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W.P. Nos. 29398 of 2017 & 3345 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. Nos. 29398 of 2017 & 3345 of 2018

&

W.M.P. No. 4094 of 2018

W.P. No. 29398 of 2017

M. Ramu

..Petitioner

Vs.

1. The Chief Executive Officer,
Office of the Cantonment,
St. Thomas Mount,
Chennai – 600 016.

2. Velayudam

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Mandamus directing the 1st respondent to take action
in accordance with law and to demolish the unauthorised construction put

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up by the 2nd respondent in the property in Door No. 5/25, Old No.25, Seven Wells Street, St. Thomas Mount, Chennai – 16, in accordance with law.

For Petitioner :: Mr.R. Srinivas

For Respondents :: Mr.C. Mohan for
M/s. King & Partridge for R1
Ms.S. Parithrashini for
Mr.V. Manohar for R2

W.P. No. 3345 of 2018

S. Velayudham

..Petitioner

Vs.

1. The Principal Director,
Defence Estates,
Appellate Authority,
Southern Command,
Ministry of Defence,
Government of India,
Pune -1.
2. The Chief Executive Officer,
Office of the Cantonment Board,
St. Thomas Mount cum Pallavaram
Cantonment Board,
Chennai – 600 016.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records pertaining to the impugned proceedings issued by the first respondent dated 04.09.2017 vide



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Appeal No.STM/10/2016 GLR Sy. No. 256/1, Cattle Cantonment Board, St.

Thomas Mount, Pallavaram, Chennai – 43 and quash the same.

For Petitioner :: Ms.S. Parithrashini
for Mr.V. Manohar

For Respondents :: Mr.MadanaGopal Rao
Central Government Standing
Counsel for R1
Mr.S. Mohan for
M/s. King & Partridge for R2

COMMON ORDER

(Order of the Court was made by **S. Vaidyanathan,J.**)

W.P. No. 29398 of 2017 has been filed by one Ramu for a mandamus directing the Chief Executive Officer of the Cantonment Board to demolish the unauthorised construction put up by the 2nd respondent (the petitioner in W.P. No. 3345 of 2018) in the property at Door No. 5/25, Old No.25, Seven Wells Street, St. Thomas Mount, Chennai – 16, as the building has been constructed in violation of the sanctioned plan while W.P. No. 3345 of 2018 has been filed challenging the order dated 18.08.2017 issued by the Appellate Authority by which the appeal filed by the petitioner therein (2nd respondent in W.P. No. 29398 of 2017) as against the notice issued by the Cantonment Board under Section 248(1) of Cantonments Act, 2006



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necessitated him to file W.P. No. 31395 of 2015 for a mandamus directing the 1st respondent to take action on the petitioner's representation and to demolish the unauthorised construction put up by the 2nd respondent in the property in question in accordance with law. By order dated 06.10.2015, the said writ petition came to be disposed of directing the 1st respondent to consider and pass orders on the petitioner's representation on merits and in accordance with law and to take consequential action within a period of six weeks after affording an opportunity to the 2nd respondent/Velayudham.

(ii) In compliance to the orders passed by this Court in W.P. No. 31395 of 2015, a letter dated 30.11.2015 was sent to the petitioner stating that the construction put up Velayudham was inspected; as deviations were found in the construction in violation of the approved plan, in terms of Cantonments Act, 2006, (“the Act” in short), notice under Section 247 of the Act had been issued and that further action would be initiated in the manner known to law. The petitioner was also informed that he has to approach the Tahsildar, Alandur, for necessary action as regards his grievance that the said Velayudham has trespassed into his property. However, according to the petitioner, no action has been taken and the 2nd respondent has also



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completed his construction. Hence, the above writ petition.

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4. According to the learned counsel for the petitioner, there is a deviation and if the deviation could not be set right, the building will have to be demolished.

5. The Chief Executive Officer, Cantonment Board/1st respondent has filed counter affidavit stating that the 2nd respondent had put up construction deviating from the sanctioned original plan and action had been initiated against him as regards the same. Notice dated 17.06.2015 under Section 247 of the Act for unauthorised construction; notice dated 06.10.2015 under Section 248(1) of the said Act and notice dated 30.11.2015 under Section 320 of the said Act to remove unauthorised construction were issued and the appeal filed by the 2nd respondent under Section 340 of the Act against the notice dated 30.11.2015 was also dismissed by the Appellate Authority on 18.08.2017. Consequent to the dismissal of the appeal, notice dated 04.12.2017 was issued to the 2nd respondent to vacate the said premises and to remove/demolish the



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unauthorised construction/deviation. However, the 1st respondent would state that the task could not be completed for want of police assistance and protection. The 1st respondent would state that when Section 315 of the Act provides for mandatory assistance of police officers to the officers of the Cantonment Board to carry out its statutory duties, in spite of repeated requests made, police protection/assistance was not extended to fulfill its statutory duty. In this regard, learned counsel for the 1st respondent relied on the decision of this Court in ***P. Mohan V. The Chief Executive Officer, Officer of the Cantonment Board, North Parade Rod, St. Thoms Mount, Chennai 600 016 and 5 others (2017 SCC OnLine Mad 21105)***, wherein, under similar circumstances, while ordering removal of encroachment/demolition of unauthorised construction, taking note of the Section 315 of the Act, this Court had directed necessary police assistance to be rendered for eviction of unauthorised occupants.

6. The 2nd respondent would state that there is a provision for condonation of violation under Section 113(C) of Town and Country Planning Act, 1971 and without resorting to the same, if demolition is carried



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out, he will be put to great loss and hardship. Further, he would state without considering the merits of the case, the appeal has been dismissed.

7. Heard the parties and perused the records.

8. In paragraph No.3 of the counter affidavit filed by the 1st respondent, the extent sanctioned for construction of ground floor and first floor and the extent of deviation from the sanctioned building plan have been tabulated and the same is reproduced hereunder:

<i>Floor</i>	<i>Extent sanctioned as per building plan</i>	<i>Extent of deviation from sanctioned building plan</i>
Ground Floor	969 sq.ft	483 sq.ft
First Floor	969 sq.ft	483 sq.ft
Second Floor	No sanction	150 sq.ft
Total	1938 sq.ft	1116 sq.ft

Thus, it is evident that there has been deviation in the ground floor and first floor to an extent of 483 sq.ft each and in the second floor, the 2nd respondent has raised construction to an extent 150 sq. ft. without any sanction. It is further stated in the counter affidavit that the permissible FSI (Floor Space Index) is one whereas the 2nd respondent has made construction for 1.5 FSI. The Appellate Authority, while dismissing the appeal, has given



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a finding that the 2nd respondent has put up construction in gross violation of the sanctioned plan and the relevant portion of the order passed by the Appellate Authority is extracted hereunder:

“6. After hearing both the Appellant as well as the Respondent, written submissions made by both the Appellant and the Respondent have been analyzed. The Appellant has made excess construction to the sanctioned building plan and thus deviation is made to the same. The Appellant should not have indulged in gross violation of the sanctioned plan and construction of excess built up area. The grounds made by the Appellant that other persons in the Cantonment have also made the construction in the same manner and so he did cannot be the ground for justifying his appeal for permitting the unauthorised construction. The Appellant's allegation that the Board have issued the notice to the Appellant is baseless and not true as this Appellate Authority itself has heard over 30 appeals in the past one year. Hence the appeal is rejected.”

From the operative portion of the order passed by the Appellate Authority, extracted supra, it is very clear that the 2nd respondent has committed major violation of the sanctioned plan and raised construction to



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an extent of 969 sq.ft. in the ground floor as well as in the first floor thereby deviating to an extent 483 sq.ft in each of the floors apart from construction of 150 sq.ft in the second floor without getting any approval.

9. The factum that the building has been constructed in violation of the sanctioned plan cannot be disputed as per the observation made by the authority concerned. Though the 2nd respondent has stated that the building can be brought in accordance with the plan, as could be seen from the counter, the permissible FSI is one whereas the construction made by the 2nd respondent is for 1.5 FSI. Therefore, the building cannot be brought in accordance with the original plan dated 18.02.2013. If the building cannot be brought in accordance with the plan, the entire building will have to be demolished in the light of the decisions rendered by the Hon'ble Supreme Court in the following cases:

(i) In Priyanka Estates International Pvt. Ltd. v. State of Assam, reported in (2010) 2 SCC 27, the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:



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“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) In yet another decision pertaining to buildings constructed in violation of rules, in the case of **Shanti Sports Club v. Union of India** reported in **(2009) 15 SCC 705**, the Supreme Court has held as under:

"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 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



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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.”

10. It would also be pertinent to refer to the judgment wherein the First Bench of this Court in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"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



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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, 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.

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."

11. Insofar as the stand taken by the 1st respondent in the counter affidavit that notwithstanding the order passed by the Appellate Authority, due to non-cooperation of police officials, the removal/demolition of unauthorised construction/deviation put up by the 2nd respondent could not be carried out, in view of Section 315 of the Act and in the light of the decision of this Court rendered in **2017 SCC OnLine Mad 21105**, on request



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made by the 1st respondent, necessary police assistance/protection shall be rendered for the removal/demolition of unauthorised construction/deviation put up by the 2nd respondent.

12. With the above directions, W.P. No. 29398 of 2017 is allowed and W.P. No. 3345 of 2018 is dismissed. No costs. Connected W.M.P. is closed.

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(S.V.N.J.) (K.R.S.J.)
25.07.2023

To

1. The Principal Director,
Defence Estates,
Appellate Authority,

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Southern Command,
Ministry of Defence,
Government of India,
Pune -1.

2. The Chief Executive Officer,
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S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

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