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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.4927 of 2021

Mr.P.Venkatesan

...Petitioner

Vs

The Commissioner,
Greater Corporation of Chennai,
Corporation Office,
Chennai.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to remove the fencing put up in front of the petitioner's building bearing Door No.1/1, Ground Floor, "Deepak Towers" Kumarasamy Nagar, Villivakkam, Chennai - 600 049 in view of the petitioner's representation dated 17.12.2020.

For Petitioner : Mr.M.Venkatesh

For Respondent : Mr.P.T.Ramadevi
Standing Counsel

ORDER

This Writ Petition has been filed for the issue of a writ of mandamus directing the respondent to remove the fencing that has been put up in front of the building of the petitioner by considering the representation made by the petitioner on 17.12.2020.

2.The respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

"5.I respectfully submit that earlier one Mr.B.Santhakumar had filed a Writ Petition in



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W.P.No.23104 of 2017 praying to issue a Writ of Mandamus directing the 1st respondent herein to remove the encroachments on the Chennai-Thiruvallur High Road at Door No.249-250, MTH road Chennai - 600 049 and other encroachment on the road in view of the petitioner's representation dated 21.07.2017. I further submit that the Hon'ble court disposed the above Writ Petition by order dated 30.10.2017 as follows:-

"...5.In the light of the aforesaid narrative, it now becomes necessary for the writ petitioner to address both the respondents 1 and 3 before us.

6.Therefore, the following order is passed:

(a) Writ petitioner shall send a fresh representation to both respondent Nos.1 and 3 with regard to his plea for removal of the alleged encroachments on Chennai-Thiruvallur High Road at Door No.249-250, MTH Road, Chennai-49 within a fortnight from the date of receipt of a copy of this order.

(b) On receipt of the representation as aforesaid, respondent Nos.1 and 3 shall dispose of the representation in a manner known to law within a period of four weeks from the date of receipt of representation..."

6.I respectfully submit that the Chennai - Thiruvallur High Road, comes under the jurisdiction of the State Highways Department. The State Highways Department has sent a letter dated 13.03.2019 vide Letter No.02/2019/stating that Door No.249-250, MTH Road, Chennai-600 049, till Padi Flyover, the road is being maintained by the Greater Chennai Corporation and has requested to remove the encroachment at MTH road, Chennai-600 049.

7.I respectfully submit that Mr.B.Santhakumar has filed a Contempt Petition in Cont.Petn.No.1483 of 2018 for non-compliance of the order dated 30.10.2017. I further submit that the Greater Chennai corporation has demolished



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the entire encroachment portion in the month of October 2019 and based on the submission the Hon'ble Court has closed the above Contempt Petition.

8.I respectfully submit that the officials of the Greater Chennai Corporation have only demolished the encroached portion which is adjacent to the compound wall of the petitioner premises. I further submit that after the removal of the encroachment, the petitioner has demolished his compound wall for the use of commercial space in the Ground floor of the building by trespassing through the MTH Road, Chennai.

9.I respectfully submit that in order to prevent the trespassing by the petitioner, the officials of the Greater Chennai Corporation have erected the G.I.Sheets adjoining the petitioner building at MTH road, Chennai.

10.I respectfully submit that since the petitioner has demolished the compound wall for utilising the commercial space in the Ground Floor and in order to verify the access approved for the petitioner, a Notice dated 22.02.2021 for calling for Approved Plan under Section 56(1) and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 was issued to the petitioner herein.

11.I respectfully submit that on receipt of the above notice dated 22.02.2021 sent to the petitioner, the petitioner has submitted the approved plan copy in PPA No.D08/5604/2011 and the Building approval in BA No.D08/0405/2012 dated 08.02.2012. I further submit that on scrutinizing the approved plan copy it was found that a part of ground floor has been sanctioned as "Cottage Industry" and the building is having access only through Kumarasamy Nagar Main road, Villivakkam, Chennai.

and ;

13.I respectfully submit that since the



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petitioner's building is being put up by deviating the approved plan, further action has been taken by issuing a Locking & Sealing and Demolition Notice dated 12.04.2021 under Section 56 & 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971 to all the occupiers of the building in question.

3. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

4. It is clear from the counter affidavit filed by the respondent that the building that has been put up by the petitioner is itself a deviation from the approved plan and therefore, already proceedings had been initiated for locking and sealing. A specific stand has been taken to the effect that it is the petitioner who had encroached upon a portion of the property belonging to the Corporation and this encroachment was removed and the Corporation has erected G.I. Sheets to prevent any further encroachment.

5. In view of the above, the relief as sought for by the petitioner cannot be granted by this Court and accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The Commissioner,
Greater Corporation of Chennai,
Corporation Office,
Chennai.

+1cc to Mr.P.T.Ramadevi, Advocate SR.No.37900

W.P.No.4927 of 2021

PCH(CO)
RVM(24/08/2021)