
(2009) 01 MAD CK 0226
In the Madras High Court
Case No : Writ Petition No. 466 of 2006

N. Subash Chand Jain

APPELLANT

Vs

T.J. Srinivasa Raj and Others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 236, 256(1), 256(2)

Citation : (2009) 01 MAD CK 0226

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; V. Dhanapalan, J

Bench : Division Bench

Advocate : AR.L. Sundaresan, SC for AL. Gandhimathi, for the Appellant; A.L. Somayaji, SC for T.S. Raja Mohan, for RR-1 to 6 P.S. Raman, AAG for I. Paranthaman, for R-7, V. Bharathidasan, for RR-8 and 9, A. Selvendiran, for RR-10 and 11, for the Respondent

Judgement

S.J. Mukhopadhaya, Acting C.J.

1. This writ petition has been preferred by the petitioner to direct respondents 7 to 9 to take appropriate action and, thereby, to demolish the illegal

construction being put up by respondents 1 to 6 at Door No. 53E, New Door No. 5, Venkatesapuram Colony, Angadi Market Street,

Ayanavaram, Chennai 600 023.

2. According to the petitioner, he is the house owner of land in Plot No. 54-E, Venkatesapuram Colony, Angadi Market Street, Ayanavaram,

Chennai 600 023, which is adjacent to the property of respondents 1 and 2. While giving detailed facts, it is alleged that respondents 1 to 6 have

constructed building in the respective land deviating from their plan affecting the ventilation, sunlight, etc., of the petitioner. Initially he filed a suit,

but as the City Civil Court, Chennai observed that it has no jurisdiction and the

suit was not maintainable, therefore, he filed a writ petition in W.P.

No. 35013/03 before this Court against the respondents herein. In the said case, having noticed the statement made by the counsel for the

Corporation of Chennai that the Corporation has already issued stop work notice u/s 236 of the Chennai City Municipal Corporation Act, 1919

(hereinafter referred to as "Act"), on 19th Nov., 2007, and is contemplating to issue notice u/s 256(1) and (2) of the Act, observed that no further

order was required to be passed in the said case and, thus, disposed of the said writ petition. The grievance of the petitioner is that, though it was

said that notice for demolition u/s 256(1) and (2) of the Act was to be issued, but no action has been taken by the Corporation.

Learned counsel appearing on behalf of the contesting respondents 7 to 9 submitted that though deviation has been made in some cases, the

concerned respondents have either moved or contemplating to move for approval of revised plan as per construction already made. Learned

Counsel appearing on behalf of the Corporation accepted that they contemplate to proceed and issue notice u/s 256(1) and (2) if there is deviation

from the building plan.

3. We have heard the learned Counsel for the parties and noticed their rival contentions.

4. In the present case, as we find that the Corporation has already taken steps and prima facie it appears that certain construction made by

respondents deviating from the plan, but no specific decision taken with regard to any building or portion thereof, and it is informed that some of

the respondents have moved or contemplating to move for approval of the revised building plan as per construction already made, instead of

issuing any direction in the manner as sought for, we pass the following order:

a) The case is remitted to the respondent, Chennai Corporation to decide whether the respondents 1 to 6 have constructed their respective

building (s) or portion of the building deviating from the sanctioned plan. A fact finding enquiry should be made jointly by the authorities of the

Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") and Corporation of Chennai, in presence of respondents 1 to

6 and the petitioner or their respective representatives in order to find out such deviation, if any, made. It should be completed within one month

from the date of receipt of a copy of this order.

b) If it is found that construction has already been made deviating from the sanctioned plan or if respondents 1 to 6 have knowledge that they have

deviated from the sanctioned plan, in such case, respondents 1 to 6 may apply for sanction of revised plan, if permissible under the law. In such

case, the CMDA will consider whether the revised plan, as has been submitted or may be submitted, is in accordance with the provisions of the

Tamil Nadu Town and Country Planning Act and the Rules framed thereunder and, thereby, such revised plan can be approved.

c) If the revised plan is sanctioned and approved in accordance with the rules and the present Master Plan for Chennai Metropolitan Area, as

notified on 2nd Sept., 2008, and the Development Control Rules, the Corporation of Chennai, may not proceed with demolition in respect of the

structure/building, as sanctioned under revised plan.

d) It will be open to the petitioner to put forth his objections before CMDA opposing sanction of the revised plan and may point out the provisions

of rules/guidelines which may bar such sanction.

e) If no application for revised plan has been made or revised plan is not sanctioned in regard to the deviated portion of the construction, the

Corporation of Chennai will take steps and demolish such illegal construction within one month thereof.

f) It is made clear that if revised plan as has been submitted by one or other party, in such case, no enquiry is required to be made as per direction

aforesaid and CMDA will take decision within one month from the date of receipt/production of a copy of this order.

g) In case of any adverse decision, the Corporation will proceed with demolition and demolish the deviated portion of such building within one

month from the date of rejection order.

5. The writ petition stands disposed of with the aforesaid observations and directions. But there shall be no order as to costs.