

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.12.2020

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THE HON'BLE MR.JUSTICE R. MAHADEVAN
and
The HON'BLE DR JUSTICE ANITA SUMANTH

W.P.No.20289 of 2020
and
W.M.P.Nos.25065 & 25066 of 2020

Syed Kasim Sakaaf ... Petitioner

Vs..

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 07.
2. The Executive Engineer,
Zone VI, Greater Chennai Corporation,
Anderson, Ayanavaram,
Chennai 600 023.
3. The Assistant Executive Engineer,
Unit 17, Zone VI, Greater Chennai Corporation,
Anderson, Ayanavaram,
Chennai - 600 023.
4. The Assistant Engineer,
Division no.073, Unit 17, Zone VI,
Greater Chennai Corporation,
Anderson, Ayanavaram,
Chennai - 600 023.
5. Habeebunnissa Begum
6. Syed Akbar Sakaaf ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records of the 3rd respondent ending with Notice No.06/01115/2020 dated 17.12.2020 and quash the same.

For Petitioner: Mr.N.A.Nissar Ahmed

For R1 to R4 : Mrs. Suganya Maya
for M/s Ganesan

O R D E R

(Order of the Court was made by R. MAHADEVAN, J.)

By consent given by either side, the writ petition is taken up for final disposal at the admission stage itself.

2.Challenging the notice dated 17.12.2020 issued by the third respondent, the petitioner has come up with this writ petition.

3.The case of the petitioner is that he and his brother/ 6th respondent are the absolute owners of the property viz., house and ground premises comprised in Door No.50, Strahans Road, 5th Street, Dadashamakkan, Chennai - 600 012 and they have been residing therein for the past 30 years. Due to ill-motive and animosity, the 5th respondent, claiming herself to be the President of Dadhashamakkan Wakf, filed a writ petition in W.P.No.17121 of 2020 seeking a direction to the respondents 1 and 2 to demolish the unauthorised construction allegedly put up by the petitioner and his brother. This Court vide order dated 04.12.2020, disposed of the said writ petition directing the respondents 1 and 2 to cause inspection of the petition premises after putting the petitioner on notice and to take necessary action in accordance with law, if required by duly adhering to the principles of natural justice. However, the third respondent, without any notice or enquiry, issued the impugned notice dated 17.12.2020 under Section 56 of the Tamil Nadu Town and Country Planning Act 1971. Hence, this writ petition.

4.According to the learned counsel for the petitioner, without any notice or enquiry, the third respondent has issued the impugned proceedings against the petitioner and hence, the same is liable to be set aside, as it is arbitrary, illegal and in violation of the principles of natural justice. He further submitted that the impugned proceedings is a non-speaking order, that too, without complying with the earlier order of this Court in WP.No.17121/2020 in a true spirit.

5.Heard Mrs.Suganya Maya, learned counsel representing Mr.Ganesan, learned Standing Counsel appearing for the respondent Corporation.

6.It is claimed that the petitioner and the sixth respondent

are the absolute owners of the subject property for more than three decades. Earlier, this Court with respect to the subject property, passed an order in WP.No.17121 of 2020 on 04.12.2020, the operative portion of which, would run thus:

"5.Though the petitioner prays for a larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in her representation or in this writ petition, directs the 2nd respondent or the subordinate officials to cause inspection of the said premises, as to whether the original construction as well as the alleged additional construction is authorised / deviated / unauthorised, after putting on notice the petitioner as well as respondents 3 and 4 and if the result of the inspection reveals any infraction of the relevant rules, regulations and norms, shall take action in accordance with law, by adhering to the principles of natural justice and complete the said exercise within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as respondents 3 and 4.

6.The writ petition stands disposed of, accordingly. No costs."

Consequently, the third respondent issued a notice dated 17.12.2020 to the petitioner and the sixth respondent, which is impugned herein, wherein, no details were furnished with regard to the inspection conducted, except in the Reference column No.1 "Site Inspection made on 17.12.2020". It is the specific case of the petitioner that the respondent authorities failed to conduct inspection, after due notice to all the parties concerned. Without complying with the direction issued by this Court vide order dated 04.12.2020 passed in W.P.No.17121 of 2020, the respondent authorities proceeded to take consequential action under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971, which is arbitrary, illegal and in violation of the principles of natural justice.

7.In such view of the matter, to render substantial justice, the impugned proceedings shall be treated as show cause notice, to which, the petitioner is directed to place all the materials enclosing documentary evidence to the respondent authorities along with reply, if any, within a period of two weeks from the date of receipt of copy of this order. On receipt of the same, the respondent authorities shall consider the same and pass appropriate orders, on merits and in accordance with law and also in the light of the earlier order dated 04.12.2020 passed

by this Court in WP.No.17121 of 2020, within a period of six weeks thereafter.

8.With the above directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Anderson, Ayanavaram, Chennai - 600 023.
4. The Assistant Engineer, Division No.073, Unit 17, Zone VI,
Greater Chennai Corporation, Anderson, Ayanavaram, Chennai - 23.

+1 cc to M/s.N.A.Nissar Ahamed ,Advocate Sr.No. 43188

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GMR (CO)
RMP (22/01/2021)

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