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WP Nos.21288 and 9148 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.21288 and 9148 of 2024

and WMP Nos.23251 and 23253 of 2024

Terrance Ramya

... Petitioner in
W.P.No.21288 of 2024

Shane Gomes

... Petitioner in
W.P.No.9148 of 2024

-VS-

1. The Chief Executive Officer,
Cantonment Board,
St.Thomas Mount,
Chennai-600 016.

... Sole Respondent in
W.P.No.21288 of 2024
& 1st Respondent in
W.P.No.9148 of 2024

2. Terrance Ramya

... 2nd respondent in
W.P.No.9148 of 2024

PRAYER in W.P.No.21288 of 2024: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in letter No.STM/Works/8/0921 dated 07.04.2022 issued under Section 248(1) of the Cantonment Act and the



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consequential notice letter No.STM/Works/8/1034 dated 12.06.2024 issued under Section 320 of the Cantonment Act and quash the same as illegal and also direct the respondent not to pass any conditional order to demolish her properties.

PRAYER in W.P.No.9148 of 2024: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st respondent to act on the petitioner's representation dated 22.01.2024 to demolish the unauthorised construction of the building constructed by the 2nd respondent violating the provisions of the Cantonment Act 1924.

For Petitioner in
W.P.No.21288/2024
and for 2nd Respondent
in W.P.No.9148/2024

: Mr.D.Gowthaman
Senior Counsel
for Mr.J.P.Rajesh

For Petitioner in
W.P.No.9148/2024

: Mr.R.Amizhdhu

For Sole Respondent in
W.P.No.21288/2024 &
for 1st Respondent in
W.P.No.9148/2024

: Mr.C.Mohan
For M/s King & Partridge

* * * * *

COMMON ORDER



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

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W.P.No.21288 of 2024 is filed to quash the proceedings of the respondent, The Chief Executive Officer, Cantonment Board, dated 07.04.2022 and the consequential notice dated 12.06.2024 issued under Sections 248(1) and 320 of the Cantonment Act, 2006.

2. W.P.No.9148 of 2024 is filed to issue writ of mandamus directing the first respondent, Cantonment Board, to consider the representation of the petitioner dated 22.01.2024 to demolish the unauthorised construction of the building constructed by the petitioner in W.P.No.21288 of 2024. The petitioner in W.P.No.9148 of 2024 is the neighbour of the petitioner in W.P.No.21288 of 2024.

3. The letter dated 07.04.2022 issued by the Cantonment Board is a notice under Section 248(1) of the Cantonment Act directing Mrs.Terrance Ramya, the petitioner in W.P.No.21288 of 2024 to stop construction and to demolish the unauthorised portion. By proceedings dated 12.06.2024, the Chief Executive Officer of the Cantonment Board has directed Mrs.Terrance Ramya to remove the unauthorised construction within 30 days in exercise of power under Section 320 of the



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Cantonment Act, 2006.

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4. The learned counsel appearing for the petitioner, Mrs.Terrance Ramya, admits that the construction is unauthorised. In all the communications which she has addressed to the Chief Executive Officer of Cantonment Board, she has submitted that she requires additional space due to expansion of her family and therefore, she had no option but to construct the building, which, of course, in violation of the regulations.

5. Though the petitioner prayed for regularisation of the unauthorised portion, the learned counsel appearing for the Cantonment board pointed out that there is no scope for regularisation of the building. The learned counsel would submit that the unauthorised portion can be compounded only upto FSI and the Cantonment Board is not competent to compound the same without the concurrence of the Competent Authority under the Cantonment Act. He further stated that in the event the petitioner file an affidavit to demolish the unauthorised portion beyond the permissible limits, the Cantonment Board will consider.



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6. The learned counsel appearing for the petitioner in W.P.No.9148 of 2024 has no serious objection for the unauthorised building to be compounded if it is compoundable under the statute.

7. The petitioner, Terrance Ramya, has filed an affidavit of undertaking as required by this Court, on the following lines:

" 3. I most humbly submit that I wish to protect about 500 square feet of construction in the ground floor and about 500 square feet of construction in the first floor from and out of the super-structure that has already been put up by me in my land, subject to the approval of the Cantonment Board. For the said purpose, I undertake to file a revised building plan before the Cantonment Board for its approval.

4. I most humbly pray for my request to be considered sympathetically in view of the fact that I have a large family to accommodate and I have already invested huge sums of money for the construction that has been put up by me exhausting my family's resources and availing bank and other loans. I also respectfully pray for a reasonable amount of time to be given to me for completing the exercise. I undertake to abide by the orders of this Hon'ble Court in this regard."



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8. The learned counsel for the Cantonment Board submits that to the extent possible, the construction will be regularised by a decision as approved by the Competent Authority.

9. Mrs.Terrance Ramya, the petitioner in W.P.No.21288 of 2024 is, therefore, directed to submit a fresh building plan as desired by her to retain for approval which can be considered by the respondent Cantonment Board. After considering the scope of compounding, the respondent Board shall consider approving the plan in accordance with the Cantonment Act and Rules. The petitioner, after getting approval, shall demolish and make corrective measures in the building so that the entire construction is in conformity with the plan approved within a period of three months from the date of approval.

10. It is the understanding that the petitioner's construction in the ground floor and in the first floor cannot go beyond 500 sq. ft. in each floor. That is, in all, the construction upto 1000 sq.ft. will be considered by the respondent subject to the regulations and the concurrence of the Competent Authority.



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11. The grievance of the petitioner in W.P.No.9148 of 2024 is that the petitioner in W.P.No.21288 of 2024 has put up construction blocking the underground drainage. The proposed construction as per the approved plan should avoid any construction above the underground drainage obstructing or affecting the convenience of the public and the neighbours.

12. With the aforesaid directions and observations, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
01.08.2024

Index : Yes/No
NC : Yes/No
sra

To

The Chief Executive Officer,
Cantonment Board, St.Thomas Mount,
Chennai-600 016.

S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

(sra)



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