



W.P.No.24488 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.24488 of 2023
and
W.M.P.No.23914 of 2023

P.L.Sarala Devi
W/o Late Dr.Prabha Shankar

.... Petitioner

vs

1. The Commissioner,
Corporation of Greater Chennai,
Ripon Building,
Chennai - 600 003.
2. The Executive Engineer,
Corporation of Chennai,
Office at
No.266, T.H.Road, Washermenpet,
Chennai - 600 021.
3. Mr.Arulselvan,
4. Poonguzhali

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India



W.P.No.24488 of 2020

to issue a Writ of Mandamus to direct the respondents 1 and 2 to demolish the unauthorized construction put up by the 3rd and 4th respondents on the west side of their house situated at Old Door No.48, New No.51, 3rd Street, Vyasarpadi Colony near Vyasarpadi Jeeva Station, Chennai - 600 039 on the set back of 4 feet from the compound wall on the Eastern side of Petitioner's property situated at Old Door No.47, New No.53, 3rd Street, Vyasarpadi Colony, Near Vyasarpadi Jeeva Railway station, Chennai - 600 039.

For Petitioner : Mr.N.S.Sivakumar

For Respondents : Mr.D.B.R.Prabu,
Standing Counsel for Corporation/
R1 & R2
Mrs.Y.Kavitha for R3 & R4

ORDER

(Order of the Court was made by J.NISHA BANU, J.,)

This writ petition has been filed to issue a Writ of Mandamus to direct the respondents 1 and 2 to demolish the unauthorized construction put up by the 3rd and 4th respondents on the west side of their house situated at Old Door No.48, New No.51, 3rd Street, Vyasarpadi Colony near Vyasarpadi Jeeva Station, Chennai - 600 039 on the set back of 4 feet from the compound wall on the Eastern side of Petitioner's property situated at Old Door no.47, New No.53, 3rd Street, Vyasarpadi Colony, Near Vyasarpadi Jeeva Railway station, Chennai - 600 039.

2. The case of the petitioner is that the unauthorised construction put up



W.P.No.24488 of 2020

by the erstwhile owners of the petitioner's neighbour was stopped previously by the action of CMDA vide order dated 28.06.2001, followed with demolition notice dated 27.08.2001, issued to the erstwhile owner. However, no action was contemplated. A civil suit in O.S.No.2139 of 2009 on the file of XIII Assistant Judge, City Civil Court Chennai was also filed with interim injunction application and interim injunction was granted on 09.04.20-01. Despite interim order, the erstwhile owners, continued the construction. Therefore, the petitioner filed W.P.No.5359/2002 seeking a direction to CMDA to take action on the demolition notice. This Court vide order dated 22.02.2002 directed the CMDA to take necessary action within two months. In compliance of the order the CMDA requested the Corporation of Chennai to take necessary action against the deviated construction. The said letter was challenged by the erstwhile owner M.T.Sethuraman in W.P.No.16407 of 2002 and the writ petition was allowed and the impugned order was quashed as the demolition notice could be issued only by the Corporation since the construction is in ground and first floor. However, the said order was made clear that the order of the Court does not stand in the way of the Corporation to take appropriate action against the petitioner(erstwhile owner) by invoking Section 256 of the Chennai City Municipal Corporation Act. Pursuant to the



W.P.No.24488 of 2020

order, the erstwhile owner stopped construction leaving the beams, pillars and supporting structures as such. Now, the erstwhile owners sold the property to 3rd and 4th respondents. After purchase, the 3rd and 4th respondents were carrying on the illegal construction in the 4 feet set back given in the western side of the property and in the eastern side of the petitioner's compound wall. Therefore, the petitioner has given a presentation dated 07.08.2023 to the 1st and 2nd respondents. Since no action was taken, the present writ petition has been filed.

3. When the matter is taken up, the learned counsel for the petitioner would state that the 3rd and 4th respondents are carrying on the illegal construction. However, the learned counsel appearing for the 3rd and 4th respondents would state that after filing of this writ petition, the 3rd and 4th respondents have not made any further construction and the 3rd respondent had filed an application under Section 80A of the Tamil Nadu Town and Country Planning Act on 21.09.2023 before the Housing & Urban Development Department, and she would pray that the 80A application may be considered by the Secretary to Government, Housing & Urban Development Department and orders may be passed within a time frame to be fixed by this Court, after giving opportunity to them.



W.P.No.24488 of 2020

WEB COPY

4. Since the application under section 80A is pending before Secretary to Government, Housing & Urban Development Department, this Court, without going into the merits of the claim made by the petitioner, directs the Secretary to Government, Housing & Urban Development Department, Fort St.George, Chennai, to dispose of the 80A application filed by the 3rd respondent, within a period of eight weeks from the date of receipt of a copy of this order, after giving opportunity to the petitioner as well as the 3rd and 4th respondents. Till such time, the 1st & 2nd respondents shall not take any coercive steps against the building in question.

5. The Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

6. As the Secretary to Government, Housing & Urban Development Department is not a party to this writ petition, Registry is directed to send a copy of this order to the Secretary to Government, Housing & Urban Development Department, Fort st.George, Chennai-600 009.

(J.N.B., J.) (N.M., J.)

01.11.2023

vsi

Index : Yes / No

Internet : Yes / No



W.P.No.24488 of 2020

To
WEB COPY

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai 600 009
2. The Commissioner,
Corporation of Greater Chennai,
Ripon Building,
Chennai - 600 003.
3. The Executive Engineer,
Corporation of Chennai,
Office at
No.266, T.H.Road, Washermenpet,
Chennai - 600 021.



WEB COPY



W.P.No.24488 of 2020

J. NISHA BANU, J.
and
N.MALA, J.

vsi

W.P.No.24488 of 2023

01.11.2023