



W.P.No.4249 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.4249 of 2024

and

W.M.P.No.4566 of 2024

L.Chamundeshwari

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
The Secretary to Government Housing
Urban Development Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Corporation of Chennai, Chennai – 3.
- 3.The Executive Engineer,
Zone-IV, Corporation of Chennai,
Thiruvotriyur, Chennai – 600 019.
- 4.The Zonal Officer,
Zone-IV, Corporation of Chennai,
Old Washermenpet, Chennai – 21.



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5. The Assistant Executive Engineer,
Unit-10, Corporation of Chennai,
Thiruvotriyur, Chennai – 600 019.

6. The Assistant Engineer,
Division No.39, Corporation of Chennai,
Thiruvotriyur, Chennai – 600 019.

7. Y. Joseph Raj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in relation to the letter issued by the 3rd, 5th and 6th respondents dated 02.02.2024 under Section 56 2(A) and 57 read with Section 85 of the Town and Country Planning Act, 1971 (as amended by Act 61 of 2008) and quash the same and forbear the respondents from proceeding further with the said letter.

For Petitioner	:	M/s.P.Uma
For R1	:	Mr.R. Vigneshwaran Government Advocate
For R2 to R6	:	Mr.D.B.R.Prabhu Standing Counsel
For R7	:	Mr.M.Ezhilarasu



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ORDER

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

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the letter issued by the respondents 3, 5 and 6, dated 02.02.2024, under Section 56 2(A) and 57 read with Section 85 of the Town and Country Planning Act, 1971 (as amended by Act 61 of 2008) and to forbear the respondents from proceeding with any enforcement action pursuant to the said letter.

2.The petitioner is running a Photo Studio in the property bearing Door No.45/137, Thiruvottiyur High Road, New Washermenpet, Tondiarpet, Chennai – 600 081, for a long time under the name and style of “Chitra & Sangeetha Photo Studio”. The case of the petitioner is that the 7th respondent, in order to vacate the petitioner from the property, had given a false complaint to the Chennai Corporation, alleging that there is a new construction in the property and that therefore, the respondents had initiated proceedings by issuing a Stop Work Notice and the impugned De-



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Occupation Notice, even though the petitioner had not put up any new construction in the same premises.

3. Even though this Court is unable to find any consistent stand as regards title over the property, it appears that there is dispute with regard to title over the property. The petitioner, who claims ownership over an extent of 1600 sq.ft., states that the said property was in the enjoyment of her grandfather about 80 years back. However, she claims title to the property on the basis of an unregistered sale deed dated 28.08.2007 from one of the legal heirs of original owner. We need not go into the petitioner's claim as to her right or entitlement to be in possession of the property. The fact that the petitioner is in possession and carrying on business, is admitted. It is also to be noted that the initial notice to stop work and for de-occupation was issued at the instance of the 7th respondent.

4. The 7th respondent had earlier filed a writ petition in W.P.No.23425 of 2022 before this Court and the said writ petition was allowed with a direction to the official respondents to remove the unauthorised construction



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put up by the petitioner without even hearing the petitioner against whom allegations were made. It was in the said context, the petitioner filed a review application in Rev.Aplw.No.151 of 2023 seeking review of the order passed by this Court in W.P.No.23425 of 2022. By an order dated 12.12.2023 in Rev.Aplw.No.151 of 2023, the review application filed by the petitioner was allowed and the order passed in W.P.No.23425 of 2022 was recalled. Taking note of the fact that two civil suits are pending with reference to the property in question in the City Civil Court, Chennai, and that the Writ Court has been used to circumvent the proceedings before the City Civil Court, Chennai, this Court dismissed the writ petition in W.P.No.23425 of 2022.

5.It is only pursuant to the direction of this Court, the impugned order dated 02.02.2024 is passed. However, from the facts admitted, it is seen that the first notice issued to stop work is illegal, inasmuch as the petitioner had not put up any new construction nor was putting up any unauthorised additional construction. A person who is in possession and carrying on business for a long time in a building cannot be issued with a notice to stop



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work. The illegality continued when the second notice was issued for de-occupation by citing the previous order, on the ground that the construction is unauthorised, when the construction is a old one. The petitioner admits her ignorance about existence of any approved plan for the building. However, in the absence of any Show Cause Notice to the petitioner, this Court is unable to expect the petitioner even to respond to the second notice which is impugned in this writ petition. Since the proceedings were initiated at the instigation of a third party, this Court is also convinced that the impugned orders suffers from legal *mala fides*. After the order in W.P.No.23425 of 2022 is recalled, the respondents ought to have atleast initiated action by issuing fresh Show Cause Notice alleging specific violations, so that the petitioner will be in a position to explain the position in a better way. In the absence of Show Cause Notice, when the proceedings are initiated quite contrary to the spirit of the legislation, this Court is unable to sustain the order. Therefore, the impugned order dated 02.02.2024 is quashed. **Accordingly, this writ petition is allowed.**



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6. However, liberty is preserved to the official respondents to initiate fresh proceedings in accordance with law. Since there is dispute between the petitioner and the 7th respondent with regard to the right of ownership over the property, the official respondents need not consider the claim of the 7th respondent or any other third party in respect of the property which is the subject matter of civil suit. The official respondents may proceed on the basis that the petitioner is in possession. However, this observation is subject to the decision that may come from Civil Court in the pending proceedings. If there is any additional construction by petitioner, the same shall be treated as unauthorised. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (N.S., J.)
10.04.2024

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and
N. SENTHILKUMAR, J.

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