



W.P.No.7974 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.7974 of 2017

B.Shanmugam ... Petitioner

versus

1.The District Collector,
Tiruvallur District.

2.The Commissioner,
Avadi Municipality,
Avadi- 600 054.

3.Balakrishnan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus directing the 2nd respondent to demolish and remove all the illegal construction made by the 3rd respondent in Plot No.247, 3rd Street Kamalam Nagar, Thirumullaivoyal, Chennai- 600 062.



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For Petitioner : Mr.C.Jeyachandran
For Respondents : Mr.E.Vijay Anand,
Additional Government Pleader,
for the first respondent

Mr.R.Gopinath,
for the second respondent

Mr.C.Prakasam,
for the third respondent

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

This writ petition has been filed for a Mandamus directing the second respondent to demolish and remove all the illegal construction made by the third respondent in Plot No.247, 3rd Street Kamalam Nagar, Thirumullaivoyal, Chennai- 600 062.

2. The case of the petitioner is that third respondent is petitioner's neighbor and the owner of the property adjacent to petitioner's property. The third respondent had started constructing illegal building very close to petitioner's building without obtaining planning permit from the second respondent. Thereafter, the



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petitioner sent a representation dated 26.12.2014 to the second respondent informing about the illegal construction made by the third respondent. Pursuant to the said representation, a show cause notice dated 20.02.2015 was issued to the third respondent. Subsequently, the third respondent, for the time being, stopped the construction on one side but carried the illegal construction on the other sides. Therefore, the petitioner gave another representation on 13.03.2017 to the second respondent. However, no action has been taken by the second respondent. Hence, the petitioner has filed the present writ petition.

3. A counter-affidavit has been filed by the second-respondent/Commissioner, wherein it is stated that pursuant to the complaint received from the petitioner, it was noticed that the third respondent has constructed a building in plot No.247 without any building permission from the Avadi Municipality. On finding that no building permission was obtained by the third respondent for the construction in the property in question, notice dated 20.02.2015, has been issued under Section 216 (1) & (2) of the Tamil Nadu District Municipalities Act, to the third respondent. On receipt of the said



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notice, the third respondent has stopped the construction and informed that he will apply for the building permission and after obtaining building permit he will continue the construction. Thereafter, since the construction was not carried on, and the third respondent had undertaken to obtain building permission, further action is kept pending. Subsequently, when it was informed by the petitioner that work was re-started by the third respondent, another notice was issued to the third respondent on 06.04.2017 under Section 216 (1) & (2) of the Act. Since the third respondent did not respond to the said notice, final orders were issued to the third respondent on 05.05.2017, requiring him to demolish the unauthorized construction within 7 days, failing which, further action will be taken by the Municipality. On receiving the said final order, the third respondent submitted a building permission application on 26.05.2017 with the requisite plans. On scrutiny, it was found that the plan was not in conformity with the Rules and also the site conditions. Further inspection showed that the required set back spaces were not given as per the Rules. Therefore, the said plan was rejected by order dated 09.06.2017. The third respondent has also filed an appeal under Section 80 (A) of the Tamil Nadu Town and



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Country Planning Act, 1971, before the Government and the said appeal was disposed off by the Secretary to Government, Housing & Urban Development Department in Letter No.18851/UD-VII(1) 2017-1 dated 27.11.2017 giving three months' time to the third respondent to get the plot regularised under the scheme for regularising the unauthorized layouts, which is presently in force. Thereafter, the third respondent has filed an application for the plot approval and the individual plot has been regularized and approved by proceedings of R2 dated 10.05.2018. Subsequently, R3 has applied for the regularization of the building on 21.05.2018. However, as there were violations of the Development Control Regulations in the construction, the said application dated 21.05.2018 was forwarded to CMDA on 01.06.2018 vide letter No.4010/F1/2018. The second-respondent states that due to the pendency of the application for regularization, it is not in a position to take further action for the unauthorized construction or deviation in the building.

4. In such circumstances, learned Standing Counsel for the Corporation reiterated that as the said application filed by the third respondent for regularization, is pending before the CMDA, the



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petitioner has to work out his remedy before the CMDA.

5. Since CMDA is not a party in this writ petition, it is for the petitioner to raise his objection, if any before the CMDA on the application filed by the third respondent for regularization of the unauthorized construction.

6. It is needless to say that if the petitioner approaches the CMDA, the CMDA has to take necessary action for early disposal of the said application dated 21.05.2018 submitted by the third respondent which was forwarded to it on 01.06.2018, without any further delay. The respondent Corporation shall take action, if necessary, subject to the outcome of the decision taken by the CMDA.

7. With the above liberty, the writ petition stands disposed of. There will be no order as to costs. Consequently, connected W.M.P.No.8716 of 2017, is closed.

[D.K.K., J.] [P.D.B., J.]
19.06.2023

Index : Yes/No
Neutral Citation : Yes/No



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To

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D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.

(mrn)

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