



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2025

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CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WP No. 37221 of 2024

AND

WMP NO. 40233 OF 2024

1.Mrs.P.Kavitha

D/o.Late S.R. Padmanabhan, No.
7,New No 20,Thangam Colony 1st
Street, Anna Nagar West, Chennai
-600040.

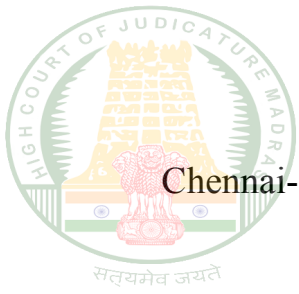
Petitioner(s)

Vs

1. The Secretary To The Government,
Housing And Urban Development
Department, Fort St. George, Chennai
-600 009.

2.The Commissioner,
Greater Chennai Corporation, Ripon
Building, Chennai -600001

3.The Executive Engineer,
Zone-viii, Grater Chennai Corporation,



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Respondent(s)

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PRAYER

Calling for the records related to the locking and sealing notice dated 18.11.2024 issued vide show cause notice Z.O.VIII.C.NO. 2627/2024 by the 3rd respondent under the Town and Country Planning Act, 1971 pertaining to the subject property situated at No.10, Thangam Colony, 1st Street, Anna nagar west, Chennai -600 040 and quash the same consequently forbear all further proceedings of the Respondents from initiating any coercive action of locking and sealing the subject property

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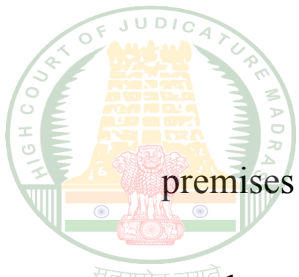
For Petitioner(s): Mr.K.K.Ram Siddhartha For
M/s.Row And Reddy

For Respondent(s): Mr.T.Chandrasekaran, For R1
Mr.D.B.R.Prabhu, For R2 & R3

ORDER

(Order of the Court was made by S.M.Subramaniam J.)

under assail is the proceedings dated 18.11.2024 issued by the Executive Engineer, Greater Chennai Corporation to execute enforcement action, specifically locking and sealing the premises belonging to the petitioner, as per the orders of the Commissioner, Greater Chennai Corporation dated 11.06.2024

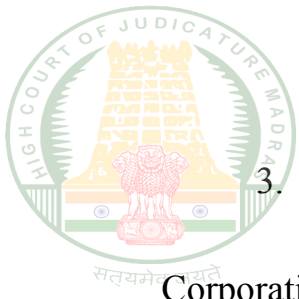


premises within seven days to enable the Greater Chennai Corporation officials to take appropriate action in accordance with law.

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2. The petitioner states that she is the absolute owner of the property measuring to an extent of 2420 Sq.ft at Plot No.10, Thangam Colony 1st Street, Anna Nagar, Chennai 600 040. Admittedly, the petitioner constructed a two-storey building by obtaining building plan permission from Chennai Corporation. However, the Corporation Authorities received complaints from the adjacent plot owner regarding unauthorised building construction/deviations. The complaint was taken on file by the Corporation and an inspection was conducted. The authorities found the following deviations/violations to the approved plans:

<i>Sl.No.</i>	<i>Description</i>	<i>As per Plan</i>	<i>As on Site</i>	<i>Deviated/ Unauthorised</i>
1.	Ground Floor & Car Parking	136.73	181.42	44.69 m ²
2.	First Floor	141.83	181.42	39.59 m ²
3.	Second Floor	99.89	181.42	81.53 m ²
4.	Terrace Floor	9.00	14.22	5.22 m ²



3. Consequently, a Stop Work Notice was issued by the Chennai Corporation vide proceedings dated 11.11.2020. Thereafter, further notice was issued on 08.01.2021, which was challenged by the petitioner in W.P.No.476 of 2022. The writ petition was filed and following orders are passed:

“7. Considering the prayer sought for in the Writ Petition and the submissions of the learned counsels appearing on either side, this Court, without expressing any opinion on the merits of the matter, directs the first respondent to dispose of the appeal preferred by the petitioner dated 24.12.2021 on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of six months. Till such time, the respondents shall not take any coercive action.”

4. The writ petition in W.P.No.14102 of 2021 filed by the Mr.D.Rajasekaran, was also disposed of by this Court on 21.01.2022 granting liberty to move a fresh writ petition as and when required. The Revision filed by the petitioner under Section 80A of Tamil Nadu Town and Country Planning Act, 1971, was disposed of by the Government vide letter dated 08.04.2022.



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Pertinently, the Government, while disposing of the Statutory Revision, granted three months time to the petitioner to rectify the violations of the subject building and to submit the revised planning permission to Greater Chennai Corporation. The Commissioner, Chennai Corporation is directed to pursue necessary action accordingly and send a report to the Government within a period of three months. However, the petitioner has not complied with the directions issued by the Government. A petition was moved before the Government seeking six months extension of time to carry out rectification works on the subject property.

5. The petitioner filed a writ petition in W.P.No.20044 of 2022, seeking a direction to take action against the alleged illegal construction by her neighbour, Mr.D.Rajasekaran, at Plot No.11 North Crescent Road, 1st Street, H Block, Thangam Colony. The writ petition along with contempt petition in CONT.P.No.405 of 2022, was disposed by the Division Bench of this Court on 27.09.2022 and the following orders are passed:

*“5. We are informed that the Commissioner
appointed to find out the actual encroachment has,*



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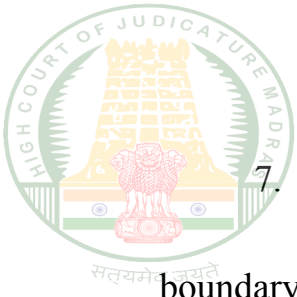
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after inspecting the property, filed a report stating that both the petitioners herein and the fourth respondent had encroached upon each other-s property. The dispute which commenced as unauthorised construction has now become a dispute interse between the petitioner and the fourth respondent which has to be decided only by a Competent Civil Court and this Court sitting under Article 226 cannot go into the disputed questions of fact and decide a private title dispute. Hence the contempt petition is closed.

6. W.P.No. 20044 of 2022 is disposed of with a direction to the respondents to pursue the action taken by them under the provisions of the Tamil Nadu Town and Country Planning Act to its logical conclusion. No costs.”

6. In pursuance of various proceedings mentioned above, the present impugned enforcement action was initiated by Chennai Corporation vide proceedings dated 18.11.2024.

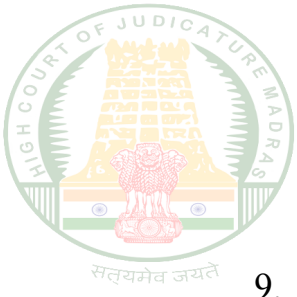


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7. The learned counsel for the petitioner would mainly contend that a boundary dispute between the petitioner and his neighbour Mr.D.Rajasekaran is yet to be resolved, and a civil suit instituted between the parties is also subjudiced. Unless the boundary dispute is resolved, the authorities may not be in a position to ascertain violations regarding set back area in the plot. Consequently, the petitioner could not rectify the deviations, and therefore, the present writ petition is to be considered. However, the petitioner states that she has given a revised plan for approval and regularisation.

8. The additional status report filed by the Executive Engineer, Chennai Corporation reveals that the petitioner has deviated the building plan permission originally granted. Pursuant to the order of the High Court, the officials of Zone-VIII of the Greater Chennai Corporation has once again conducted inspection in the site located at Plot No.10, Thangam Colony 1st Street, Anna Nagar, Chennai on 08.01.2025. Based on the re-inspection it is found that there is no rectification has been made subsequently by the petitioner as per the plan.

Among three shops, one shop has been opened and that has been rented.



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9. The facts as stated above reveal that despite the Government's directions to rectify the deviation and restore the building as per the building plan permission granted and after passing of the order by the High Court, no action has been taken by the petitioner. Contrarily, the petitioner is attempting to sustain the unauthorized construction one way or other by continuing the litigations. Already three writ petitions have been filed by the petitioner. Even the present writ petition has been instituted challenging the enforcement action initiated by the Chennai Corporation authorities. Thus, the petitioner's intention is explicit that she is willing to retain the unauthorized portion of the construction and failed to initiate necessary action to rectify the deviations and restore the building as per the building plan permission granted.

10. The conduct of the building owners to restore the unauthorized constructions at no circumstances be encouraged by the Courts. Unauthorized construction in cities and other areas not only causing prejudice to neighbours but also pose a threat to the safety and security of the neighbors, road users and



people residing in that locality.

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11. The Hon'ble Supreme Court of India in a recent judgment in ***Rajendar Kumar Barjatya vs. U.P. Avas Evam Vikas Parishad¹***, delivered judgment in rem to be followed by the authorities across the Country to deal with the unauthorized constructions. The directives of the Apex Court as stated in paragraph 21, read as under:

“21. Therefore, in the larger public interest, we are inclined to issue the following directions, in addition to the directives issued by this Court in Re : Directions in the matter of demolition of structures (supra):

(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.



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(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential/commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider/Board to



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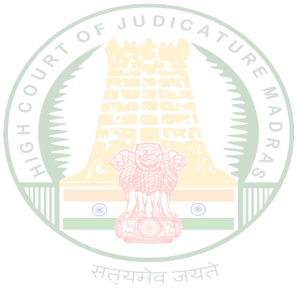


the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation/violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder/owner/occupant; and the official, who is responsible for issuance of wrongful completion/occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission/licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.



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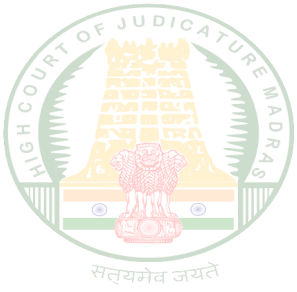
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(viii) *Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.*

(ix) *In the event of any application/appeal/revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals/revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.*

(x) *If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal/Courts*



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relating to house/building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks/financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.”

12. In view of the ratio laid down by the Apex Court, misplaced sympathy or lenient view by the High Court would result in miscarriage of justice. The practice of granting via-media reliefs to the citizen, who have committed such



illegalities and irregularities would only embolden them to continue their unlawful activities rather than its rectification.

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13. Any misplaced sympathy by the High Courts based on certain submissions would result in unconstitutionality and would do no service to the cause of justice. Contrarily, such orders would cause inconvenience to the people residing in that locality, neighbours and the public at large.

14. Larger repercussions, environmental damage caused and other inconveniences are to be taken into consideration by the Courts. This Court is of the considered opinion that citizens must abide by the law and encouraging such illegalities would result in an anomalous situation.

15. Despite numerous statutes governing the construction of buildings in urban areas and maintaining environmental aspects, cities are becoming concrete jungles leaving people with no space even to breath.



16. In view of the fact and circumstances, we find no reason to interfere with the order impugned passed by the Executive Engineer, Greater Chennai Corporation dated 18.11.2024, which is in consonance with the Statutes and Rules, and based on earlier orders passed by this Court.

17. Therefore, the respondents are directed to execute the order by demolishing the unauthorised buildings/deviations procedures within a period of eight (8) weeks from the date of receipt of a copy of this order.

18. In this case, this Court found that the petitioner has filed multiple writ petitions, including two statutory Revision Petitions under Section 80A of the Town and Country planning Act. Despite being granted three months time by the Government to rectify the deviations, the petitioner has not complied with. Even after two years, the petitioner continues to file petition after petition in order to protect the unauthorized construction.

19. Therefore, the present writ petition is to be construed as vexatious and



therefore stands dismissed. This Court is inclined to impose a cost of

Rs.10,000/- which shall be paid to the High Court Legal Services Committee,

Madras High Court, ADR Building, Chennai, within a period of two (2) weeks

from the date of receipt of a copy of this order. Consequently, connected

Miscellaneous Petition is closed.

(S.M.SUBRAMANIAM J.)(K.RAJASEKAR J.)

14-02-2025

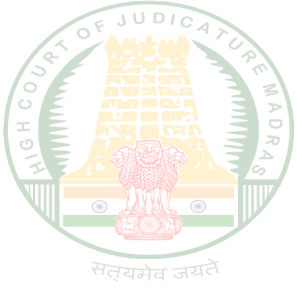
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To

1.The Secretary To The Government,
Housing And Urban Development
Department, Fort St. George, Chennai
-600 009.

2.The Commissioner,
Greater Chennai Corporation, Ripon
Building, Chennai -600001

3.The Executive Engineer,
Zone-viii, Greater Chennai Corporation,
Chennai-600 001.



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**S.M.SUBRAMANIAM
J.
AND
K.RAJASEKAR J.**

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**WP No. 37221 of 2024
AND WMP NO. 40233
OF 2024**

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