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W.P.No. 2698 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.2698 of 2023

P.N.Srinivas

... Petitioner

-VS-

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai.

2. The Zonal Officer,
33, Arcot Road,
Bhuvaneshwari Nagar,
Valasaravakkam, Zone 11,
Chennai-600 087.

3. G.Sakthivel

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to consider the petitioner's representation dated 10.11.2022.

For Petitioner : Mr.S.Patrick

For R1 & R2 : Mr.D.B.R.Prabhu,
Standing Counsel



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ORDER

This Writ Petition has been filed for a direction to the Respondents 1 and 2 to consider the petitioner's representation dated 10.11.2022.

2. Heard the learned Counsel for the petitioner. Mr.D.B.R.Prabhu, learned Standing Counsel takes notice for R1 & R2.

3. It is submitted by the Petitioner that the property to the extent of 4884 sq.ft. is in his possession by virtue of Settlement Deed No.5276 of 2012 and that he has decided to develop the said extent of plot after obtaining necessary approval from the CMDA. It is further submitted that since a transformer is installed in front of the property, the access to the property is restricted. It is also submitted that he has already taken steps to pay the requisite fee for regularization and development of the property. Owing to non removal of the transformer, R3 and other unknown persons started putting cart in front of the property, thereby committing illegal activities thereon. The representation dated 10.11.2022 submitted by the petitioner to take action against those encroachers did not evoke any response. Hence, the petitioner is before this Court seeking for the above direction.



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4. Considering the facts and circumstances of the case and taking into account the fact that the petitioner's representation dated 10.11.2022 is already pending with R1 & R2 and if the representation is not already disposed of earlier, the Writ Petition is disposed of with the following directions:

i) A direction is issued to R1 & R2 herein to consider the representation preferred by the petitioner dated 10.11.2022 and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner, R3 and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 60 days from the date of receipt of a copy of this order. The respondents 1 & 2 shall also cause spot inspection and take photographs and videograph, if required ;

ii) After enquiry, if it comes to light that 3rd respondent is an encroacher, no indulgence shall be shown to him, failing which, departmental action can be initiated against the Officials, who are responsible for removal of encroachment.

iii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission within a period of one month from the date of



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receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iv) In case the petitioner fails to appear or file a written submission in time, the respondents 1 & 2 shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

v) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 10.11.2022 and this order, to the respondents forthwith;

vi) The respondents 1 & 2 are directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve



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the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order;

5. The respondents 1 & 2 shall take into account the following judgments, while acting upon the representation of the petitioner:

i) **Priyanka Estates International Pvt. Ltd. v. State of Assam**, reported in **(2010)**

2 SCC 27;

“It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

ii) **Shanti Sports Club v. Union of India** reported in **(2009) 15 SCC 705;**

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the



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High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

iii) Relevant portion of the order of the First Bench of this Court in Contempt

Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu);

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is at least no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite,



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mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

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(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

6. With the above observations and direction, this Writ Petition is disposed of. No costs.

[S.V.N., J.] [J.S.N.P., J.]
02.02.2023

Index: Yes / No
Internet: Yes / No
tsi/ar

To:

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