
(1998) 07 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 11393 of 1989

G.R. Gunavathy

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 256, 256(2), 256(3), 380, 381

Citation : (1998) 07 MAD CK 0018

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : D. Saravanan, for the Appellant; T. Chandrasekaran, for the Respondent

Judgement

K. Sampath, J.—The prayer is for a certiorari calling for the records relating to the notice in Ref. No. 3904 dated 29.7.1989 on the file of

the second Respondent and quashing the order made therein which purports to confirm the provisional order No. 7004 dated 12.7.1989 on the

file of the second Respondent on the following allegations:

Alleging deviations, a notice was issued to the writ Petitioner on 29.7.1989. The endorsement was signed by somebody whose designation was

not clear from the order served on the Petitioner. There were blanks in the orders which stated that the Petitioner had completed the construction

of the building without a sanctioned plan. Thereafter on 12.7.1989 the Petitioner received a notice dated purported to have been issued by Circle

Officer III who had signed the same on 17.7.1989. The notice had been issued u/s 256 of the Madras City Municipal Corporation Act. The notice

incorporated an unsigned provisional order that the building work was carried on otherwise than in accordance with the sanctioned plan No. 5/85

dated 28.2.1985. According to the Petitioner, the first stage of the construction was completed in 1983; the second stage in 1985, and the third stage in 1986 and all these three stages had been to the knowledge of the Corporation officials and they had also revised the property tax. The printed form bearing date 12.7.1989 had a number of blank spaces, the time by which such explanation had to be given to the show cause notice was also not mentioned. There had been no application of mind. This was followed by another notice dated 29.7.1989 served on the Petitioner on 16.8.1989 calling upon the Petitioner to carry out the provisional order No. 7064 dated 12.7.1989. The time to carry out the said order printed as 30 days* had been scored out and a figure 7 had been inserted. There were several other blank spaces unfilled in the notice. The said notice incorporates itself a provisional order also stated to have been passed on the very same date. The building work was carried out on a duly sanctioned plan dated 19.9.1986. Though the notice said that there had been deviations in the sanctioned plan, the nature of the deviation had not been disclosed. The endorsement had been made by the Chief Engineer though u/s 256 of the Madras City Municipal Corporation Act it was only the Commissioner who had the authority to issue such notices and such an authority cannot be delegated. These were some of the infirmities in the notice issued to the Petitioner and without affording a reasonable opportunity, the authority had passed final orders purporting to be u/s 256(3) of the Act. The orders dated 12.7.1989 and 29.7.1989 were in violation of Section 256(2) and 256(3) of the Act. There had been no compliance with the mandatory requirement of Section 256(2) of the Act and there had been contravention of the principles of natural justice. The provisional order dated 12.7.1989 cannot also be said to have been passed in exercise of powers u/s 256 of the Act. No opportunity having been given to the writ Petitioner the whole proceedings had to go.

2. No counter has been filed on behalf of the Respondent Corporation though the matter has been pending for several years. The notice dated 29.7.1989 runs as follows:

No satisfactory cause having been shown -why the Provisional Order No. dated shall not be confirmed, - the order is - confirmed and made

binding on you. You are hereby required to carry out the order within 7 days of

service of this notice. In default, the Commissioner may cause - necessary works to be done under Sections 380 and 381 of the Act and recover cost thereof from you. You will be also liable to fine which may extend to Rs. 500/- and to a further fine of Rs. 100/- for each day during which the offence is proved to have continued after the first day.

The provisional order bearing date 12.7.1989 is also bereft of particulars. On the reverse of the said provisional order it is stated as follows:

You have completed the building without sanctioned plan in second floor and deviation from the sanctioned plan in ground floor and first floor.

The person who has signed it, is not the Commissioner of the Corporation of Madras. The provisional order dated 12.7.1989 concedes that there

is a sanctioned plan No. 5/85 dated 28.2.1985. It alleges that the building had been carried on or completed otherwise than in accordance with the

sanctioned plan but the deviation is not specifically mentioned. This notice had been received by the writ Petitioner after 18.7.1989. No time limit is

mentioned for showing cause against the provisional order. The subsequent order bears date 29.7.1989. This order directs the Petitioner to carry

out the order within seven days of service of the notice. That is also bereft of particulars and it is seen that the authorities had not bothered even to

disclose the nature of deviation and the period within which the deviation had to be removed and the provisional order had also been issued in a

mechanical way without application of mind. In these circumstances there has been clear violation of the principles of natural justice. The Petitioner

had not been heard before final orders were passed. The learned Counsel for the writ Petitioner - relied on a number of decisions: (i) In *Habibullah*

v. The State of Tamil Nadu 1994 (1) MU 229 the matter arose under Tamil Nadu Land Encroachment Act (III of 1905). While dealing with

Section 5 of the said Act the learned single Judge of this Court observed as follows:

A notice u/s 5 of the Act was issued to the Petitioner. It does not bear any date. In the said notice it was mentioned that the property will be

forfeited u/s 6 of the Act, and the Petitioner was called upon to show cause and on or before 1990. There is also some over-writing. This hardly

satisfies the legal requirement of the provisions of the Act. There cannot be any denial of the fact that the right of hearing given to the unauthorised

occupant u/s 7 of the Act is a valuable right and it has to be strictly in conformity with the Act.

(ii) In *S. Radhakrishnan and others Vs. Govt. of Tamil Nadu and others*, Kanakaraj, J. as he then was while dealing with Tamil Nadu Town and

Country Planning Act quashed the notice to demolish unauthorised construction as the same had been issued beyond the period of three years

within which it should be issued. It was observed by the learned Judge that the parties and authorities should be vigilant and exercise the right

within the prescribed period, (iii) In AIR 1940 185 (Lahore) , the Lahore High Court dealing with the power vested with the Municipality

committee to require the demolition of a building which was erected without the necessary sanction held that this power was vested with the

committee to meet extreme cases of defiance or cases in which encroachments were made on Municipal lands or rules framed by the committee on

hygienic or sanitary grounds are flagrantly ignored. In such cases, the law provided an alternative remedy and it was to penalize the offender in such

sum as the committee might deem reasonable, (iv) In *Purusottam v. Raton Lal* AIR 1972 Calc 459 a Full Bench of the Calcutta High Court held

that even in respect of matters which involved violation of an unrelaxable building rule the Commissioner had discretion not to order demolition if

the violation was not of serious nature and that the discretion must however be used bona fide stating reasons therefore.

3. In the instant case, the violation appears to have been noticed after the three year period. The nature of violation or deviation is not disclosed. It

is also not known as to the authority under which a junior engineer issued the notice u/s 256, provisional order followed by a notice.

There are blanks. The period within which the Petitioner should comply with the requirements is also not disclosed. There are so many infirmities in

the impugned order that it cannot stand. Consequently, a writ of certiorari will issue as prayed for. No costs.