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W.P.No.10030 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2023

Delivered on : 30.10.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.10030 of 2020

D.Anikiah

... Petitioner

Vs.

- 1.The Secretary
Housing and Urban Development Department
Secretariat, Chennai-600 009
- 2.Chennai Metropolitan Development Authority
Gandhi Irwin Road, Egmore
Chennai-600 008
- 3.The Member Secretary
Chennai Metropolitan Development Authority
Gandhi Irwin Road, Egmore
Chennai-600 008
- 4.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai-600 003



W.P.No.100

5.The Executive Engineer
The Greater Chennai Corporation
Zone XII, New Street, Alandur
Chennai-600 016.

6.CEO, Cantonment Board
Parangimalai, St.Thomas Mount
Chennai-600 016

7.V.C.Penchalaiah

8. Narashimalu

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st to 6th respondents to consider the petitioner's representation letter dated 18.05.2020 in accordance with law and to further direct the 1 to 6 respondents to stop the unauthorized illegal construction of 7th and 8th respondents.

For Petitioner : Mr.S.Ramajayam

For Respondents : Mr.E.Vijayanand, Addl Govt. Pleader for R1

Mr.Y.Bhuvanesh Kumar, Standing counsel for R2 and R3

Mr.E.C.Ramesh, for R4 and R5

Mr.C.Mohan for M/s.King and Patridge for R6

Mr.S.Palani for R7 and R8.



W.P.No.1001

WEB COPY

ORDER

Per J.NISHA BANU, J.

This Writ Petition is filed for a writ of Mandamus, to direct the respondents 1 to 6 to consider the petitioner's representation letter dated 18.05.2020 and to direct the respondents 1 to 6 to stop the unauthorized illegal construction of 7th and 8th respondents.

2. The petitioner has averred in the writ petition that his house property is situated in Survey No.1911/3 in Mangaliamman Kovil Street, St.Thomas Mount. The 7th and 8th respondents constructed house in very adjacent to the petitioner's compound wall and without giving setback. The 7th and 8th respondent constructed house for four floors without getting approval. The petitioner further averred that there is only 5 feet common pathway and in such a factual situation, 7th and 8th respondents started to construct 12 houses in the property. The petitioner also averred that the entire land belongs to 6th respondent-CEO, Cantonment Board.

3. The petitioner has given a representation dated 18.05.2020 to the authorities 1 to 6 requesting to take appropriate action as against the 7th and 8th respondents stating



W.P.No.1001

the 7th and 8th respondents are constructing the building without leaving set back and the nearby people are suffering due to the said unauthorized construction.

WEB COPY

4. 6th Respondent-Cantonment Board filed counter affidavit and submitted that 7th and 8th respondents constructed the building GLRS.No.279 (B2 land) measuring to the extent of 1888 sq.ft. In ground floor and not constructed 4000 sq.ft., in ground floor as alleged by the petitioner. The 7th and 8th respondents re-erected the building during the month of June 2020 and not obtained planning permission from the Cantonment Board; no permission was sought by 7th and 8th respondents for such re-erection as required under Section 235 of Cantonment Act.

5. It is also submitted by the 6th respondent that Cantonment Board issued Statutory notice under Section 239(1) of the Cantonments Act, 2006 to 7th and 8th respondents for their illegal construction without obtaining planning approval from the Cantonment Board.

6. Perusal of the Counter affidavit indicates that they had issued notices of stop the construction under Sec 239 (1) of the Cantonments Act, 2006, Notice calling for explanation regarding the unauthorised construction in terms of Sec 247 of the



W.P.No.1001

Cantonments Act, 2006, Notice calling for the 8th respondent to remove unauthorised structures under Sec 320 of the Cantonments Act, 2006 and Notice issued to the 8th respondent for sealing of the Building in terms of Sec 249 of the Cantonments Act, 2006.

7. As the respondents 7 and 8 had violated various provisions of the Cantonments Act, 2006, criminal prosecution is launched against 7th and 8th respondents before the learned Judicial Magistrate, Alandur in STC No 498 of 2020 which is pending trial before the court.

8. The 7th and 8th respondents filed counter affidavit submitting that since it was a old house in dilapidated condition, for the safety of the family, renovation in the building was carried out and the petitioner in order to grab the property, filed the writ petition with malafide intention.

9. Heard both sides and perused the records.

10. The petitioner is aggrieved by the construction work carried out by the 7th and



8th respondents adjacent to the compound wall of the petitioner's house. The petitioner fears that the unauthorised construction without approval from the planning authorities would cause inconvenience to the use of the pathway to his house which is very narrow that is just 5 feet width. The petitioner fears that the construction of a pillar upon the drainage tank, the poor quality of construction materials and the failure to allow the mandatory setback near his compound wall will pose a serious threat to public safety.

11. From the above narrated facts, it is revealed that the 6th respondent CEO of the Cantonment Board, Parangimalai, St. Thomas Mount, Chennai is the planning authority whose approval is necessary under the Cantonments Act, 2006 for the 7th and 8th respondents to do construction work at the site.

12. The 6th respondent had recorded a categorical finding that the 7th and 8th respondents have constructed 1888 SqFt of concrete structure in the site without obtaining permission under Sec 247 of the Cantonments Act, 2006.

13. The action contemplated under the relevant provisions of the Cantonments Act, 2006 is also initiated by the 6th respondent from time to time culminating in the



W.P.No.1001

filing of prosecution complaint before the learned Judicial Magistrate Court, Alandur.

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14. Now, as the prayer sought by the petitioner is already been acted upon by the 6th respondent CEO of the Cantonment Board including initiation of criminal prosecution before the learned Judicial Magistrate Court, Alandur, the prayer of the petitioner has become redundant. However, we direct the 6th Respondent CEO of the Cantonment Board, St.Thomas Mount to pursue the proceedings diligently already initiated by them to its logical conclusion in accordance with law. We also request the Learned Judicial Magistrate, Alandur, to dispose of the pending complaint, as expeditiously as possible on merits after giving opportunity without the influence of the decision in this writ petition. This Writ Petition disposed of on the above terms. No costs.

J.N.B.J., N.M.J.,
30.10.2023

Index : yes/no
Internet : yes/no
nvsri



W.P.No.1001

To

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WEB COPY



W.P.No.10030 of 2020

J.NISHA BANU, J.

&
N.MALA, J.

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WEB COPY



W.P.No.1005

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