/2, 202/2, 204/1 and 205/3 in the approval layout of house sites in L.P.D.M/DDTP No.148/71 and restore the road to its original condition. The Division Bench of this Court, vide order dated on 12.07.2000, had dismissed the Writ Petition with liberty to file a Civil Suit, if necessary.

2. Thereafter one Mr.A.Muthu, filed W.P.No.1413/2019, against the respondents 3 and 4 as well as against the petitioner and the 5th respondent herein, praying for a Writ of Mandamus directing the respondents 1 and 2 therein to take action on the notice dated 28.08.2018 and reminder dated 25.09.2018, submitted by the petitioner therein, without any hindrance, as the illegal building put up by the 3rd respondent / writ petitioner herein at southern portion of vacant land bearing Plot No.23, at present Door No.24, III Cross Street, Kumaran Nagar, Chennai 92, comprised in S.F.No.118/2A1A/A7F and 204/1A4E of Koyambedu Village and to lock and seal the building by respondents 1 and 2 therein.

3. The learned Standing Counsel appeared for the Corporation of Chennai on instructions submitted that having noted that the construction is an unauthorised one, sent a notice dated 27.06.2019 for locking and demolition and after expiry of the notice period, further action would be taken in accordance with law and the Hon'ble Division Bench of this Court, by taking note of the said submission, had closed the Writ Petition.

4. The petitioner challenging the locking, sealing and demolition notice dated 27.06.2019, has filed a Statutory Appeal / Revision during 2019, under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 and pending disposal of the same, he has been issued with de-occupation notice dated 29.10.2019, by the 4th respondent and it is followed by one more notice dated 07.12.2020 and challenging the same, came forward to file this Writ Petition.

5. Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.D.Ashok Kumar, learned counsel appearing for the petitioner would submit that the 6th respondent, while filing W.P.No.1413/2019, has deliberately burked the earlier order dated 12.07.2000, made in W.P.No.2901/1998 and would further add that despite statutory revision / appeal is pending on the file of the 1st respondent, the 4th respondent is threatening to proceed further with the impugned De-occupation notice dated 07.12.2020 and since the premises in question is used for residential purpose, prays for appropriate orders.

6. Mr.M.Elumalai, learned Additional Government Pleader appearing for the 1st respondent would submit that if the papers are otherwise in order, the Special Revision / Appeal would be numbered and given disposal as per seriatum, depending upon exigency and urgency.

7. Mr.M.Ganesan, learned standing counsel appearing for the respondents 3 and 4 would submit that as per the Enjoyment

Certificate issued by the Tahsildar, Egmore-Nungambakkam Taluk, Chennai 600 031 dated 08.07.1987 in K.Dis.C4/5305/87 in old S.F.No.118/2, New T.S.No.205/3, Block No.70, Village No.106, Koyambedu Village, Egmore, Nungambakkam Taluk, measuring an extent of part 1622 sq.ft classified as 'Vaikkal Land' corresponding to Door NO.24, 3rd Cross Street, Kumaran Nagar, Chennai 600 111 and that apart, the construction put up by the petitioner in Door No.24, 3rd Cross Street, Kumaran Nagar, Chennai 600 092, is wholly unauthorised and as such, it is not open to the petitioner to contend otherwise and prays for dismissal of this Writ Petition.

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

9. According to the learned Senior Counsel appearing for the petitioner, the 6th respondent did not disclose the fact of the order dated 12.07.2020 made in W.P.No.5901/1998.

10. A perusal of the cause title of the said Writ Petition would disclose that the 6th respondent is not one of the Writ Petitioners and assuming for the sake of arguments that the said order has not been disclosed, the fact remains that the petitioner has put up wholly unauthorised construction. The petitioner said to have filed the regularisation application by invoking Section 113-C of the Tamil Nadu Town and Country Planning Act and even for the sake of arguments that the said application has been entertained, mere pendency of the application would not prevent the jurisdictional officials of Greater Corporation of Chennai to proceed further, in accordance with law. The petitioner has availed the statutory remedy by filing an appeal / Special Revision before the 1st respondent, by invoking Section 80-A of the TCP Act, 1971, without filing any application for interim injunction. Section 80-A(3) provides for interim relief, if the authority may deem it fit, pending exercise of power under Section 80-A(1) of TCP Act, 1971. If the petitioner is so advised, he is at liberty to file an application for Stay for interim relief by invoking Section 80-A(3) of the TCP Act, within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website, to the 1st respondent and upon receipt of the same, may entertain it, if the main appeal / revision papers are in order and accord priority and after putting on notice the 6th respondent, shall dispose of the petition for Stay as expeditiously as possible, within a further period of two weeks thereafter. Till such time, the 4th respondent shall defer further decision in terms of the impugned notice dated 07.10.2020. It is open to the 1st respondent to give priority and give a disposal of the main Special Revision / Appeal itself at the earliest. The petitioner till the disposal of the Special

Revision / Appeal by the 1st respondent, shall not create any third party in respect of the land and superstructure in question.

11. The Writ Petition stands disposed of accordingly. No costs. Consequently connected miscellaneous petitions are closed.

-sd/-
Assistant Registrar (CS)

// True Copy //

Sub-Assistant Registrar

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To

1. Secretary to the Department of Housing and Urban Development,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai 600 009.

2. Member Secretary,
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Thalamuthu Natarajan, Maligai, Egmore, Chennai 600 008.

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4. The Executive Engineer,
Zone - 10, Ward no. 127,
Greater Chennai Corporation,
Koyambedu Zone, Chennai 600 092.

+ 1 C.C. to M/S.D.Ashok Kumar, Advocate SR.NO.42700

+ 1 C.C. to M/S. M.Ganesan, Advocate SR.NO.42551

W.P.No.19556 of 2020

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