



WEB COPY



W.P.Nos.30206 & 29458 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.Nos.30206 & 29458 of 2023

and

W.M.P.Nos.29075, 29077, 29834 & 29835 of 2023

in

W.P.Nos.30206 & 29458 of 2023

W.P.No.30206 of 2023

K.Santhosh

S/o.S.Kumar

.. Petitioner

Vs.

1. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.
2. The Executive Engineer - Zone 14
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.
3. The Asst. Executive Engineer - Unit 42
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.



W.P.Nos.30206 & 29458 of 2023

4. The Asst. Engineer - DIV.188
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.

5. MJ Sankar

.. Respondents

R5 impleaded vide order dated 17.04.2024 in
W.M.P.No.7065 of 2024 in W.P.No.30206 of 2023.

W.P.No.29458 of 2023

D.Ganesh
S/o.S.Devaraj

.. Petitioner

Vs.

1. The Commissioner
Corporation of Greater Chennai
Ripon Building
Chennai-600 003.
2. The Executive Engineer
Corporation of Chennai
Chennai.
3. The Asst. Executive Engineer
Corporation of Chennai
Chennai.
4. The Asst. Engineer
Corporation of Chennai
Chennai.

... Respondents

Writ petition No.30206 of 2023 filed under Article 226 of the
Constitution of India praying to issue a writ of Certiorarified Mandamus,
to call for the records pertaining to the impugned notice issued vide Letter
No.14/00241/2023 dated 31.07.2023 on the file of the respondents and to



W.P.Nos.30206 & 29458 of 2023

quash the same and consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the housing property of the petitioner.

Writ petition No.29458 of 2023 filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the entire records in Lock and Seal Notice Letter No.14/00241/2023 dated 31.07.2023 issued by the respondents 2 to 4 and to quash the same.

W.P.No.30206 of 2023

For Petitioner : Mr.A.Udhayachandiran
For Respondents : Mr.D.B.R.Prabhu
standing counsel for R1 to R4
Mr.MJ. Sankar
party-in-person (R5)

W.P.No.29458 of 2023

For Petitioner : Ms.R.Suganya
for Mr.K.Venkatesan
For Respondents : Mr.D.B.R.Prabhu
standing counsel for R1 to R4

COMMON ORDER

(Order of the Court was made by **M.Sundar, J.**)

This common order will now dispose of the captioned two 'Writ Petitions' {hereinafter 'WPs' for the sake of brevity} and captioned 4 'Writ Miscellaneous Petitions' {hereinafter 'WMPs' for the sake of brevity} thereat.



W.P.Nos.30206 & 29458 of 2023

2. The short point on which this common order will now be made is alternate remedy qua Article 226 of the Constitution of India.

3. In the light of the short point on which this order is being made, it is not necessary to dilate on facts in great detail. Suffice to say that two notices, both dated 31.07.2023 bearing Letter No.14/00241/2023 and captioned 'Lock and Seal Notice' issued by R2, R3 and R4 {to be noted, jointly signed by all three) have been assailed by two noticees Mr.K.Santhosh {writ petitioner in W.P.No.30206 of 2023} and Mr.D.Ganesh {writ petitioner in W.P.No.29458 of 2023}.

4. Mr.Udhayachandiran, learned counsel on record for writ petitioner in W.P.No.30206 of 2023, Ms.R.Suganya, learned counsel representing Mr.K.Venkatesh, counsel on record for writ petitioner in W.P.No.29458 of 2023 and Mr.D.B.R.Prabhu, learned standing counsel for Chennai Corporation for R1 to R4 in both writ petitions are before us.

5. Mr.MJ.Sankar, who triggered a complaint which led to two impugned notices (to be noted, afore-referred two notices dated 31.07.2023 bearing Letter No.14/00241/2023 are being referred to as



W.P.Nos.30206 & 29458 of 2023

'impugned notices' collectively for the sake of brevity and convenience) has been impleaded as R5 in W.P.No.30206 of 2023 and Mr.MJ.Sankar appearing party-in-person is before us.

6. We find that impugned notices have been issued under Section 57(4) of 'the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972)' {hereinafter 'said Act' for the sake of brevity}. We also find that impugned notices have been issued under Section 57 read with 85 of said Act but it is not necessary to delve more into that as concluding paragraph of impugned notices makes it clear that impugned notices have been issued under Section 57(4) of said Act.

7. Any proceedings, notice or order under Section 57(4) of said Act can be assailed by way of an application to Government vide Section 80-A of said Act captioned 'Special Powers of Government' which reads as follows:

'80-A. Special Powers of Government.- (1)

Notwithstanding anything contained in section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2-A) of section 56



W.P.Nos.30206 & 29458 of 2023

or under section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing.

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they may deem fit, pending the exercise of the powers under sub-section (1) in respect thereof.'

8. To be noted, we are informed that Section 80-A of said Act was inserted with effect from 10.12.2008.

9. The above makes it clear that writ petitioners have alternate remedy qua impugned notices.

10. Before we proceed further, we make it clear that we are acutely conscious that alternate remedy is not a bar either for resorting to



W.P.Nos.30206 & 29458 of 2023

Article 226 of Constitution of India or for exercising powers under Article

226 of Constitution of India (alternate remedy) but it is a self imposed

restraint. In the case on hand, we find that the matter turns heavily on

factual disputes / contestations and therefore, we are of the

considered view that this is a fit case to relegate writ petitioners to

alternate remedy under Section 80-A of said Act. As regards R5

(Mr.MJ.Sankar) in W.P.No.30206 of 2023, we deem it appropriate to

advert to sub-section(2) of Section 80-A of said Act which makes it clear

that no order prejudicial to 'any person' shall be passed unless such

person has been given an opportunity of making his representation. In

the case on hand, not only writ petitioners but R5 should also be given an

opportunity to make representation as impugned notices are a product of

R5's trigger.

11. If writ petitioners do not resort to Section 80-A of said Act,

in the light of the facts / circumstances of cases at hand and the trajectory

the cases have taken, we make it clear that R5 (Mr.MJ.Sankar) can make

a representation to Government under Section 80-A of said Act and if it is

done, the Government under Section 80-A of said Act shall consider the

same on its own merits and in accordance with law. It is also open to R5



W.P.Nos.30206 & 29458 of 2023

to seek implementation of impugned notices *inter alia* by coming to this Court in an appropriate manner or before any other Forum. We hasten to make it clear that this part of the order is owing to the trajectory the matter has taken in the light of the unique facts / circumstances of the cases at hand and therefore the same shall not serve as a precedent qua all cases in which Section 57(4) of said Act notices are assailed.

12. We make it clear that we have not expressed any view or opinion on the merits of the matter as we are relegating parties to alternate remedy.

13. As regards alternate remedy, rights and contentions of all parties are preserved for being canvassed before the authority concerned. As regards limitation, if parties are resort to Section 14 of Limitation Act, 1963 qua captioned WPs, it is open to the Government to consider the same also on its own merits and in accordance with law.

14. As regards Section 80-A proceedings and / or other proceedings in this Court all rights and contentions of all parties before us are preserved.



W.P.Nos.30206 & 29458 of 2023

WEB COPY

15. Captioned WPs are disposed of as closed albeit with
aforementioned observations and preservation of rights in the aforesaid
manner. Consequently, captioned 4 WMPs stand closed. There shall be
no order as to costs.

(M.S.J.) (K.G.T.J.)
23.08.2024

Index:Yes/No
Neutral Citation: Yes/No
Speaking order / Non-speaking order

mk

To

1. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.
2. The Executive Engineer - zone 14
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.
3. The Asst. Executive Engineer - Unit 42
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.
4. The Asst. Engineer - DIV.188
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.



WEB COPY



W.P.Nos.30206 & 29458 of 2023

M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

W.P.Nos.30206 & 29458 of 2023

23.08.2024