



W.P.No.20544 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	23.08.2023
PRONOUNCED ON :	28.03.2024

CORAM :
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE N.MALA

W.P.Nos.20544 & 26764 of 2023
and W.M.P.Nos.19926, 19927 & 26199 of 2023

M.Vijayakumar ... Petitioner in
W.P.No.20544/2023

N.K.A.M. Victor Laurance ... Petitioner in
W.P.No.26764/2023

Vs.

1. The Secretary,
Chennai Metropolitan Development Authority,
'Thalamuthu-Natarajan Maaligai'
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008

2. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003

3. The Executive Engineer,
Zone 4, Division 48,
No.249, Thiruvottiur,
Tondairpet, Chennai 600 081



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4. The Assistant Engineer,
Zone 4, Division 48, No.249, Thiruvottiur,
Tondairpet, Chennai 600 081

5. The Joint Engineer,
Zone 4, Division 48,
No.249, Thiruvottiur,
Tondairpet, Chennai 600 081

6. The Zonal Executive Engineer,
(Zone IV) Greater Chennai Corporation,
Royapuram, No.226, Thirvottiur High Road,
Chennai 600 021

7. N.K.A.M.Victor Laurance

8. N.K.A.M.Vinolia Shoba

... Respondents in
W.P.No.20544/2023

1. The State of Tamil Nadu
Rep. By Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Chennai 600 006

2. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003

... RR 1 & 2 in
W.P.No.26764/2023

PRAYER in W.P.No.20544/2023: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents 1 to 6 to dispose of the petitioner's representation dated 02.02.2023 and 09.05.2023 and direct the respondents 1 to 6 to take appropriate action to



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demolish against the illegal and unauthorized construction put by the respondents 7 and 8.

PRAYER in W.P.No.26764/2023: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing the 2nd respondent to remove the lock and seal forthwith in respect of the premises measuring 3686 sq.ft. at New Door No.59 (Old No.22), Muthiah Mudali Street, Old Washermenpet, Chennai pending consideration of the petitioner's appeal dated 26.07.2023 and 30.08.2023 filed before the first respondent u/s 80A of the TN Town and Country Planning Act, 1971.

In W.P.No.20544/2023:

For Petitioner	:	Mr.B.Janakiram
For R-1	:	Mrs.C.N.Vinobha
For RR 2 – 6	:	Mr.D.B.R.Prabhu, Standing Counsel
For RR 7 & 8	:	Mr.N.Manoharan

In W.P.No.26764/2023:

For Petitioner	:	Mr.N.Manoharan
For R-1	:	Mr.E.Vijay Anand, Additional Government Pleader
For R2	:	Mr.D.B.R.Prabhu, Standing Counsel



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COMMON ORDER

(Order of this Court was made by **J.NISHA BANU, J.**)

Since the issue involved in both the writ petitions are one and the same, they are disposed of by this common order.

2. Writ petition in W.P.No.20544/2023 has been filed seeking for a direction to the respondents 1 to 6 to dispose of the petitioner's representations dated 02.02.2023 and 09.05.2023 and for a consequential direction to the respondents 1 to 6 to take appropriate action to demolish the illegal and unauthorized construction put by the respondents 7 & 8.

3. Writ Petition in W.P.No.26764/2023 has been filed by the seventh respondent in the above writ petition, i.e. W.P.No.20544/2023, seeking for a direction to the 2nd respondent to remove the lock and seal forthwith in respect of the subject premise, pending consideration of the appeal dated 26.07.2023 and 30.08.2023 filed before the first respondent u/s 80A of the TN Town and Country Planning Act, 1971.



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4. According to the learned counsel for the petitioner in W.P.No.20544/2023, the petitioner had purchased the subject property from one Seshachari on 04.05.2001 vide document No.1380/2001 situated at New Door No.59, Old Door No.22, Muthiah Mudali Street, Old Washermenpet, Chennai-600021 and therefore, the petitioner became the sole and absolute owner of the said property, by obtaining patta and mutating the Property Tax and also CMWSSB Tax in his name.

5. According to the learned counsel for the petitioner in W.P.No.20544/2023 one Mrs.Sugirthammal became a tenant in the year 1968 under the erstwhile owner Mrs.Senbagammal. After purchasing the said property by the petitioner, the same was informed to her, whereby the said Mrs.Sugirthammal demanded a ransom amount of Rs.2,00,000/- as a condition to vacate and deliver the possession of the property and also refused to pay the entire arrears of rent. Therefore, the petitioner filed a case in R.C.O.P.No. 1986 of 2010 on the file of Rent Controller, Chennai on the ground of willful default. During the course of time, Mrs. Sugirthammal died in the year 2016 leaving behind her son N.K.A.M.Victor Laurance, who is the seventh



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respondent/petitioner in W.P.No.26764 of 2023 and her daughter N.K.A.M.Vinolia Shoba, the 8th respondent herein as her surviving legal heirs and they are continuing in the property without paying rent to the petitioner.

6. The learned counsel further stated that the petitioner in W.P.No.20544/2023 had filed a suit in O.S.No.3296 of 2016 before the XIV Assistant City Civil Court, Chennai, for permanent injunction restraining the respondents 7 & 8, their men, agents, servants, representatives or any person or persons acting on behalf of respondents 7 & 8 from putting up any illegal and unauthorized construction in the suit schedule property. The said suit was dismissed due to plea taken by the respondents 7 & 8 that the property was acquired by the Government and an award was passed and gazetted on 05.01.1972.

7. Thereafter, the petitioner in order to know the real facts of the property had approached the authorities under the Right to Information Commission (RTI ACT) and received the reply that no such kind of acquisition exists. Thereafter, the petitioner had filed a First Appeal in AS.No.77 of 2023 in O.S.No.3296 of



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2016 and the same is pending before the learned Principal Judge, City Civil Court, Chennai. Taking advantage of the same, again the respondents 7 & 8 have illegally started their construction in the petitioner's property without obtaining any prior permission from the petitioner and the concerned Authorities.

8. Due to the above said act of the respondents 7 & 8, the petitioner in W.P.No.20544/2023 had sent a representation dated 02.02.2023 to the respondents 1 to 5-Greater Chennai Corporation and CMDA. The 1st respondent-CMDA had issued a letter/Notice vide Letter No.EC/N- 1/3167/2023 to the 2nd & 6th respondents. In the above said letter dated 10.02.2023, it is clearly stated that the 1st Respondent has not issued any planning permission for the said premises and had directed the concerned Authorities to take necessary action against the unauthorized and illegal construction. In view of the same, the concerned Authorities had issued a 'STOP WORK NOTICE' dated 11.01.2023, 02.02.2023 and 01.03.2023 and the same was affixed on the above said premises to stop the illegal and unauthorized construction by the respondents 7 & 8.



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9. Even after Stop Work Notice, 7th and 8th respondent continued the unauthorised construction activity. Therefore, the petitioner in W.P.No.20544/2023 had sent reminder representation dated 09.05.2023 to the respondents 1 to 6. But even thereafter, since no action was taken by the concerned Authorities to stop the construction, this writ petition is filed seeking direction to the respondents 1 to 6 to dispose of the petitioner's representation dated 02.02.2023 and 09.05.2023.

10. On the other hand, Mr.N.Manoharan, learned counsel appearing for the petitioner in W.P.No.26764/2023/7th respondent in W.P.No.20544 of 2023, would submit that against the Stop Work Notice/Notice calling for approved plan dated 11.01.2023, followed by Lock and Seal/Demolition Notice dated 02.02.2023 and De-occupation notice dated 03.03.2023, the respondents 7 and 8 in WP.No.20544/2023 have filed an Appeal dated 26.07.2023 before the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai, U/s. 80-A of the Tamilnadu Town and Country Planning Act, 1971 and the same is pending.



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11. According to the learned counsel, the parents of respondents 7 and 8 were inducted in the subject property in the year 1970 and they constructed a Prayer House in the name as "Jehovah Jireh Prayer House" in 1970 itself. After the death of their parents, the respondents 7 and 8 continued to run the prayer house till this date. Further, nearly 25 orphans have been given shelter and food in the subject property. While so, since the roof of the church building started developing cracks and damages caused to the old building due to natural calamities, to ensure safety to the Prayer House and also to the inmates, the respondents 7 and 8 have done some repair works. But the petitioner in W.P.No.20544 of 2023 has given a petition to the Corporation, complaining to initiate action against them.

12. According to the learned counsel for the petitioner in W.P.No.26764 of 2023, petitioner in W.P.No.20544 of 2023 has adopted a circuitous method to evict them under the disguise of giving complaint to the Corporation/respondents 2 to 6. In fact, the subject lands were already acquired by the Government as per Gazette Notification dated 05.01.1972 issued under the Land Acquisition Act, 1894 and an Award was passed by the Deputy



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Collector on 19.04.1972. It is the contention raised by the learned counsel for the petitioner in W.P.26764/2023 that neither the petitioner in W.P.No.20544 of 2023 nor his predecessors in title, have no right much less right in the subject property.

13. Further, the learned counsel appearing for the petitioner in W.P.26764/2023 would submit that the petitioner in W.P.No.20544 of 2023 has filed a comprehensive suit in O.S. No. 3823 of 2020 on the file of XIV Asst. City Civil Court, Chennai and also filed I.A. No. 10 of 2023 to implead the Chennai Corporation, Revenue Tahsildar and the Commissioner of Land Administration as party defendants, without disclosing the earlier suit filed in O.S.No.3823 of 2020.

14. The Greater Chennai Corporation has filed the status report stating that there was a civil dispute between the petitioner in W.P.No.20544 of 2023 and 7th and 8th respondents therein. Petitioner in W.P.No.20544 of 2023 has already filed a Civil Suit bearing O.S.No.3823 of 2020 against the 7th & 8th respondents and the said Civil Suit is still pending.



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15. Upon receipt of the notice in the above Civil Suit, the building in question was inspected and it was found that the 7th respondent was carrying on with the construction activity. Therefore, action had been taken by issuing a Stop Work Notice/Notice Calling for Approved Plan dated 11.01.2023 under Sections 56 (1) and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971 to the 7th respondent herein by the respondent Corporation.

16. Even though the 7th respondent has received the above notice, he failed to submit the approved plan. Therefore, according to the learned standing counsel appearing for the respondent Corporation, the entire building has to be treated as unauthorized one and therefore, further action in this regard has been taken by issuing a Lock & Seal and Demolition Notice dated 02.02.2023 under Section 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971. Since, the 7th respondent has refused to receive the notice, the same was affixed on the wall of the 7th respondent building.

17. Further action against the 7th respondent/petitioner in W.P.No.26764 of 2023 was taken by issuing a De-occupation Notice dated 03.03.2023 under



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Section 56 Sub Section 2(A) and 57 read with Section 85 of Tamil Nadu Town and Country Planning Act, 1971. But he refused to receive the notice, the same was also affixed on the wall of the 7th respondent's building. Therefore, the learned standing counsel appearing for the respondent Corporation submitted that further action against the 7th respondent/petitioner in W.P.No.26764 of 2023 will be taken as per the provisions of Tamil Nadu Town and Country Planning Act, 1971.

18. Heard the learned counsel appearing on behalf of both the petitioners and the learned standing counsel appearing on behalf of the official respondents and perused the materials placed before this Court.

19. This Court vide order dated 09.08.2023, has recorded the status report filed by the respondent Corporation stating that the 7th respondent was carrying on with the construction activity. On that day of hearing of the writ petition, it is seen that the petitioner in W.P.No.20544 of 2023 has sought for an order of stay instead of filing an injunction petition. However, considering the facts and circumstances of the case, this Court had granted an order of interim injunction



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thereby restraining the 7th and 8th respondents from putting up any construction in the property situated at New No.59, Old Door No.22, Muthiah Mudali Street, Old Washermenpet, Chennai - 600 021, till the disposal of the writ petition.

20. Thereafter, the petitioner in W.P.No.26764 of 2023 had filed a petition in W.M.P.No.26199 of 2023, seeking for an interim direction to the second respondent to de-seal and unlock the above premises. Since the aggrieved party filed appeal before the statutory Authority under [Section 80\(A\)](#) of Tamil Nadu Town and Country Planning Act 1971, and that thereafter building was sealed by the authorities, this Court on 11.09.2023 had directed the concerned authorities to desear the premises.

21. The notice dated 11.01.2023, 02.02.2023 and 03.03.2023 clearly point out that the building is deviated one. The status report of the Greater Chennai Corporation would go to show that further action against the 7th respondent will be taken as per the provisions of Tamil Nadu Town and Country Planning Act, 1971.



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22. In the above stated circumstances, we are of the view that the 1st respondent is to take up the appeal filed by the respondents 7 and 8 in W.P.No.20544/2023 and dispose of the same, after giving opportunity to the petitioner in W.P.No.26764 of 2023 and objectors if any and pass appropriate orders, within three months from the date of receipt of a copy of this order. Till such time, the respondent authorities are restrained from taking any coercive steps against the petitioner in W.P.No.26764 of 2023.

23. As far as W.P.No.20544 of 2023 is concerned, the petitioner who claims title to the property has failed to discharge his onus in proving his title in respect of the subject property. The petitioner who sought for eviction of respondents 7 and 8 in RCOP.No.1986 of 2010 is pending. The suit for permanent injunction filed by the petitioner in O.S.No.3296 of 2016 on the file of learned XIV Assistant Judge, Chennai, was dismissed on 03.11.2022 on a finding that the petitioner has not approached the court with clean hands; plaintiff failed to discharge his onus in proving his title and cause of action in the suit property. The learned Judge clearly pointed out that the Government



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alone can evict the defendant and stop the illegal construction. Subsequently, the petitioner in W.P.No.20544 of 2023 filed O.S.3823 of 2020 on the file of XIV Assistant City Civil Court for mandatory and permanent injunction against the 7th and 8th respondents to remove the illegal construction put up by them and the same is pending. Therefore, we are of the view that when the legislature has provided for a specific mechanism for appropriate redressal, hence, the petitioner shall approach the authority concerned for redressal of his grievance.

24. In the light of the above observations, W.P.No.26764 of 2023 is disposed of with the direction to the 1st respondent to dispose of appeal filed before him on 26.07.2023 within three months from the date of receipt of a copy of this order. W.P.No.20544 of 2023 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.)

(N.M., J.)

28.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
sts/nvsri



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To:

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1. The Secretary,
Chennai Metropolitan Development Authority,
'Thalamuthu-Natarajan Maaligai'
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008
2. The Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Chennai 600 006
3. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003
4. The Executive Engineer,
Zone 4, Division 48,
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Chennai 600 021



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J.NISHA BANU, J.,
and
N.MALA, J.,

nvsri

Pre-Delivery of
Common Order made in
W.P.Nos.20544 & 26764 of 2023

Dated:
.3.2024