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W.P.No.4306 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.4306 of 2023
and
W.M.P.No.4347 of 2023

Francis Augustine

.. Petitioner

Vs.

- 1.The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 2.The Corporation of Chennai,
Represented by its Commissioner,
Rippon Buildings, No.1131, EVR Periyar Salai,
Park Town, Chennai – 600 003.
- 3.The Executive Engineer, Zone – 8,
Corporation of Chennai,
No.36B, 2nd Cross Street, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.
- 4.The Assistant Engineer, Division 103,
Corporation of Chennai,
No.36B, 2nd Cross Street, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.



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5. The Assistant Executive Engineer, Unit-22,
Corporation of Chennai,
No.36B, 2nd Cross Street, Pulla Avenue,
Shenoy Nagar, Chennai – 600 030.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to impugned notice in Notice No:Zone VIII/TPENF/238/2022 dated 09.01.2023, issued by Respondents 3 to 5 and quash the same.

For Petitioner : Mr.Dhalapathy Vignesh Kumar

For R1 : Mr.R.Sivakumar
Standing Counsel

For R2 to R5 : Mr.D.B.R.Prabhu
Standing Counsel

ORDER

(Order of the Court was delivered by V.M.VELUMANI, J.)

The Writ Petition is filed to quash the impugned notice in Notice No:Zone VIII/TPENF/238/2022 dated 09.01.2023, issued by respondents 3 to 5.

2. By consent of both the learned counsel appearing for the petitioner, Mr.R.Sivakumar, learned Standing Counsel, who takes notice for 1st respondent as well as Mr.D.B.R.Prabhu, learned Standing Counsel,



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who takes notice for respondents 2 to 5, the writ petition is taken up for final disposal at the stage of admission itself.

3. Heard Mr.Dhalapathy Vignesh Kumar, learned counsel appearing for the petitioner, Mr.R.Sivakumar, learned Standing Counsel appearing for the 1st respondent as well as Mr.D.B.R.Prabhu, learned Standing Counsel appearing for the respondents 2 to 5 and perused the entire materials on record.

4. According to the petitioner, he is the absolute owner of the property situated at Flat No.AG-9, Old No.2B, Ground Floor of the building in Block No.2 in T.S.No.47, Part of Periakudal Village, Anna Nagar, bearing Door No.AG-9, Old No.2B, Shanthi Colony, 4th Avenue, Anna Nagar, Chennai measuring 840 sq.ft and 1294 sq.ft., undivided share. The said property was constructed by Tamil Nadu Housing Board and allotted to his mother 'Mano Augustine' in the year 1972. His mother purchased the said property by the Sale Deed dated 22.02.1990 and subsequently, she has settled the said property on the petitioner. From the year 1990, the petitioner's mother did not make any alteration in the property. The petitioner rented out the property to a Doctor for running a



clinic. The petitioner is paying property tax and electricity charges under the commercial tariff. The Tenant/Doctor vacated the premises and the building is very old and all the appurtenance and interiors like wooden doors, windows and drainage pipe have been weathered and the same cannot be used by the occupants and hence, the petitioner took steps to renovate the interiors of the said building and fix the new drainage pipeline as per the advice of the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB). According to the petitioner, he has not changed the physical structure.

5. The petitioner put up a temporary shed with asbestos sheet roofing to protect the vehicles from the rain and sunlight. Whiles, the respondents 4 and 5 issued a notice dated 13.12.2022 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 and directed the petitioner to furnish the planning approval within fourteen days. The petitioner sent a reply dated 22.12.2022 enclosing the documents. The respondents 3 to 5 without considering the said reply, issued impugned notice dated 09.01.2023 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 alleging that the petitioner is using the building for commercial purpose instead of



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residential and constructed a shed unauthorisedly.

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6. The petitioner is challenging the notice dated 09.01.2023 issued under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

7. From the materials on record, it is seen that the respondents earlier issued notice dated 13.12.2022 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 for the very same building. According to the petitioner, he has given explanation on 22.12.2022 enclosing the approved plan. The learned counsel appearing for the petitioner submitted that the petitioner has not made any structural alteration but only renovating the interior of the building as the building was constructed in the year 1972 by the Tamil Nadu Housing Board. The respondents 3 to 5 have issued impugned notice dated 09.01.2023 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

8. Considering the above materials, the petitioner is directed to



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submit an explanation to the impugned notice enclosing all the documents relied on by him including the approved plan to show that there is no unauthorised construction within a period of three weeks from the date of receipt of a copy of this order. If any such explanation is given, the respondents 3 to 5 are directed to inspect the property and consider the explanation of the petitioner and take appropriate proceedings in accordance with law. Till such time, the respondents 3 to 5 are restrained from taking any coercive steps against the petitioner.

9. With the above directions, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

(V.M.V., J) (R.H., J)
15.02.2023
(1/2)

Index : Yes / No
Neutral Citation : Yes / No
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and
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