

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.33724/2019

R.S.Madhavan

.. Petitioner

Versus

1. The Member Secretary
Chennai Metropolitan Development
Authrotiy, Egmore, Chennai 600 008.
2. The Commissioner
Corporation of Greater Chennai
Chennai 600 003.
3. The Executive Engineer [Enforcement]
Zone-X, Corporation of Chennai
No.117, NSK Salai, Kodambakkam
Chennai 600 024.

4.T.Soundarrajan

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 to 3 particularly the 3rd respondent to implement the G.O. [3D] No.161 dated 31.10.2019 issued by the Principal Secretary to Government, Housing and Urban Development [UD-VI[1]] Department, State of Tamil Nadu, Fort St George, Chennai 600 009 against the 4th respondent's building bearing Door No.5/2, 6th Street Jai Nagar, Arumbakkam, Chennai 106 on the basis of the petitioner's legal notice dated 14.11.2019.

For Petitioner : Mr.R.Thanjan
For R1 : Mr.R.Thiruvengadam
For RR 2 & 3 : Dr.R.Ravichandran
For R4 : Mr.T.V.Badrinarayanan

ORDER

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

(1)By consent, the writ petition is taken up for final disposal.

(2)The writ petition is styled as a public interest litigation filed by one Mr.R.S.Madhavan, a resident of Door No.4/13, 6th Street, Jai Nagar, Arumbakkam, Chennai-106 and he would state

among other things that the 4th respondent, in utter disregard and total violation of the Planning Permission, had put up an unauthorised additional structures and in this regard, the petitioner, on an earlier occasion, filed WP.No.2415/2017, praying for issuance of a writ of mandamus, directing the 2nd respondent therein, viz., the Commissioner of the Corporation of Chennai, to consider and dispose of his representations dated 30.11.2016 and 25.11.2016 respectively and demolish the unauthorised structure put up by the 4th respondent herein.

(3) The learned counsel for the petitioner would submit that the said writ petition came to be disposed of on the basis of the submission made by the learned Standing counsel appearing for the Corporation of Chennai that a Locking, Sealing and Demolition Notice has been issued and proceedings will be concluded within a maximum period of two months from the date of the order on 01.12.2019. Learned counsel would submit that the petitioner, challenging the Locking, Sealing and Demolition Notice dated 07.06.2017, the 4th respondent herein availed the statutory remedy by filing a Special Revision / Appeal under Section 80-A of the Town and Country Planning Act, 1971, before the Housing and Urban Development [UD-VI[1]] Department and it was entertained and the Appellate / Revisional Authority had called for the remarks from the Chennai Metropolitan Development Authority [CMDA] / the 1st respondent herein, and passed the impugned order dated 31.10.2019 in G.O.[3D] No.161, rejecting the appeal/statutory revision filed by the 4th respondent.

(4) The learned counsel for the petitioner has drawn the attention of this Court to the contents of the impugned order and would submit that even in respect of the structure put up in accordance with the planning permission, there is a set back violation for stilt + I and II Floors and the III and the terrace floors are wholly unauthorised and the planning permission application to regularise the same, submitted by the 4th respondent on 06.12.2017, also came to be rejected and since the set back portion cannot be set right and that the Appellate Authority, after due and proper application of mind to the entire materials, has reached the conclusion and that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the same and prays for appropriate orders in the writ petition.

(5) Mr.S.Thiruvengadam, learned Standing counsel appearing for the 1st respondent / CMDA would submit that in the light of the impugned order and that the Corporation of Chennai being the delegated Authority, it is for them to carry out the demolition of the offending portions.

(6) Dr. C. Ravichandran, learned Standing counsel appearing for the respondents 2 and 3 would submit that after the receipt of the impugned order, the 3rd respondent has issued a Notice dated 09.01.2019 in Z.O.C.No.383/2019 to the 4th respondent calling upon him to vacate the premises within seven days for the purpose of enforcement of the orders and the response of the 4th respondent is awaited.

(7) Mr. T. V. Badrinarayanan, learned counsel for the 4th respondent has drawn the attention of this Court to the counter affidavit and would submit that the petitioner is not a genuine public interest litigant and he has got a tendency to pick targets and subject them to litigation under the guise of Public Interest Litigation with an oblique motive and would plead that admittedly, the premises are residential in nature, especially, the third floor and drawn the attention of this Court to inner page No.4 of the impugned order and would submit that the deviations are very minimal and that apart, there is no floor violation and to review the impugned order, a review application has also been filed before said Authority and hence, prays for appropriate orders.

(8) This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(9) It is relevant to extract the deviations pointed out in paragraph No.2 of the impugned order as well as the result of the inspection conducted on 23.04.2019 - details of which, are available in paragraph No.4 of the said impugned order:-

Deviations:-u

Sl.No	Description	As per plan	As on Site	Deviated
1	Stilt floor	8.36 sq.m	51.47 sq.m.	43.11 sq.m
2	First Floor	106.42	151.81 sq.m	45.39 sq.m
3	Second Floor	106.42	151.81 sq.m	45.39 sq.m.
4	Third Floor	Nil	151.81 sq.m	151.81 sq.m
5	Terrace Floor	Nil	[27.44 sq.m permanent structure & 54.44 sq.m.- semi permanent	[27.44 sq.m permanent structure & 54.44 sq.m.-semi permanent

Sl.No	Description	Required / Permissible	Provided	Remarks
1	Land use	Primary residential [upto 16 dwelling units or upto 300 sq.mts., of commercial area]	Office [152 sq.m.] cum residential	Permissible
2	Height of the buidling	12m	12m	Nil
3	Road width	6.0m and above	6.70 m	Not permissible
4	Set backs			
	FSB at Ground Level	1.50m	1.8m	Nil
	@ Upper floors	1.50m	0.65m	Less by 0.85m
	SSB [East] @ Ground Level	1.5m	0.85m	Less by 0.65m
	@ Upper Floors	1.5m	0.29m 0.87m	Less by 1.21m less by 0.63m
	SSB [West] @ Ground Level	1.5m	0.95m 0.65m	Less by 0.55m Less by 0.85m
	@ Upper floors	1.5m	0.55m 0.60m	Less by 0.95m Less by 0.90m
	RSB @ Ground Level	1.5m	0.60m 0.70m	Less by 0.90m Less by 0.80m
	@ Upper floors	1.5m	-do-	-do-
5	FSI	2.00	2.488	Excess by 0.4888
6	Parking Car T/w	4 Nos 4 Nos	4 Nos 4 Nos	Nil

(10)A perusal of the impugned order would disclose that there are set back violations and that apart, the entire third and

terrace floors were put up unauthorisedly. The learned counsel for the 4th respondent would submit that the offending construction in the terrace floor have been removed totally and taking into consideration of the fact that the 4th respondent is residing along with his family in the demised premises, prays for some lenience and mercy.

(11)When a person applies for planning permission and if it is accorded, the grantee is normally expected to put up the construction strictly in accordance with the sanctioned plan. This Court can take judicial notice of the fact, especially in the City of Chennai, that almost all of them are not adhering to the planning permission conditions and some times, they go overboard to put up wholly unauthorised structures. The Monitoring Authorities, viz., the Corporation of Chennai as well as the Chennai Metropolitan Developing Authority, had abdicated its responsibilities long back and only when some litigations are filed, they intend to take some action in the form of issuing locking and sealing and demolition notice, of course, to enable the violators to approach the Government to set it right either in the form of filing special revision/appeal or seeking regularisation under Section 113-A and 113-C of the Town and Country Planning Act, 1971. Despite very many directions issued by this Court as well as the Hon'ble Supreme Court of India, as to the demolition of the unauthorised constructions and putting in place the effective monitoring mechanism even at the time of putting up the construction, nothing had gone to the ears of the concerned officials of CMDA as well as the Corporation of Chennai. The result is that this Court is often flooded with very many litigations of present nature and thereby, taking away its precious judicial time.

(12)The Appellate / Revisional Authority, viz., the Housing and Urban Development Department, after receiving the comments from CMDA and in terms of the Inspection conducted by CMDA on 23.04.2019, found that the deviations are major in nature which cannot be set right and citing reasons, had rejected the appeal. This Court, in exercise of judicial review, cannot appreciate the findings recorded by the above cited Statutory Authority to arrive at an altogether different conclusion.

(13)The learned counsel for the petitioner is unable to point out any error apparent on the face of the record or infirmity or perversity in the reasons assigned by the Appellate/Revisional Authority in the impugned order and in the absence of the same, the scope of interference by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is very limited.

(14) In the light of the fact that the 3rd respondent had issued a Notice dated 09.01.2019 to the 4th respondent for vacating the premises in question to set right the offending construction, they are at liberty to pursue the same and conclude it as expeditiously as possible.

(15) In the result, the writ petition stands dismissed. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

AP

To

1. The Member Secretary
Chennai Metropolitan Development
Authrotiy, Egmore, Chennai 600 008.
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- +1 CC to Mr.T.V.Badrinarayanan, Advocate sr 4598.
+1 CC to Mr.S.Thiruvengadam, Advocate sr 4045
+1 CC to Mr.R.Thanjan, Advocate sr 4041.
+1 CC to Dr.R.Ravichandran, Advocate sr 3822.

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BP (CO)
SP(21/02/2020)