



W.P.No.13334 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.13334 of 2020

Vali Moideen
S/o Jani Basha

..

Petitioner

v.

1. The Chennai Metropolitan
Development Authority
Thala Muthu Maligai
Egmore, Chennai
2. The Commissioner
Corporation of Chennai
Greater Chennai
Rippon Buildings, Chennai
3. The Assistant Engineer
Corporation of Chennai
Zone X, Kodambakkam
Chennai 600 024
4. The Executive Engineer
Tamil Nadu Electricity Board
Power House



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Kodambakkam
Chennai 600 024

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5. Sri Gokulam Chits and Finance Company
Sri Gokulam Towers
New No.66, Old No.35, Arcot Road
Kodambakkam, Chennai 600 024 ..

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to consider the petitioner's representation dated 26.04.2019, 19.08.2020, consequently direct the respondents 1 & 4 to remove the unauthorized construction put up by the 5th respondent at Sri Gokulam Towers, New No.66, Old No.356, Arcot Road, Kodambakkam, Chennai 600 024.

For Petitioner :: Mrs.A.B.Fathima Sulthana
for Mr.S.N.Subramani

For Respondents :: Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.V.Sudalai Selvan
Standing Counsel for R1
Mr.D.B.R.Prabhu
Standing Counsel for R2 & R3
Mr.L.Rajasekar for R5
No appearance for R4

ORDER

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

This writ petition is filed for issuance of a mandamus directing the



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respondents 1 to 4 to consider the petitioner's representations dated 26.04.2019 and 19.08.2020 and to further direct them to remove the unauthorized construction put up by the fifth respondent at New No.66 (Old No.356), Arcot Road, Kodambakkam, Chennai.

2. The petitioner, though claims proprietary rights in respect of use of the land, as per the revenue records, the case of the petitioner in the present writ petition is that the fifth respondent has illegally encroached the property, which according to the petitioner belongs to Dargah, and put up construction without getting any approval from the statutory authorities. It is also stated that the fifth respondent has constructed seven floors in the property ignoring the regulations. After submitting representations to the official respondents, the petitioner has now filed the writ petition for issuance of a direction to the official respondents to remove the unauthorized construction by considering the representations of the petitioner.

3. A detailed counter affidavit is filed by the fifth respondent denying



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the specific averment that the property of the petitioner or the Dargah is encroached by the fifth respondent while putting up construction. The allegation that the fifth respondent had illegally constructed seven floors is also specifically denied by the fifth respondent. It is stated by the fifth respondent that the fifth respondent had constructed ground plus three floors along with basement and mezzanine floors after obtaining planning permission and building plan approval from the Corporation. It is also stated that the building has been constructed as per the approved plan, as the fifth respondent has housed its corporate office in the said building. Though the fifth respondent has admitted the construction of temporary zinc sheet shed in the open terrace, it is now stated that the fifth respondent has removed the said shed. It is further stated that the petitioner has come forward with a false affidavit making incorrect statement as to the nature of construction put up by the fifth respondent. The present litigation is displayed as vexatious by the fifth respondent.

4. A status report is filed on behalf of the first respondent apart from the counter affidavit dated 20.09.2023. Both in the status report as well in



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the counter affidavit, the first respondent pointed out several deviations in the constructions and the fact that the building is not in tune with the approved plan. The first respondent has also stated that the regularization application applied under Section 113-C of the Tamil Nadu Town and Country Planning Act does not include the deviated portions.

5. In other words, the learned Additional Advocate General, who is present before this Court, has pointed out that the regularization application does not address all the deviations pointed out by the first respondent in the counter affidavit as well as in the status report.

6. The learned counsel for the fifth respondent has no answer to the specific stand taken in the counter affidavit/status report, except stating that he has no objection for the first respondent to take action to consider the regularization application and to proceed further in accordance with law, in case there are violations which are not in tune with the approved plan or cannot be regularized under any scheme.



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7. In the said circumstances, the writ petition is disposed of with a direction to the first respondent to consider the regularization application stated to have been submitted by the fifth respondent on 17.04.2021 and to take further action to bring down the structure in accordance with the approved plan or as may be directed after the regularization, if feasible and possible as per the scheme in vogue, within a period of three months from the date on which the decision is taken on the regularization application filed by the fifth respondent. It is needless to say that the first respondent shall issue show cause notice before taking any further action and after holding enquiry as to the unauthorized construction, it is open to the first respondent to pull down/demolish any portion of the unauthorized construction, which is not in tune with the approved plan or if not permissible even after regularization as per the application submitted by the fifth respondent. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
10.01.2024

SS



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To

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1. The Member Secretary
Chennai Metropolitan
Development Authority
Thala Muthu Natarajan Maligai
Egmore, Chennai 600 008
2. The Commissioner
Corporation of Chennai
Greater Chennai
Rippon Buildings
Chennai 600 003
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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

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