

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.P.No.21782 of 2021
W.M.P.No.22965 of 2021

M/s.SPlus Media Pvt. Ltd.,
Rep. by its Director,
Mr.I.Nagamanickam
Old No.145, New No.4,
Rukmani Lakshmipathy Street,
(Marshalls Road), Egmore,
Chennai 600 008.

.... Petitioner

-VS-

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
Chennai -9.
2. The Greater Chennai Corporation,
Rep by the Commissioner,
Rippon Building, Park Town,
Chennai – 600 003.
3. The Assistant Engineer, Div 061,
Greater Chennai Corporation,
No.23, Driver Street,
Pudupet, Chennai 600 002.
4. The Assistant Executive Engineer, Unit 14,
Greater Chennai Corporation,
No.2 Adikesavulu Street,

Chindadripet, Chennai 600 002.

5. The Executive Engineer, Zone 05,
Greater Chennai Corporation,
Rippon Building, Park Town,
Chennai – 600 003.

..... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the Respondents from in anyway taking coercive steps like locking and sealing or demolishing or taking any other coercive steps against any part of the Petitioner's premises situated at Old No.145, New No.4, Rukmani Lakshmi pathy Road, Egmore, Chennai 600 008 pending consideration of the Petitioner's statutory Appeal before the 1st Respondent dated 14.09.2021.

For Petitioner : Mr.P. Wilson
Senior Counsel
for M/s.Wilson Associates

For Respondents : Mr.T.N.C. Kaushik (R1)
Government Advocate
Mr. Raja Srinivas (R2 to R5)

ORDER

S.VAIDYANATHAN,J.,
AND
A.A. NAKKIRAN,..

This Writ Petition has been filed, forbearing the Respondents from in anyway taking coercive steps like locking and sealing or demolishing or taking any other coercive steps against any part of the Petitioner's premises situated at Old No.145, New No.4, Rukmani Lakshmi pathy Road, Egmore, Chennai 600 008 pending consideration of the Petitioner's statutory Appeal before the 1st Respondent dated 14.09.2021

2. Mr.T.N.C.Kaushik, learned Government Advocate takes notice for 1st respondent and Mr. Raja Srinivas, learned counsel takes notice for Respondents 2 to 5. By consent, final orders are passed in the Writ Petition at the admission stage.

3. It is the case of the petitioner that he is the tenant of the property situated at old No. 145, New No.4, Rukmani Lakshmipathy Road, Egmore Chennai 600 008 and he had entered into a rental agreement with M/s.TCCL dated 01.08.2021 to let out the said premises. Further the Petitioner's landlord also possessed a valid plan bearing Planning Permit No. B/Spl.bldg/391/2002 subject to the conditions in the CMDA office letter No.B1/14337/2002 dated 21.11.2002. At that time, the Respondents 3 to 5 under the extraneous influence of M/s Madras Ashoka Hotel Pvt.Ltd., issued a stop work notice bearing No.DN/61/253/2021 dated 09.08.2021 to the Petitioner, calling upon the Petitioner to produce a copy of the plan or stop the construction work with immediate effect.

4. It is further stated that the said stop work notice does not specify what portion of the Petitioner's Construction is in violation or deviation. That apart, the stop notice states that the Petitioner's property was inspected on 07.08.2021 but according to Petitioner, no inspection was conducted. The petitioner also sent a suitable reply to the

Respondents on 31.08.2021, but without considering the same, the Respondents 3 to 5 has issued a Lock & Seal and Demolition notice to the Petitioner vide letter No. 05/04918/2021 dated 27.08.2021. Being aggrieved by the action of the Respondents, the Petitioner has filed an Appeal before the First Respondent on 14.09.2021 with an application for interim stay. Since no orders have been passed in the Appeal, the Petitioner has come forward with this Writ Petition seeking for the aforesaid relief.

5. Considering the facts and circumstances of the case and taking into account the fact that the Petitioner's Appeal is already pending with the First Respondent, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the First Respondent concerned to consider the Appeal preferred by the petitioner dated **14.09.2021**, if not already disposed of, and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order, without adjourning the proceedings beyond seven working days at any point of time;

ii) In case the petitioner is unable to appear for personal hearing either physically

or virtually, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the First Respondent concerned shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the Appeal dated **14.09.2021** and this order, to the First Respondent concerned forthwith;

v) The First Respondent is directed to communicate the decision taken on the Appeal, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to

face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order.

6. It is made clear that in case of non-passing of orders in the Appeal, any person can file contempt and Court will punish the Authority, if the said non-compliance is wilful and deliberate. This Court has already warned the Authorities and also called for details vide its order dated 16.10.2018 in W.P.No.27499 of 2018, in addition to prescribing procedures to be adopted and the relevant paragraphs are extracted below:

“12 (c) In the event of the building being found locked or closed by the occupants, the respondents shall drill the roof of the building and make a big hole so that the building cannot be occupied any more.

(k) The 1st Respondent/Secretary to the Government of Tamil Nadu, Housing and Urban Development Department and the 5th Respondent/Commissioner, Corporation of Chennai, Chennai are directed to furnish the following particulars to this Court on or before 18.12.2018:

(i) Number of appeals pending before the authorities;

(ii) Number of cases, wherein directions have been issued by this Court.”

7. The Authorities concerned can also utilize the advanced technology of drone survey in the presence of the respective parties in order to ascertain the factum of encroachment and they should conduct a periodical inspection on the construction of building from the basement, ground floor onwards, so that the set backs are adhered to

and to ensure that on-going construction complies with the norms. In case of inspection after the basement is constructed and if any defect is found out at the initial stage / stages, a decision could be arrived to prevent further construction, unless it is rectified within a time frame. The suggestion for grant of permission in stages is for eradication of encroachment and not for accumulation of wealth by the Officials concerned in the garb of acceptance of bribe.

8. It is needless to mention that if any encroachment is found to be made by the Petitioner, the electricity connection with respect to the petitioner shall have to be disconnected in the light of the Judgment of the Division Bench in the case of **"P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and others"** (W.P.No. 21639 of 2017), decided on 13.02.2018, wherein the Division Bench observed as follows, in consonance with the order of the Supreme Court dated 05.01.2018 passed in Petition for Special Leave to Appeal (C) No.33863 of 2017:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017

seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

9. It goes without saying that if the area building is not able to be bifurcated for the purpose of rectification, the Electricity supply shall be disconnected for the entire building and the building shall not be put to any use till it is rectified and brought in accordance with the plan. A building can be permitted to be brought in accordance with the sanctioned plan and approval and in case, during on-site inspection, it is found by the Authorities that still there are violations, the violated portions shall be kept under lock and seal and the same can be opened only for rectification purpose.

10. A Division Bench of this Court in the case of *N.Ravikumar vs. The District*.

Collector, O/o.Thiruvallur District, Thiruvallur, Thiruvallur District and others

[W.P.Nos.13963 to 13967, 14359 and 15229 of 2018] decided on 02.01.2019 observed

as follows:

“11. Before parting with this judgment, *this Court is of the view that unless there is a stay of the proceedings by the High Court, quoting any pendency of the matter, the Officials of the Municipality / Corporation / CMDA and Government Officials cannot close the complaints or appeals, etc., on the ground of pendency of Writ Petition or Writ Appeal. If they do so, it would amount to dereliction of duty and they could be proceeded with departmentally so as to bring them within the ambit of not discharging their duties with integrity and devotion to duties and also it may attract moral turpitude, depriving them their gratuity and terminal benefits, apart from endorsing the same in the Service Register during their service, which would disentitle their further promotion and those Officials shall be removed from the said post and posted in a non-sensitive post, if any complaint is made that they are not discharging their duties to the fullest satisfaction.*

12. We are of the view that any records or statements made by the Staff, who are dealing with the encroachment and illegal construction, are found to be false, it would amount to not only dereliction of duty, but also attract moral turpitude.

13. In fine, we would like to quote the decision of the Apex Court in the case of *M.I.Builders Private Ltd. Vs. Radhey Shyam Sahu and others*, reported in *AIR 1999 SC 2468 at Special Page 2505*, wherein at Paragraph 82, it is observed and held as under:

"82. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal

and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

14. The Secretary, HUD Department, Govt. of Tamil Nadu, Chennai, The Additional Secretary (Technical), HUD Department, Govt. of Tamil Nadu, Chennai, The Commissioner, Corporation of Chennai, Chennai, The Secretary, Municipal Administration and Water Supply Department, Government of Tamil Nadu, Fort St. George, Chennai 600 009, The Commissioner of Municipal Administration, Ezhilagam, Chennai 600 005, The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Building, No.1, Gandhi-Irwin Road, Egmore, Chennai-600 008, are expected to issue suitable direction to the concerned authorities to go ahead with the matter, where there are no stay to proceed with the matter. The Government is expected to issue necessary circular / Government Order, incorporating the above directions and a copy of the same shall be filed before this Court on 04.02.2019. Till such circular / Government Order is issued, the afore-stated directions should be followed in letter and spirit. It is made clear that the directions issued hereinabove are only illustrative and apart from the above directions, stringent conditions may also be incorporated in the circular / Government Order so as to make the Officials to execute their job consecutively in the absence of stay of the proceedings by any judicial forum.”

11. This Court in the order dated 29.04.2019 passed in W.P.5076 of 2016 already directed the Government to constitute a Permanent Special Task Force duly headed by an efficient, devoted and honest Official, not below the rank of Additional Chief Secretary, as Chairman of the STF for various purposes, including periodical inspections, field survey and create a boundary marks in respect of vacant Government lands as per Sections 16 and 21 of The Tamilnadu Survey and Boundaries Act, 1923 and

other relevant provisions of the Act, etc., and it is not known as to whether such a Force has been constituted for the said purpose. Any lapses are noticed in respect of wilful and deliberate disobedience, this Court will pass stringent orders against erring officials and in that case, imposition of fine is secondary and the imprisonment is primary.

12. In yet another case, a Division Bench of this Court, finding building violations, directed the violated portions to be razed to the ground, in the case of *M/s.Aara Silk, rep. by its Partner, MAM. Hayath S/o.M.A.Mohamed Masthan, 8/42. & 8/42-A, B - Ranganatha Mudhali Street, C.Pallavaram, Chennai vs. The Principal Director, Southern Command, IDES Guest House and others, [W.P.No.29985 of 2016] decided on 29.09.2016.* For the sake of convenience, the relevant paragraphs of the said judgment are extracted hereunder:

“20. It is pertinent to note that recently, the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4.We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

21. And, this Court (Huluvadi G.Ramesh, J. & M.V. Muralidaran,J.), while dealing with the removal of encroachments, **in the case of A.Kumar vs. The Commissioner, Greater Corporation of Chennai vide judgment dated 13.06.2016**, has held as under:

17. In view of the act of the petitioner in making repeated representations, the Corporation could not remove the encroachment as directed by this Court. Therefore, the Corporation had to face contempt proceedings in Contempt Petition No.1391 of 2015, which was closed after recording the submission of the Corporation that they would remove the same within a period of two weeks. Again, since the the encroachment could not removed due to the attempts made by the petitioner and other encroachers, the Corporation faced another contempt proceedings in Contempt Petition No.13 of 2016. In that matter, the Corporation sought one week time to comply with the order and the same was granted on depositing a sum of Rs.20,000/- within a week.

18. In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan [(1997) 11 SCC 123], the Supreme Court after referring to the earlier decisions, has observed thus:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for

passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

19. In view of the decision cited above, we are of the considered view that the encroachment has to be removed forthwith, since the petitioner and others were given notice and their objections were also heard and considered, in accordance with law. Therefore, this writ petition is disposed of, with a direction to the Corporation to demolish the encroachment, in the presence of the petitioner on 13.7.2016 and also with a direction to the petitioner to pay a fine of Rs.1,000/- (Rupees one thousand only) to the credit of the Tamil Nadu Mediation and Conciliation Centre, Chennai, within a period of one week from the date of receipt of a copy of this order. This order shall be treated as notice to the petitioner for demolishing the encroachment made in the land in question. There shall be no order as to costs. Consequently, WMP No.16456 of 2016 is closed.

22. In view of the decisions cited supra, this Court is of the view that the violated portions have got to be razed to the ground. In terms of the provisions of the Cantonment Act, the police shall give full protection for the demolition of the building and the petitioner is given a week's time from today, to remove the belongings in the building, otherwise, it will be construed that the belongings have been vacated by the petitioner. This Writ Petition is dismissed with the above direction and observation."

No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N,J.] [A.A.N,J.]
06.10.2021

Index: Yes / No
Speaking order /Non speaking order
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S.VAIDYANATHAN,J.,
and
A.A.NAKKIRAN,J.,
arr

To:

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
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2. The Greater Chennai Corporation,
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