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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.12.2021	27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28143 of 2021
and
W.M.P.No.29745 of 2021

B.Kanchana

...Petitioner

-vs-

- 1.The Commissioner
Corporation of Chennai
Rippon Building,
Raja Muthiya Road,
Periyamet, Chennai-600 003.
- 2.The Additional Secretary (Technical)
Housing & Urban Development Department,
Secretariat, Chennai.
- 3.The Member Secretary,
CMDA Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
- 4.The Executive Engineer,
Zone 11, Unit 33, Division 145,
Corporation of Chennai,
Nerkundram, Chennai-600 107.
- 5.The Assistant Executive Engineer,
Zone 11, Unit 33, Division 145,
Corporation of Chennai,
Nerkundram, Chennai-600 107.
- 6.The Assistant Engineer,
Zone 11, Unit 33, Division 145,
Corporation of Chennai,
Nerkundram, Chennai-600 107.
- 7.E.Padmini



8.The Chairman, Tamil Nadu Generation and
Distribution Corporation Ltd.,
144 Anna Salai, Chennai 600 002.

...Respondents

(R8 is suo motu impleaded by this order of this Court today)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 6th respondent in pursuant to the letter dated 24.12.2021 herein and quash the same and consequently, direct the 2nd respondent to dispose the appeal in File No.15561/2021 dated 20.09.2021 within a time frame that maybe fixed by this Hon'ble Court and thus render justice.

For Petitioner	:	Mr.S.Sai Shankar
For R1, R4 to R6	:	Mr.Raja Srinivas
For R2	:	M/s.Geetha Thamaraiselvan Spl. Govt. Pleader
For R3	:	M/s.C.Sumathy Sreekanth

O R D E R

S.VAIDYANATHAN,J.,
AND
D.BHARATHA CHAKRAVARTHY,J.,

This Writ Petition has been filed, seeking to quash the Letter dated 24.12.2021 of the 6th respondent, in and by which, lock and seal notice was issued to the petitioner, with a direction to the 2nd respondent to dispose of the appeal in File No.15561 of 2021 dated 20.09.2021.

2. Mr.Raja Srinivas, learned counsel takes notice for R1 and R4 to R6, M/s.Geetha Thamaraiselvan, learned Special Government Pleader for R2 and M/s.C.Sumathy Sreekanth for R3. Notice to R7 is dispensed with, as no adverse order is going to be passed against her. By consent, final orders are passed in the Writ Petition at the admission stage.

3. It was the case of the petitioner that her late husband purchased the property in question in the year 1985 and since then, the property's rights vests with them. When her husband purchased the property, the area was governed by the Local Body and subsequently, it fell within the Greater Chennai Corporation limit after its due extension. It was further case of the Petitioner that during the life time of her husband, they constructed a residential house in ground floor to an extent of 1800 sq.ft. and subsequently, her husband died on 12.06.2017.



4. It was also the case of the petitioner that though she had applied for building plan approval before the 1st respondent through online, which is still pending, a lock and seal notice dated 21.01.2020 under Section 57 r/w Section 85 of the Town and Country Planning Act, 1971 (in short 'the Act, 1971') was issued, that too, without conducting any enquiry on her pending application. Thereafter, she applied for regularization of land before the 3rd respondent on 14.02.2021, during pendency of which, a de-occupation notice dated 13.09.2021 under Section 56, Sub-Section 2(A) and Section 57 r/w Section 85 of the Act, 1971 came to be issued against her.

5. It was averred by the petitioner that challenging the lock and seal notice and De-Occupation notice dated 21.01.2021 and 13.09.2021 respectively, she has preferred an appeal before the 2nd respondent on 20.09.2021. While the said appeal is pending, eviction notice has been issued, citing the direction issued by this Court in W.P.No.19111 of 2021 filed by the 7th respondent herein, even though the said Writ Petition was closed on 13.09.2021, without any positive direction. It was further averred that there was a suppression of pendency of appeal before the 2nd respondent by the 7th respondent, while the Writ Petition in W.P.No.19111 of 2021 was filed.

6. Learned counsel for the Petitioner assailed the impugned order on the ground that when there was no hindrance to any public on account of the construction made by a 70 years old widow, the act of the Respondents in issuing eviction notice is detrimental to the interest of the petitioner. Moreover, the petitioner has not encroached upon any public property and due to expansion of boundary by the Greater Corporation of Chennai, the petitioner sought for regularization of her building and the Officials of Corporation, even before taking a decision on her appeal, has hurriedly pressed into service for taking coercive action against the petitioner, which is un-sustainable.

7. The prayer sought for in this Writ Petition is on two folds and if the first part is allowed and notice is quashed, then the question of disposal of appeal does not arise. The second part of the relief has got to be answered only by the Authority. A careful scrutiny of the averments reveals that the land on which the purported building has been constructed was purchased by the husband of the petitioner way back in 1985 to an extent of 1800 sq.ft. and a building has been constructed in the year 2003, which is admittedly an unauthorized one even as per own admission of the petitioner vide representation dated 20.09.2021, as she undertook to regularize the building according to the original plan in that letter. When there is a violation contrary to the plan, the petitioner has no right to seek for regularization of the building and if any such request is made, the Authority cannot grant regularisation, contrary to the sanctioned plan.



8. The main plea canvassed by the petitioner was that in the Writ Petition (W.P.No.19111 of 2021) filed by the 7th respondent, an order was passed behind her back without issuing any notice to her. A bare reading of the order of this Court dated 13.09.2021 unravels that the said Writ Petition was closed as infructuous on the basis of the submissions made by the learned Standing Counsel for the respondents 4 to 6 therein. For the sake of brevity, the relevant paragraphs of the judgment are extracted hereunder:

"4. Mr.Raja Srinivas, learned Standing Counsel appearing for the respondents 4 to 6 would state that based on the representation of the petitioner, the fourth respondent already issued a lock and seal notice and today, they are issuing de-occupation notice to the respondents 7 to 9.

5. In the light of the above submissions of the learned Standing Counsel appearing for the respondents 4 to 6, we are of the considered opinion that the prayer sought for in the Writ Petition has become infructuous. Accordingly, the Writ Petition is closed. No costs."

9. The violation of construction of the building has been duly established by the respondents and there should be no deviation from the sanctioned plan. It was stated by the petitioner that appeal against the notice is pending in File No.15561/2021 dated 20.09.2021 before the 2st Respondent. In view of the said submission, the appeal, if any pending and not already disposed of, shall be considered and suitable orders be passed thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order, without adjourning the proceedings beyond five working days at any point of time.

10. It is made clear that in case of non-passing of orders in the Appeal, any person can file contempt and Court will punish the Authority, if the said non-compliance is wilful and deliberate. This Court has already warned the Authorities and also called for details vide its order dated 16.10.2018 in W.P.No.27499 of 2018, in addition to prescribing procedures to be adopted and the relevant paragraphs are extracted below:

"12 (c) In the event of the building being found locked or closed by the occupants, the respondents shall drill the roof of the building and make a big hole so that the building cannot be occupied any more.

(k) The 1st Respondent/Secretary to the Government of Tamil Nadu, Housing and Urban Development



Department and the 5th Respondent/Commissioner, Corporation of Chennai, Chennai are directed to furnish the following particulars to this Court on or before 18.12.2018:

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(i) Number of appeals pending before the authorities;

(ii) Number of cases, wherein directions have been issued by this Court."

11. The Authorities concerned can also utilize the advanced technology of drone survey in the presence of the respective parties in order to ascertain the exact portion of violation. It is needless to mention that if any encroachment is found to be made by the Petitioner, the electricity connection with respect to the petitioner shall have to be disconnected and the Eighth respondent shall issue suitable direction to the concerned Assistant Engineer to that effect, in the light of the Judgment of the Division Bench in the case of "P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and others" (W.P.No. 21639 of 2017), decided on 13.02.2018, wherein the Division Bench observed as follows, in consonance with the order of the Supreme Court dated 05.01.2018 passed in Petition for Special Leave to Appeal (C) No.33863 of 2017:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C). No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:



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"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

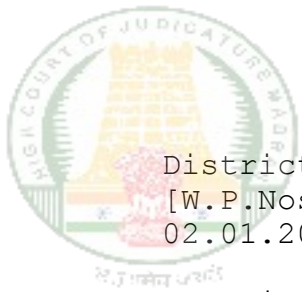
However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

12. As held by this Court in Contempt Petition No.1087 of 2017 and Writ Petition No.24705 of 2017 dated 18.03.2019, the Government should think of amending Acts, such as the Tamil Nadu Town and Country Planning Act, 1971, District Municipalities Act and other Enactments that deal with the removal of illegal constructions and encroachments, to the effect that wherever buildings are constructed in violation of the plan, the charges, like electricity, property and water tax, etc., should be collected not less than 5 times (can be extended upto 10 times) at the rate applicable to commercial buildings even to residential houses, so that monies collected in that way could be utilised by the Government and the Government can avoid financial emergency. Thus, if any dispute, with regard to the applicability of electricity charges to the residential building or partly commercial arises, the rate applicable to commercial buildings will prevail for the entire building / construction. Unless the law is strict and Judges are firm to control the violators with iron hands, it has got to be presumed that Judges are perpetuating illegality.

13. It goes without saying that if the area building is not able to be bifurcated for the purpose of rectification, the Electricity supply shall be disconnected for the entire building and the building shall not be put to any use till it is rectified and brought in accordance with the plan. A building can be permitted to be brought in accordance with the sanctioned plan and approval and in case, during on-site inspection, it is found by the Authorities that still there are violations, the violated portions shall be kept under lock and seal and the same can be opened only for rectification purpose.

14. A Division Bench of this Court in the case of N.Ravikumar vs. The District Collector, O/o.Thiruvallur



District, Thiruvallur, Thiruvallur District and others [W.P.Nos.13963 to 13967, 14359 and 15229 of 2018] decided on 02.01.2019 observed as follows:

"11. Before parting with this judgment, this Court is of the view that unless there is a stay of the proceedings by the High Court, quoting any pendency of the matter, the Officials of the Municipality / Corporation / CMDA and Government Officials cannot close the complaints or appeals, etc., on the ground of pendency of Writ Petition or Writ Appeal. If they do so, it would amount to dereliction of duty and they could be proceeded with departmentally so as to bring them within the ambit of not discharging their duties with integrity and devotion to duties and also it may attract moral turpitude, depriving them their gratuity and terminal benefits, apart from endorsing the same in the Service Register during their service, which would disentitle their further promotion and those Officials shall be removed from the said post and posted in a non-sensitive post, if any complaint is made that they are not discharging their duties to the fullest satisfaction.

12. We are of the view that any records or statements made by the Staff, who are dealing with the encroachment and illegal construction, are found to be false, it would amount to not only dereliction of duty, but also attract moral turpitude.

13. In fine, we would like to quote the decision of the Apex Court in the case of M.I.Builders Private Ltd. Vs. Radhey Shyam Sahu and others, reported in AIR 1999 SC 2468 at Special Page 2505, wherein at Paragraph 82, it is observed and held as under:

"82. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal



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predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

14. The Secretary, HUD Department, Govt. of Tamil Nadu, Chennai, The Additional Secretary (Technical), HUD Department, Govt. of Tamil Nadu, Chennai, The Commissioner, Corporation of Chennai, Chennai, The Secretary, Municipal Administration and Water Supply Department, Government of Tamil Nadu, Fort St. George, Chennai 600 009, The Commissioner of Municipal Administration, Ezhilagam, Chennai 600 005, The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Building, No.1, Gandhi-Irwin Road, Egmore, Chennai-600 008, are expected to issue suitable direction to the concerned authorities to go ahead with the matter, where there are no stay to proceed with the matter. The Government is expected to issue necessary circular / Government Order, incorporating the above directions and a copy of the same shall be filed before this Court on 04.02.2019. Till such circular / Government Order is issued, the afore-stated directions should be followed in letter and spirit. It is made clear that the directions issued hereinabove are only illustrative and apart from the above directions, stringent conditions may also be incorporated in the circular / Government Order so as to make the Officials to execute their job consecutively in the absence of stay of the proceedings by any judicial forum."

15. This Court in the order dated 29.04.2019 passed in W.P.5076 of 2016 already directed the Government to constitute a Permanent Special Task Force duly headed by an efficient, devoted and honest Official, not below the rank of Additional Chief Secretary, as Chairman of the STF for various purposes, including periodical inspections, field survey and create a boundary marks in respect of vacant Government lands as per Sections 16 and 21 of The Tamilnadu Survey and Boundaries Act, 1923 and other relevant provisions of the Act, etc., and it is not known as to whether such a Force has been constituted for the said purpose. Any lapses are noticed in respect of wilful and deliberate disobedience, this Court will pass stringent orders against erring officials and in that case, imposition of fine is secondary and the imprisonment is primary.

16. In yet another case, a Division Bench of this Court, finding building violations, directed the violated portions to be razed to the ground, in the case of M/s.Aara Silk, rep. by its Partner, MAM. Hayath S/o.M.A.Mohamed Masthan, 8/42 & 8/42-A, B - Ranganatha Mudhali Street, C.Pallavaram, Chennai vs. The Principal Director, Southern Command, IDES Guest House and others, [W.P.No.29985 of 2016] decided on 29.09.2016. For the



sake of convenience, the relevant paragraphs of the said judgment are extracted hereunder:

"20. It is pertinent to note that recently, the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) 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 atleast 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 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.'

21. And, this Court (Huluvadi G.Ramesh, J. & M.V. Muralidaran,J.), while dealing with the removal of encroachments, in the case of A.Kumar vs. The Commissioner, Greater Corporation of Chennai vide judgment dated 13.06.2016, has held as under:

17. In view of the act of the petitioner in making repeated representations, the Corporation could not remove the encroachment as directed by this Court. Therefore, the Corporation had to face contempt proceedings in Contempt Petition No.1391 of 2015, which was closed after recording the submission of the Corporation that they would remove the same within a period of two weeks. Again, since the the encroachment could not removed due to the attempts made by the



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petitioner and other encroachers, the Corporation faced another contempt proceedings in Contempt Petition No.13 of 2016. In that matter, the Corporation sought one week time to comply with the order and the same was granted on depositing a sum of Rs.20,000/- within a week.

18. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan [(1997) 11 SCC 123], the Supreme Court after referring to the earlier decisions, has observed thus:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

19. In view of the decision cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner and others were given notice and their objections were also heard and considered, in accordance with law. Therefore, this writ petition is disposed of, with a direction to the Corporation to demolish the encroachment, in the presence of the petitioner on 13.7.2016 and also with a direction to the petitioner to pay a fine of Rs.1,000/- (Rupees one thousand only) to the credit of the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of one week from the date of receipt of a copy of this order. This order shall be treated as notice to the petitioner for demolishing the encroachment made in the land in question. There shall be no order as to costs. Consequently, WMP No.16456 of 2016 is closed.

22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation."

17. The applicants must give a reasonable time to the authorities to consider the grant of approval for construction



of the building and any request for an instant approval will pave way for "under the table dealing" and in that process, the Officials will flourish and their belly will get doubled with the money received as bribe. No application for approval after completion of the building can be entertained, as it would amount to putting a cart before a horse. The Authorities shall also inspect the building from the basement level itself, so that the set backs as suggested by them / plan can be adhered to and in any event, the FSI / area cannot be enhanced.

18. Electricity supply may be an essential service for any person, but certainly it shall not be to the violators and it has got to be fixed at the premium rate till the building is brought back in accordance with the plan. The Court may feel that disconnection of electricity may hinder not only to the violators, but also to the family members. In such an event, the Authorities / Court must ensure that while passing interim / final orders in the application, the Electricity charges, Property Tax, Water and Sewage Charges must be five times to the violators, till such time the violation is set right and the building is rectified in terms of the plan. Such stringent conditions by the Authorities in the application that are pending before it under the provisions of the Act, 1971 or any other provisions of the Act would make the violators to adhere to the strict norms of construction in accordance with the plan. That apart, Officials of E.B. must make a periodical surprise inspection to violated places to check about the theft of electricity. If exorbitant rates are foisted, it will affect the monthly budget of the violators and they will think twice to violate, as the charges under three heads, viz., E.B., Property Tax and Water Charges are recurring one.

19. Last but not the least, we want to emphasize that Courts must be slow in granting relief, much less interim relief in cases where violators approach the Court for relief, as even a direction for disposal of representation will give rise to another round of litigation and Judges must ensure that no leniency is shown to the violators.

20. In view of what is stated hereinabove, this Court is not inclined to interfere with the impugned Letter dated 24.12.2021 and the Petitioner is not entitled to any relief sought for in this Writ Petition. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar



- 1.The Commissioner
Corporation of Chennai
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- 7.The Chairman, Tamil Nadu Generation and
Distribution Corporation Ltd.,
144 Anna Salai, Chennai 600 002.

+1cc to Government Pleader SR. No.5136

W.P.No.28143 of 2021

PMK (CO)
PR (24/02/2022)