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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 11182 of 2021

and

W.M.P. No. 11827 of 2021

S.Ramesh Kumar

Vs.

... Petitioner

1. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003.

2. Executive Engineer
Greater Chennai Corporation, Zone V
No.61, Basin Bridge Road
Chennai - 600 021.

3. The Assistant Executive Engineer
Unit - 16, Ward 58, Zone V
Corporation of Chennai
Royapuram Chennai.

... Respondents

PRAYER : Petition filed under Section Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in Notice No. Dn/58/082/2021 issued by the Second Respondent dated 20.04.2021 and quash the same as arbitrary, illegal and contrary to law and direct the respondents to allow the Petitioner to use the premise as per the law.

For Petitioner : Mr. S.Prabakaran
Senior Counsel
For M/s. A.Vinu Prahda

For Respondents : Mr. K.Raja Srinivas



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ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The matter was heard through ''Video Conference''.

2. According to the Petitioner, he is the owner of property bearing Door No. 71-L, Jermiah Road, Vepery, Chennai - 600 007 and he has put up a construction over the subject property, after getting approved plan. When he is in possession and enjoyment of the entire property, the impugned order has been issued on 20.04.2021 stating that there is a deviation against the approved plan. The said order is being challenged before this Court.

3. When the matter came up for admission on 30.04.2021, this Court directed the Corporation official to inspect the subject property and ascertain as to whether any deviation is there and file a report in that regard.

4. When the matter is taken up for hearing today, Learned Counsel appearing for the Respondents submits that on 05.05.2021 after inspection only it was found that a car parking area to an extent of 477 square feet has been converted and used as Gym. Therefore, the impugned order has been issued.

5. Heard Mr. S.Prabakaran, Learned Senior Counsel appearing for the Petitioner and Mr. K.Raja Srinivas, Learned Standing Counsel appearing for the Respondents, and perused the materials placed on record.

6. Mr. K.Raja Srinivas, Learned Standing Counsel appearing for the Respondents submits that Counter Affidavit has been filed by the Second Respondent, which is placed on record.

7. It is stated in Paragraph No. 8 of the Counter-Affidavit filed that during the earlier proceedings, the Petitioner building was de-sealed on 02.03.2019 enabling the Petitioner to rectify defects pointed out in that Lock and Seal notice issued to him. Thereafter, the Petitioner had rectified the deviations mentioned in that Lock and Seal notice by removing the first floor temporary tin sheet structure and leave the space for parking in ground floor as per plan dated 06.06.2006.

8. However, it has been stated in Paragraph no.10 of the Counter-Affidavit that there is a deviation in the subject property, which is extracted as follows:-

"10. I respectfully submit that the case came up for hearing on 30.04.2021 and the Hon'ble Court ordered as follows:-



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".... 2. The impugned order only speaks about the deviation against the approved plan. Unless the deviation is mentioned, the same can not be rectified by the Petitioner. For lack of material particulars, the impugned order is stayed.

3. However, respondents 2 and 3 are directed to inspect the property and ascertain as to whether any deviation is there and file a report in this regard, before this Court on 01.07.2021.... "

Accordingly the premises was inspected on 05.05.2021 by Second and Third Respondents and the deviations are mentioned below:-

Sl. No.	Description	As per plan	As per site	Deviation
1.	Car parking area	477 sq. ft.	Nil	477 sq. ft.

9. It is made clear that when there is a deviation in the subject property as per the approved plan, the Petitioner is bound to rectify the same in consonance with the approved plan. However, Mr. S.Prabakaran, Learned Senior Counsel appearing for the Petitioner submits that the Petitioner intends to retain the Gym as it is.

10. In view of that, it is always open to the Petitioner to prefer an Appeal or a Revision under the provisions of the Tamil Nadu Town and Country Planning Act, 1971 to work out his remedy before the appropriate forum in accordance with law.

11. With the above, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya



To

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Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003.

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No.61, Basin Bridge Road
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Unit - 16, Ward 58, Zone V
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+3 CCs to Mr.A.Vinupradha, Advocate, Sr.No.38161

W.P. No. 11182 of 2021

PCH (CO)
K.RK. (24.08.2021)