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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE R.VIJAYAKUMAR

Writ Appeal No.1335 OF 2021

N.G.Deivakadatcham

... Appellant/Petitioner

vs.

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
E.V.R. Road,
Chennai 600 003.
2. The Executive Engineer,
Greater Chennai Corporation,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai 600 024.
3. The Junior Engineer,
Greater Chennai Corporation,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai 600 024.
4. I.Periyasamy
5. M.Kannan

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 23.12.2020 passed by this Court in
W.P.No.17546 of 2020.



Prayer in WP.No.17546/2020: Petition filed U/A 226 of the Constitution of India praying to issue a writ of Mandamus, directing the first respondent to take disciplinary action against the Respondents 4 & 5 in terms of the order passed by the Tamil Nadu Local Bodies Ombudsman in complaint No.753/Maa/2019 dated 28/02/2020 and by considering the petitioner's representation dated 28/09/2020.

For Appellant : Ms.B.Kavya
For Respondents 1 to 3 : Mrs.Karthika Ashok
For Respondents 4 & 5 : Mr.V.C.Selvasekaran

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 23.12.2020 passed by the learned Single Judge in W.P.No.17546 of 2020, the Writ Petitioner has come up with the present Appeal.

2. It is the case of the Appellant/Writ Petitioner that, some illegal construction has been put on a Temple land and to remove the same, he lodged a complaint to the Authorities concerned against Respondents 4 and 5 herein. As no action was forthcoming, the Writ Petitioner approached the Local Bodies Ombudsman by filing a complaint and the Ombudsman, passed an order dated 28.02.2020 on the Writ Petitioner's complaint.

3. The learned Single Judge dismissed the Writ Petition on the ground that, the remedy sought for by the Writ Petitioner does not lie under Article 226 of the Constitution of India. However, the learned Single Judge granted liberty to the Writ Petitioner to work out his remedy in the manner known to law.

4. A reading of Section 12 of the Tamil Nadu Local Bodies Ombudsman Act, 2014, makes it clear that, the Ombudsman has every right to direct the Authorities to initiate action on a complaint For better appreciation, Section 12 of the said Act is extracted hereunder:

12.(1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, namely:



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(a) order the recovery of loss caused to the local body from the person responsible;

(b) order the recovery of loss from the accused failing which order for recovery of the amount as if it were an arrear of land revenue under the Tamil Nadu Revenue Recovery Act, 1864;

(c) refer the complaint to the appropriate authority to take disciplinary action for wilful negligence or dereliction of duty of any officer or employees of the local body;

(d) order other necessary remedial measures considering the facts and circumstances of the case;

(e) where the Ombudsman finds that the procedure or practice regarding the administration of local body gives room for complaint, he/she may give suggestions to the Government or local body relating to the measures for avoiding the recurrence of such complaint.

(2) The Ombudsman shall submit an annual report regarding the performance of his/her functions under this Act to the Government and the Government shall lay it before the Legislative Assembly with an explanatory memorandum."

5. From the above, it is clear that, the order passed by the Ombudsman has to be implemented. Based on the same, the Corporation has taken action against Respondents 4 and 5.

6. Learned counsel appearing for Respondents 4 and 5 submitted that, the land in question belongs to third parties and after scrutinizing the records, Plan has been sanctioned and if there are any violations, Respondents 4 and 5 are not responsible



for the same. He further submitted that, Temple has already approached this Court by filing W.P.No.16116 of 2017, contending that, the alleged owners of the land have constructed an unauthorized building.

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7. A Division Bench of this Court, by an order dated 15.11.2017, disposed of W.P.No.16116 of 2017 holding that, a Statutory Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, is pending before the Authority concerned and it is for the contesting Respondents to put forth their defence before the Authority concerned. Whether Respondents 4 and 5 herein have aided in the illegal construction or not, needs to be elicited in an enquiry that may be conducted based on the Charge Sheet that has been issued by the Corporation.

8. This Court is of the view that, pendency of the Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, is not a bar for the Authorities to proceed further. While conducting enquiry, it is needless to mention that, the Temple Authorities and the alleged owners of the land may be examined apart from examining Respondents 4 and 5 herein, to ascertain as to whom the land in question, belongs to. That apart, the land in question needs to be measured using Drone technology.

9. We are aware that, there is violation of construction everywhere and unless otherwise, Authorities and violators are taken to task, there will not be an end to such illegal structures. This observation does not mean that, we are rendering a finding against Respondents 4 and 5 in this Appeal and this is only a general observation.

10. Learned counsel appearing for Respondents 4 and 5 contended that, challenging the order dated 28.02.2020 passed by the Ombudsman, Respondents 4 and 5 herein have filed W.P.No.21892 of 2021 and W.P.No.22211 of 2021, respectively.

11. Dehors the recommendation made by the Ombudsman, the Ombudsman has every power in terms of Section 12 of the Tamil Nadu Local Bodies Ombudsman Act, 2014, and independent of the same, the Corporation is entitled to proceed against Respondents 4 and 5 to ascertain the truth with regard to dereliction of duty, apart from any other misconduct that may be charged against them.



12. Hence, we are of the view that, the finding of the learned Single Judge that, the Writ Petition is not maintainable, is liable to be set aside, as, when the official Respondents fail to act, certainly, a mandamus will lie. The observation made by the learned Single Judge, that, the Writ Petitioner will have to work out his remedy in the manner known to law, includes filing of a Writ Petition seeking a direction to the Authorities to implement the order of the Ombudsman.

13. Accordingly, the order dated 23.12.2020 passed by the learned Single Judge in W.P.No.17546 of 2020 is set aside, with a direction to the official Respondents herein to implement the order dated 28.02.2020 passed by the Ombudsman in terms of Section 12 of the Tamil Nadu Local Bodies Ombudsman Act, 2014, by initiating disciplinary action against erring employees.

14. Though, it has been contended that, this Division Bench may take up the Writ Petitions in W.P.Nos.21892 and 22211 of 2021 for hearing, we cannot take up the same for hearing, unless and until there is an order by the Honourable Chief Justice, as the said Writ Petitions are to be heard by a learned Single Judge.

15. It is made clear that, the observation made by the Authorities under the Ombudsman Act may be corroborative or can be utilized for the purpose of contradiction. But, the said observation made thereunder cannot be brushed aside, as, in the present case on hand, it appears that, a Temple property has been encroached upon. Independent of the direction given by the Ombudsman, the Authorities shall proceed with the departmental action as observed above. Learned counsel appearing for the Respondent/Corporation submitted that, departmental action has already been initiated.

16. This Court directs the Respondent-Corporation to proceed with the enquiry on a day-to-day basis without adjourning the matter beyond seven working days at any point of time. If the Authorities fail to take any action, departmental action will have to be initiated against those Officials, who are responsible for initiation of enquiry. In case, employees do not co-operate with the enquiry, adverse entry with regard to the pendency of Charge Sheet may be entered into their Service Records. Employees shall not stall the enquiry proceedings till a final decision is taken in the departmental proceedings and they shall not try to stall the proceedings on the ground that, Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act,



1971 is pending.

In fine, the Writ Appeal is allowed with the above direction and observation. No costs.

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Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

(vm/aeb)

To:

1. The Commissioner,
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Kodambakkam,
Chennai 600 024.

+1cc to Mr.R.Jayaprakash, Advocate SR.No.55492

+1cc to M/s.Karthikaa Ashok, Advocate SR.No.55500

W.A.No.1335 of 2021

VG II(CO)

CB(15/12/2021)