



WEB COPY



W.P.No.13573 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Writ Petition No.13573 of 2023
and W.M.P.Nos.13248, 13249 & 13251 of 2023

S.Saravan Kumar

.. 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
Division 103
Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.



W.P.No.13573 of 2023

4.The Assistant Engineer
Division 103
Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.

5.The Assistant Executive Engineer
Division 103
Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.

6.The Secretary to Government
Government of Tamil Nadu
Housing and Urban Development
Secretariat, Chennai-9.

.. Respondents

(6th respondent suo motu impleaded
vide order of this Court dated 28.04.2023)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to impugned notice in Notice No.Zone-8/TPENF/239/2022 dated 12.04.2023 issued by the respondents 3 to 5 and quash the same.

For Petitioner : Mr.Ashwin Prem Sundar

For R1 : Mr.R.Sivakumar
Standing Counsel

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

For R6 : Mr.E.Vijay Anand
(newly impleaded Additional Government Pleader
respondent)



W.P.No.13573 of 2023

ORDER

WEB COPY

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

The petitioner has come out with the present Writ Petition challenging the impugned notice dated 12.04.2023 issued by the respondents 3 to 5.

2. By consent of the learned counsel appearing for the petitioner as well as Mr.R.Sivakumar, learned Standing Counsel, who takes notice for the 1st respondent and Mr.D.B.R.Prabhu, learned Standing Counsel, who takes notice for the respondents 2 to 5, the Writ Petition is taken up for final disposal at the stage of admission itself.

3. Heard the learned counsel appearing for the petitioner as well as learned Standing Counsel appearing for the 1st respondent and 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.2A in the ground floor of the building bearing Door No.AG, New No.19, Old No.8, Shanthi colony, 4th Avenue, Anna Nagar, Chennai-600 040. One Vivekanandan, owner of the first



W.P.No.13573 of 2023

floor started to demolish and reconstruct his portion unauthorisedly in the common passage situated on the eastern side of petitioner's property without any approval. The petitioner has access to his motor room only through the common passage and all the drainage lines and water sump are also situated on the eastern side of the common passage. If there is any blockage in the drainage, it is difficult to stand and work in the small place. The petitioner has given Police complaint and since the Police could not stop the construction, the petitioner approached the 3rd respondent. The 4th respondent issued notice dated 17.12.2019 directing the said Vivekanandan to discontinue the occupation of the premises unauthorisedly constructed within seven days from the date of receipt of said notice. The said notice was also pasted on the building on 19.12.2019. Even after receipt of the notice, the owner of the first floor did not take any steps to vacate the premises which was constructed unauthorisedly. Hence, the petitioner has filed W.P.No.8586 of 2020 for a direction to the respondents 3 & 4 therein to take action as per the notice dated 17.12.2019. The owner of the first floor has also filed Writ Petition No.10202 of 2020 for a direction to the respondents to remove the unauthorised construction alleged to have been put up by the petitioner. Both the Writ Petitions were heard together and as per the order of this



W.P.No.13573 of 2023

Court, the petitioner has removed the unauthorised construction.

However, the Officials failed to note that the owner of the first floor has not taken any steps to remove the unauthorised construction put up by him.

5. Learned counsel appearing for the petitioner submitted that initially, the above said building was used only for residential purpose. Now the petitioner has let out the building for commercial purpose. Before letting out, the petitioner has sent Online clarification dated 09.03.2022 to the respondents 2 & 3 to use the premises for commercial purpose. The respondents clarified that the petitioner can use the building for commercial purpose. Thereafter, the respondents issued notice dated 20.12.2022 stating that the petitioner is using the premises as commercial shop instead of residence. Before issuing said notice, no inspection was conducted. Challenging the said notice, the petitioner filed W.P.No.4311 of 2023. As per the order of this Court dated 15.02.2023, the respondents without complying with the directions given in the earlier Writ Petitions, inspected the property of the petitioner and sent de-occupation notice dated 12.04.2023. Hence, the petitioner has come out with the present Writ Petition for the above stated relief.



6. From the materials on record, it is seen that the impugned notice dated 12.04.2023 was issued under Sections 56 & 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, which is appealable.

7. Learned Standing Counsel appearing for the respondents 2 to 5 submitted that Secretary to Government, Housing and Urban Development is the competent authority to dispose of the revision if any, filed by the petitioner and prayed for passing suitable orders.

8. In view of the above submissions, this Court suo motu impleads ***“The Secretary to Government, Government of Tamil Nadu, Housing and Urban Development, Secretariat, Chennai-9”*** as 6th respondent in this Writ Petition. Mr.E.Vijay Anand, learned Additional Government Pleader takes notice for the newly impleaded 6th respondent. The petitioner is directed to file a revision challenging the notice dated 12.04.2023 within a period of two weeks from the date of receipt of a copy of this order. If any such revision is filed, the newly impleaded 6th respondent is directed to dispose of the revision after giving opportunity of hearing to the petitioner, within eight weeks from the date of receipt of



W.P.No.13573 of 2023

the revision. Till such time, the respondents are restrained from taking any coercive steps against the petitioner based on the notice issued to him. If no such revision is filed as per the order of this Court, it is open to the respondents 2 to 5 to take further action.

9. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.M.V., J) (V.L.N., J)
28.04.2023

Index : Yes/No
Neutral Citation : Yes/No

Note: Registry is directed to carry out necessary amendment in the cause title.

kj

To

1. The Chennai Metropolitan Development
Authority
Represented by its Member Secretary
Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008.



WEB COPY



W.P.No.13573 of 2023

**V.M.VELUMANI,J.
and
V.LAKSHMINARAYANAN,J.**

Kj

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
Division 103, Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.

Writ Petition No.13573 of 2023
and W.M.P.Nos.13248, 13249 & 13251 of 2023

4.The Assistant Engineer
Division 103, Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.

5.The Assistant Executive Engineer
Division 103, Corporation of Chennai
No.36B, 2nd cross street
Pulla Avenue, Shenoy Nagar
Chennai-600 030.

6.The Secretary to Government
Government of Tamil Nadu
Housing and Urban Development
Secretariat, Chennai-9.

28.04.2023