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Cont.P.No.1593 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Contempt Petition No.1593 of 2022

Jawaid Alam Iraqi

..Petitioner

VS

Mr.Anshul Mishra, I.A.S.,
Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Building,
No.1, Gandhi Erwin Road,
Chennai 600008.

..Respondent

PRAYER : Petition filed under section 11 of the Contempt of Courts Act,
to punish the respondent for wilful disobedience of the order passed by this
Court in WP.No.18096 of 2021 dated 21.09.2021.

For Petitioner : M/s.V.Bhavani
For Respondent : Mr.P.Kumaresan, AAG
assisted by Mr.C.Manoharan



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ORDER

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This petition has been filed alleging wilful disobedience of the order passed by this Court in WP.No.18096 of 2021 dated 21.09.2021.

2. The learned counsel for the petitioner submitted that the petitioner is residing in the third floor of the Touch Stone Apartment at Kilpauk, Chennai and the other flat owners made unauthorised constructions in the said flat. Hence, he filed a Writ Petition in WP.No.18096 of 2021 to take appropriate action against the violators and this Court by an order dated 21.09.2021, directed the respondent to take appropriate action on the basis of the representation of the petitioner within a period of three months. He further submitted that pursuant to the order of this Court, the respondent issued notice to the violators and thereafter, no follow up action has been taken by them. Hence, the present Contempt Petition.

3. In reply, Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.C.Manoharan, learned Standing Counsel appearing for



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CMDA, submitted that pursuant to the order of this Court, dated 21.09.2021, the officials inspected the site and found the deviations as follows:

S.No.	Description	As per approved plan	As on site	As per TNCD & BR-2019 rules-35(b)	Violations/ Deviation with reference approved plan
1.	No. of Floors	Basement Floor + Ground Floor + 3 Floors	Basement Floor (part) + Stilt (part) / Ground Floor (part) + 4 Floors	unauthorized 4th Floor	4th Floor is constructed unauthorizedly with reference to approved plan
2.	Floor Space Index	1.50	2.061 (5149.41m ²)	2.00 (2498.58 approx. x 2.00 = 4997.16 m ²)	Excess FSI by 0.561. Excess area = 1401.54 m ²
3.	Dwelling units	26	35	-	Excess by 9 dwelling units
4.	Usage	Residential building	Residential cum Commercial building	-	Basement Floor(part) - Commercial and part of Ground Floor residential use converted in to commercial use.
5.	Parking	-	Car - 21 Nos. TW - 10 Nos.	Car - 46 Nos. TW - 61 Nos.	Less by 25 Nos. Less by 51 Nos.

4. Subsequently, they have initiated the process to lock and seal the premises and issued Demolition Notice dated 12.08.2022 to all the violators and also sent a reminder to them on 17.08.2022.



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5. The learned Additional Advocate General further submitted that one of the violators approached this Court by filing WP.No.25178 of 2022 praying to quash the notice of lock and seal and demolition and also to consider the special revision made under Section 80-A of the Tamil Nadu Town and Country Planning Act. This Court, while granting an order of status quo, disposed of the said Writ Petition, directing the Government to consider the special revision filed under Section 80-A of the Act and pass appropriate orders within a period of three months.

6. It is pertinent to mention here that since the contempt petition is pending, normally, the Authority concerned would be reluctant to take a decision on the application. In **Priyanka Estates International Pvt. Ltd. v. State of Assam**, reported in **(2010) 2 SCC 27**, the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

“It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such



activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

7. In yet another decision pertaining to buildings constructed in violation of rules, in the case of **Shanti Sports Club v. Union of India** reported in **(2009) 15 SCC 705**, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.



Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”



8. A First Bench of this Court in Contempt Petition No.1769 of 2015

and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is at least no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single



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person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

9. Considering the submissions of the learned Additional Advocate General that the matter is pending before the State, this Court directs the State to commence the proceedings by conducting enquiry on day to day basis without adjourning the matter beyond 5 working days at any point of time and after giving necessary opportunity to the complainant and the violators, pass a detailed order within the time prescribed by this Court in WP.No.25178 of 2022 dated 19.09.2022.

10. In view of the subsequent development, this contempt petition is closed.

[S.V.N., J] [V.S.G., J]
15.11.2022

Speaking Order: Yes / No
pvs



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