



Cont.petn.No.778 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.08.2023**

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Contempt Petition No.778 of 2022

Dr.A.Kumar

...

Petitioner

...Vs...

1.Dr.M.Elangovan. B.V.Sc,
Commissioner,
No.2 Dr.Ambedkar Salai,
Pozhichalur Main Road,
Pammal Municipality,
Pammal,
Chennai-75.

2. P.V.Umapathy

(R2 suo motu impleaded as 2nd Respondent
as per the Order of this Court dated 15.11.2022
made in Cont.Petn.No.778 of 2022)

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Respondents

Petition filed under Section 11 of the Contempt of Courts Act, 1971 to
punish the Respondent for Wilful disobedience of the order of this Court
dated 17.06.2021 made in W.P.No.642 of 2021.



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For Petitioner : Mr.S.Vijayakumar
For Respondents : Mrs.P.Veena Suresh
for CMDA
Mr.P.Srinivas (R1)
Ms.M.D.Leelavathi
for M/s.T.Kumaravijayan (R2)

ORDER

(Order of the Court was made by **S.VAIDYANATHAN,J**)

This Contempt Petition is filed alleging non compliance of the order passed by this Court on 17.06.2021 in W.P.No.642 of 2021.

2. This Court on 17.06.2021 in W.P.No.642 of 2021, has passed the following order:

"6. In view of the above factual position, the First Respondent is directed to make re-inspection, after giving notice to the Petitioner as well as the Fourth Respondents/owner of the property and consider the Petitioner's representation/complaint, after giving opportunity of personal hearing to the Petitioner as well as the Fourth Respondent to file documents and pass orders on its own merits, within a period of 12 weeks from the date of receipt of a copy of his order."

3. It is the contention of the learned counsel for the petitioner that pursuant to the order passed by this Court on 17.06.2021, the 1st Respondent



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issued a notice dated 21.10.2021 calling upon the respective parties to appear for personal hearing and in response to the said notice, the petitioner appeared before the 1st respondent on 25.10.2021, but till date no orders have been passed to demolish the unauthorized construction.

4. The learned counsel for the 2nd Respondent/owner submitted that initially the 2nd Respondent filed an application for regularization of building in question under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 (in short 'the Act') and as the building does not satisfy the rules and guidelines prescribed in G.O.Ms.No.110 dated 22.06.2017, the same was rejected and thereafter the 2nd Respondent demolished the 2nd Floor and made a representation vide letter dated 05.08.2022 to the Member Secretary, CMDA, Chennai seeking to consider the regularisation application filed under Section 113C of the Act and the same is pending.

5. In reply, the learned counsel for the Petitioner submitted that not only the building is in violation of the building plan, with regard to the 2nd floor, but also the construction has been made beyond the period of three years, viz., 2007, from the date of sanction of the plan in the year 2004. It is



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the further submission of the learned counsel that even after the demolition of the 2nd floor, there are still deviations and, therefore, it is clear that the orders passed by this Court has not been complied with in full.

6.The learned counsel for CMDA submitted that G.O.Nos.110 and 111 dated 22.06.2017 are under challenge before the Apex Court and the regularisation application would have await the outcome of the orders to be passed by the Apex Court in the aforesaid case.

7. This Court heard the learned counsel appearing for the respondents and perused the materials available on record.

8. It is evident even from the contention of the 2nd Respondent that pursuant to the order passed by this Court on 17.06.2021, the 2nd respondent has taken steps and demolished the 2nd floor. However, it is the stand of the petitioner that though the building plan was sanctioned in the year 2004, which is valid for a period of three years, the building was not completed within a period of three years of validity of the building plan, which is evident from the fact that electricity connection has been obtained only in the year 2008.



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9. Be that as it may, a perusal of the report of the learned Advocate

Commissioner shows that Electricity connection has been obtained in the year 2008. The mere fact that electricity connection was obtained belatedly cannot be construed that the building was not completed within the time prescribed in the planning permit. The petitioner contends that he is in occupation of the property and there are some deviations. He further contends that since no regularisation of the same has been granted by the authorities till date, the said portions also require to be demolished. However, it is borne out by record that the representation given by the 2nd Respondent on 05.08.2022, to consider the regularisation application filed under Section 113C of the Act is pending before the authority and as the G.O.Nos.110 and 111 dated 22.06.2017 are under challenge before the Apex Court, the decision on the regularisation application would be based on the outcome of the orders to be passed by the Apex Court in the aforesaid case.

10. In such view of the matter, as the matter is pending consideration before the Apex in the application filed under Section 113 C.P.C., this Court makes it clear that the application for regularisation shall be subject to the outcome of the SLP and till such time no coercive action shall be taken by the Respondents. However, parties are at liberty to work out their remedies after



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orders are passed by the Apex Court.

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11. Though it is the contention of the petitioner that necessary setback as mandated under the Town and Country Planning Act must be provided, it is pertinent to mention here that the deviation if any, which is within permissible limit, with regard to balcony can be excluded so long as the said deviation does not cause any hindrance to the neighbours and if any hindrance is caused to the neighbours due to the aforesaid deviation, the same shall be removed. If any projections are there in the open space (OSR) public place and the like, the same need not be condoned and shall be demolished forthwith. The entire structure more particularly foundation/pillar should have been constructed as per plan and if any deviation for the setback is retained/maintained, the said portion shall be razed to ground. If the same is not removed, the officers who are responsible to keep the violation without removing it shall be proceeded with departmentally for major misconduct of dereliction of duty, honesty and integrity and major penalty shall be imposed.

This Contempt Petition is closed with the above directions.

[S.V.N,J.] [T.V.T.S,J.]
10.08.2023

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S.VAIDYANATHAN, J.
AND
T.V.THAMILSELVI, J.
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