

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.2457/2021
& WMP.No.2770/2021

B.R.Srinivasa Rao

..

Petitioner

Versus

1. The Additional Secretary [Technical]
to Government of Tamil Nadu
Housing and Urban Development
Department, Secretariat,
Chennai 600 009.
2. The Commissioner
Greater Chennai City Municipal Corporation
Ripon Building, Chennai 600 003.
3. The Executive Engineer [Zone 8]
Greater Chennai Corporation
Zonal Office-VIII, 2nd Cross Street
[East], Pulla Avenue, Shenoy Nagar
Chennai 600 030.
4. The Assistant Engineer, Dn-95
Greater Chennai Corporation
Zonal Office-VIII, 2nd Cross Street
[East], Pulla Avenue, Shenoy Nagar
Chennai 600 030.
5. The Assistant Executive Engineer
U-21, Greater Chennai Corporation
Zonal Office-VIII, 2nd Cross Street
[East], Pulla Avenue, Shenoy Nagar
Chennai 600 030.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the
Constitution of India praying for issuance of writ of
certiorari/mandamus calling for records of the 3rd
respondent culminating in his notice No.Zone-

VIII/TPENF/C.No.906/2018 dated 22.01.2021 and quash the same and to direct the 1st respondent to furnish a true copy of the Govt. Letter cum Order No.15999/UD-7[1]/2018-6 dated 05.03.2020.

For Petitioner : Mr.V.Raghupathi
For R1 : Mr.R.Vijayakumar
Additional Government Pleader
For RR2 to 5 : Mr.K.Raja Srinivas
Standing counsel

ORDER

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

- (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.K.Raja Srinivas, learned Standing counsel accepts notice on behalf of respondents 2 to 5.
- (3) The petitioner claims to be the sole, lawful and absolute owner of the land and superstructure bearing Door No.36, Ponnan Kinaru Street, Villivakkam, Chennai-600049, wherein he is using for commercial purposes in the form of running a Hospital under the name and style of 'Cauvery Trust Hospital' and it is a Partnership Concern, consisting of his elder brother, viz., Dr.B.R.Shankar, his wife, viz., Dr.B.R.Lakshmi, his elder sister, viz., Dr.Mrs.Shakunthala and his brother-in-law, Dr.P.Maruthi Rao and his wife Mrs.B.R.Padmavathi. The brother-in-law of the petitioner is the Administrator of the said Hospital. The petitioner further claims that the land has been settled in his favour by his father vide registered Settlement Deed dated 26.08.2008 bearing Doc.No.3812/2008 registered on the file of the office of the Sub Registrar, Konnur.
- (4) The petitioner would further aver that at the time of settlement, his father did not give the relevant documents such as plan etc., and since the superstructure housing Hospital became old, some urgent minor repairs have been done to make the building safe worthy and however, without causing any inspection, a Notice dated 13.04.2018 came to be issued u/s.56 read with Section 85 of the Town and Country Planning Act, 1971, calling for the approved plan. The petitioner challenging the same, filed WP.No.9559/2018 and it came to be disposed of by granting liberty to the petitioner to submit his response on or before 28.04.2018

with a further direction, directing the respondents to pass appropriate orders on the same.

- (5) The petitioner has also submitted his reply and it was considered and the 3rd respondent, vide communication dated 30.06.2018 has passed a detailed final order calling upon the petitioner to restore the building as per the approved plan within 30 days from the date of receipt of the copy of the said notice, failing which, action would be initiated. The petitioner challenging the said Notice dated 30.06.2018, filed a special revision/appeal u/s.80-A of the Town and Country Planning Act, 1971, along with the petition for stay and the same has been acknowledged also. Subsequently, respondents 3 to 5 had issued Notice dated 17.07.2018, informing about the Locking and Sealing and Demolition of the deviated construction.
- (6) The petitioner made a challenge to the said Notice and in the light of the pendency of the same, the Notice dated 17.07.2018 came to be withdrawn and accordingly, the writ petition came to be dismissed as withdrawn on 06.09.2018. Subsequently, respondents 3 to 5, once again issued Locking and Sealing and Demolition Notice dated 20.03.2019 for which the petitioner has also submitted his response dated 23.03.2019 and challenging the same, has also filed a special revision/appeal u/s.80-A of the Act before the 1st respondent and it was also acknowledged on 24.04.2019.
- (7) The primordial submission made by the learned counsel for the petitioner is that despite entertainment of the special revision/appeal along with the petition for stay, respondents 3 to 5 proceeded further and issued the impugned De-Occupation Notice dated 22.01.2021 and would further submit that the special revision preferred by him also came to be rejected on 05.03.2020. However, copy of the same is yet to be furnished to the petitioner and therefore, prays for appropriate orders, by directing the 1st respondent to furnish a copy of the same and till such time, prays for deferment of further proceedings in terms of the impugned Notice dated 22.01.2021.
- (8) Mr. R. Vijayakumar, learned Additional Government Pleader appearing for the 1st respondent would submit that the special revision has been given a disposal and copy of the same would be furnished at the earliest if not already sent to the petitioner.
- (9) Mr. K. Raja Srinivas, learned Standing counsel appearing for respondents 2 to 5 has drawn the attention of this Court to the additional typed set of documents filed on behalf of the petitioner and admittedly, the petitioner has been granted Planning Permission to construct a residential premises consisting of ground, mezzanine and first floor and in utter violation and deviation of the same, has converted the head room as full-fledged room and that apart, there is also

change of use in the form of running a hospital and despite the fact that reasonable opportunities have been given to the petitioner to set right the deviation, the petitioner has failed to do so. It is also the submission of the learned counsel appearing for respondents 2 to 5 that the area is classified as primary residential zone and the road width is only 6 meters and as such, the petitioner is not entitled to put up any additional or unauthorised construction and that apart, the planning permission which is given for residential unit, has been converted as a non-residential unit without any permission and since action has been taken strictly in accordance with law, it is not open to the petitioner to make any grievance and prays for dismissal of this writ petition with cost.

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

(11) It is relevant to extract the nature and extent of the deviation as incorporated in the impugned Notice dated 22.01.2021:-

S.No	Description	As Per Plan	As Per Site	Remarks
1	Ground Floor	161.68 sq.m.	188.40 sq.m.	Excess by 26.69 sq.m.
2	G.F.Mezzanine Floor	42.46 sq.m.	41.85 sq.m.	Lesley 0.61 sq.m.
3	First Floor	161.68 sq.m.	170.15 sq.m.	Excess by 8.47 sq.m.
4	Second Floor	14.86 sq.m.	14.86 sq.m.	-
5	Second Floor [Unauthorised]	-	29.24 sq.m.	29.24 sq.m.
			Total	64.40 sq.m.

(12) It prima facie appears from the additional typed set of documents filed on behalf of the petitioner that the planning permission was accorded to construct Ground, mezzanine and first floors with head room and however, the premises is unauthorisedly converted for the purpose of running a Hospital and that apart, there are more violations also as pointed out in the impugned Notice. Though the petitioner insist the respondents to follow due process of law, equally he is under obligation to comply with the process of law in the form of authorised construction of the building in accordance with the sanctioned plan and it prima facie appears that there are lot of deviations. The petitioner would further state that since the special revision/appeal preferred by him came to be rejected vide communication of the 1st respondent dated 05.03.2020, it may be furnished to him.

(13)The learned counsel appearing for respondents 2 to 5 would submit that the order which is said to have been passed on 05.03.2020, would have been communicated under normal circumstances and if not already communicated, it would be communicated to the petitioner at the earliest possible time and the said submission, on instructions, is placed on record.

(14)In the result, the writ petition is partly allowed by directing the 1st respondent to furnish the true copy of the Government Letter-cum- Order No. 15999/UD-7[1]/2018 dated 05.03.2020, to the petitioner within a period of two weeks from the date of receipt of a copy of this order/uploading of the order in the website and insofar as the challenge made to the impugned Notice dated 22.01.2021 issued by the 3rd respondent is concerned, since the petitioner is having an effective and efficacious alternative remedy, this Court is not inclined to entertain this writ petition. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Additional Secretary [Technical]
to Government of Tamil Nadu
Housing and Urban Development
Department, Secretariat,
Chennai 600 009.
2. The Commissioner
Greater Chennai City Municipal Corporation
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+1cc to Mr.V.Raghupathi, Advocate, S.R.No.16762.
+1cc to Mr.K.Rajasrinivas, Advocate, S.R.No.11230.
+1cc to the Government Pleader, S.R.No.11161.

GJ(CO)
CSR 22.03.2021

WP.No.2457/2021



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