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W.P.No.94

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.11.2023

ORDERS DELIVERED ON: 11.01.2024

CORAM

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA**

**W.P.No.9468 of 2017
and
W.M.P.No.10425 of 2017**

S.Prema

... Petitioner

Vs.

- 1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.
- 2.The Assistant Engineer,
DN – 63.
- 3.The Assistant Executive Engineer,
U-14.
- 4.The Executive Engineer – V,
Respondents 2 to 4 having office at
Greater Chennai Corporation,
Zonal Office 5.

5.N.R.Dhanakoti
(R5 is impleaded as per order dated

... Respondents



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19.04.2017 by C.J. & M.S.J. in
W.P.No.9468 of 2017)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in Notice No.Dn63/014/2017 dated 25.03.2017 on the file of the respondents 2 to 4 and quash the same as illegal and pass such further or other orders and thereby render justice.

For Petitioner : Mr.Avinash for Mrs.V.Srimathi

For R1 to R4 : Mr.D.B.R. Prabu,
Standing Counsel

For R5 : Mr.K.S.Kumar

* * * * *

ORDER

(Order of the Court was made by N.MALA,J.)

This writ petition is filed to call for the records in Notice No.Dn63/014/2017 dated 25.03.2017 on the file of the respondents 2 to 4 and quash the same as illegal.

2.The petitioner states that the property in question originally belonged to her father-in-law. The petitioner's father-in-law purchased the property vide sale deed dated 28.07.1976. He died on 12.04.1995, leaving behind his three sons and two daughters. The petitioner is the widow of one of the sons, R.Sekar, who died on 02.09.2012. The petitioner states that though the subject property was allotted to her husband the fifth



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respondent made unwarranted claims over the property and filed a suit in O.S.No.7627 of 2006 on the file of the XIII City Civil Court, Chennai. During the pendency of the civil suit the fifth respondent tried to take control of the subject property. As the fifth respondent failed in his attempts to get control over the property he instigated the respondents 2 to 4 to take action against the petitioner for unauthorised construction. The respondents 2 to 4 inspected the property on 13.02.2016 and issued a notice dated 15.02.2016 calling upon the petitioner to produce the approved plan. Thereafter a lock & seal and demolition notice was issued 29.02.2016, treating the whole building as an unauthorized one. The daughter of the petitioner sent a reply to the lock & seal and demolition notice stating that no new construction was put up. The petitioner challenged the lock & seal and demolition notice in W.P.No.10767 of 2016 and the same was disposed by this Court on 23.03.2016, with a direction to the respondents to consider and dispose the petitioner's daughter's representation. Thereafter, the fifth respondent filed a writ petition in W.P.No.33489 of 2016 for a direction to the respondents 2 to 4 to take action under the provisions of the Tamil Nadu Town and Country Planning Act, 1971 against the petitioner's subject property. The said writ petition was disposed of by this Court on 12.12.2016, recording that the 4th respondent therein had demolished the unauthorized construction in the second floor of the subject building by making hole in the roof. According to the petitioner, inspite of the closure of



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the earlier writ petition recording the statement of the petitioner herein that the unauthorized construction in the second floor was made inhabitable, the impugned notice was issued by the respondents. The petitioner has filed the above writ petition challenging the said impugned notice.

3.The 3rd respondent filed a counter tracing the history of the litigation. According to the 3rd respondent, this Court while disposing of the writ petition filed by the petitioner in W.P.No.10767 of 2016 directed the respondents to decide the representation of the petitioner's daughter in accordance with law and on merits. Accordingly, the representation came to be considered and final order was passed on 25.07.2016 rejecting the same. On receipt of the rejection order dated 25.07.2016, the petitioner partially demolished the unauthorized construction in the said building by making a hole in the roof thus making it unsuitable for habitation. As the petitioner partially demolished the unauthorized structure, the 5th respondent filed writ petition in W.P.No.33489 of 2016 for a Writ of Mandamus directing the respondents to take further action in pursuance of the notice dated 29.02.2016. This Court vide order dated 12.12.2016 in the aforesaid writ petition held as follows:

“3.We are of the view that in so far as the unauthorized construction is concerned, if something still remains, it is the



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matter for the corporation to take action against the respondent

No.4.”

4. Thereafter on the complaint of the fifth respondent that the petitioner intended to rework the demolished portion and reuse the same, the impugned order was passed on 25.03.2017 and the building was locked and sealed on 12.04.2017.

5. The fifth respondent was impleaded vide order dated 19.04.2017. The 5th respondent filed the counter narrating the entire history of the case. The 5th respondent stated that while considering the petitioner's daughter's representation, the respondent rejected her claim that the approved plan was not traceable. According to the 5th respondent the impugned order was consequential to the rejection order. The fifth respondent further stated that the impugned notice was sent because inspite of lock & seal and demolition notice, the building was used by the petitioner's tenants. The fifth respondent further stated that from the orders passed in the earlier proceedings it would be clear that the subject building was an unauthorized one and therefore, the writ petition had no merits and the same deserved to be dismissed.

6. On 22.01.2019, when the matter was taken up for hearing by this Court on the basis of the counter of the fifth respondent that the petitioner removed the lock and seal



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from the premises and the petitioner's tenants were using the building, the 2nd respondent was directed to personally inspect the petitioner's building. The second respondent was directed to lock and seal the first and second floors of the building if the petitioner was found to have removed the same and to further file a report before this Court. In pursuance of the directions issued by this court, the second respondent filed the report stating that on 22.01.2019 the building was inspected and it was found that as the building was under lock and seal from 12.04.2017 the tapes and notice affixed were torn. The report further stated that the locks were intact and the building was not put to any use. It was further stated that on the very same day the building was again locked and sealed by putting another lock in the shutter. New tapes and notices were affixed with the help of police officials.

7. Thereafter, when the matter was taken up for hearing, it was submitted by the learned counsel for the petitioner that in the earlier proceedings, this Court had already closed the issue by noting that the usage of unauthorized portion had been discontinued and therefore there was no justification for issuing impugned notice. The learned counsel further submitted that as the building was in existence for more than 16 years, the demand for approved plan for the old building was unfair. The learned counsel submitted that in the light of the orders passed in the earlier proceedings nothing



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survived and hence the impugned order was unsustainable.

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8.The learned counsel appearing for the 5th respondent on the other hand submitted that the impugned order was only a consequential order, as it was passed in pursuance of the rejection of the petitioner's representation, which was directed to be disposed of vide order dated 23.03.2016 in W.P.No.10767 of 2016. The learned counsel submitted that there was absolutely no illegality in the impugned order. The learned counsel further submitted that as the impugned order was passed in pursuance of the liberty given by this Court in the writ petition filed by the 5th respondent in W.P.No.33489 of 2016 it could not be faulted.

9.The learned counsel for the second respondent submitted that as the petitioner was not able to produce the plan approval copy inspite of the demand to produce the same, the building could be construed only as an unauthorized one and therefore there was absolutely no infirmity in the impugned order.

10.We have heard the learned counsels and have perused the materials placed on record.

11.It is seen that the 4th respondent issued a notice dated 15.02.2016, calling upon



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the petitioner to produce the approved plan for the building in question. Thereafter on 29.02.2016, the lock & seal and demolition notice was issued to the petitioner. The petitioner challenged the same in W.P.No.10767 of 2016 and an order was passed by this Court on 23.03.2016, directing the respondents to dispose of the petitioner's daughter's representation dated 29.02.2016, in accordance with law and on merits. In pursuance of the aforesaid orders of the Court, the representation of the petitioner's daughter was rejected vide order dated 25.07.2016. On receipt of the said orders, the petitioner demolished the unauthorized construction in the second floor of the building and on the inspection conducted by the respondents it was found that the petitioner had partially demolished the construction by making a hole in the roof. Thereafter, the fifth respondent filed a writ petition in W.P.No.33489 of 2016 for a Writ of Mandamus and this Court vide order dated 12.12.2016, gave liberty to the respondents therein to take further action against the unauthorized construction put up by the petitioner if something still remained. Thereafter, the fifth respondent finding that there was no lock and seal and the premises was being used by the petitioner's tenants, complained to the respondents. The respondents issued the impugned de-occupation notice on 25.03.2017 and locked and sealed the petitioner's building.

12.The petitioner's daughter in her representation dated 29.02.2016 clearly



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admitted that the approved plan was not traceable. The petitioner's daughter further stated that there was no new construction made in the building, but only the renovation work was carried out. The said representation was rejected on 25.07.2016 giving 15 days time to demolish the unauthorised portion.

13.It is pertinent to note that the petitioner partially demolished the second floor by making it inhabitable. But as the fifth respondent was not satisfied with the same he filed the writ petition in W.P.No.33489 of 2016 for a Writ of Mandamus. This Court vide order dated 12.12.2016, gave liberty to the Corporation to take further action against the petitioner's unauthorized construction if something still remained. It is only thereafter and on the complaint of the fifth respondent that the impugned order came to be passed.

14.It is the contention of the petitioner that the only renovation and repair work was done by her and so no planning permission was necessary. The very same contention was raised by the petitioner's daughter and the same was rejected by the respondent vide order dated 25.07.2016. From the photographs filed by the fifth respondent, it is seen that the original building has been replaced by a totally new construction and therefore the said submission is untenable. Admittedly the petitioner is



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not able to trace the approved plan. While so, the petitioner's building can be construed to be an unauthorized one only.

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15.As far as the civil dispute between the petitioner and the fifth respondent is concerned, it is a matter to be decided by the civil suit. As the petitioner is not able to produce the approved plan for the building in question, we find that no infirmity in the impugned order. We therefore find no merits in the writ petition and the same is dismissed. The respondents are directed to take further enforcement action in accordance with law as expeditiously as possible. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

J.N.B., J. N.M., J.

11.01.2024

Index : yes/no
Internet : yes/no
Speaking order : Non-speaking order
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To

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

2.The Assistant Engineer, DN – 63.

10/11



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3.The Assistant Executive Engineer, U-14.

4.The Executive Engineer – V,
Respondents 2 to 4 having office at
Greater Chennai Corporation,
Zonal Office 5.

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

ah

PRE-DELIVERY ORDER IN
W.P.No.9468 of 2017



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