

In the High Court of Judicature at Madras

Dated: 22.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM  
and  
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.50048 of 2006  
and M.P.No.1 of 2006

S.Vijayakumar ..Petitioner

..vs..

1. The Commissioner,  
Corporation of Chennai,  
Ripon Buildings,  
Chennai-600 003.

2. The Assistant Engineer,  
Division 50, Chennai Corporation,  
Zone-IV,  
Jawahar Nagar,  
Chennai-82.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1<sup>st</sup> respondent relating to the notice issued under Section 378 of Chennai City Municipal Corporation Act, 1919, vide No.110 dated 04.11.2006 and quash the same and consequently forbearing the respondents from interfering with the building put up at Door No.26 A, 1<sup>st</sup> Circular Road, Jawahar Nagar, Chennai-600 082, particularly by way of demolition of any portion or portions thereof.

For Petitioner : Mr.R.Kannan

For Respondents : Mr.A.Mohammed Ghouse

ORDER

(Order of the Court was made by P.SATHASIVAM, J.,)

Aggrieved by the Notice issued under Section 378 of the Chennai City Municipal Corporation Act, 1919, vide No.110, dated 04.11.2006, the petitioner has filed the above writ petition, to quash the same

and forbear the respondents from interfering with the building put up at Door No.26A, Ist Circular Road, Jawahar Nagar, Chennai-82, particularly by way of demolition of any portion or portions thereof.

2. On direction, Mr.Mohammed Ghouse takes notice for respondents.

3. Learned counsel for the petitioner, by drawing our attention to the first notice dated 02.08.2006 issued under Section 256(1) of Chennai City Municipal Corporation Act, submitted that, though the said notice mentions that the construction is not in accordance with the sanctioned plan, absolutely there is no reference / particulars about the alleged violation or deviation. According to him, in spite of the same, the petitioner submitted a representation on 05.10.2006 along with the revised plan for approval of the Commissioner of Corporation of Chennai. The said representation was duly acknowledged by both the authorities on 16.10.2006. The copies of representation and the acknowledgment cards are available in the typed set, vide pages 9 to 11. It is the further grievance of the petitioner that in spite of the same, now the respondents have issued a notice dated 04.11.2006 under Section 378 of the said Act, to demolish the unauthorised deviated portion in the building in question.

4. In the light of the infirmities pointed out, we heard the learned counsel appearing for the respondents. Learned counsel for the respondents submitted that a direction may be issued for the disposal of the representation dated 05.10.2006 and till such time, no demolition will be carried out.

5. We are not inclined to adopt such course, since the notice issued under provisional Order dated 02.08.2006, which gives an opportunity to the petitioner, does not contain any reference as to nature of deviation / violation. In spite of the same, the petitioner has made a representation for approval of his revised plan even on 05.10.2006. In such circumstances, it is but proper on the part of the respondents, while issuing notice dated 04.11.2006 under Section 378 of the said Act, could have considered the objections raised by the petitioner in his representation dated 05.10.2006. Such recourse has not been followed by the respondents. In such circumstances, we are satisfied that the impugned notice cannot be sustained. Accordingly, the same is quashed.

6. In view of the fact that the petitioner has made a representation even on 05.10.2006 for approval of his revised plan, the Commissioner, Corporation of Chennai, is directed to consider and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity to the petitioner. Depending on the order

to be passed, the respondents are free to take further action. Writ petition is allowed on the above terms. No costs. Consequently, M.P.No.1 of 2006 is closed.

gl

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner,  
Corporation of Chennai,  
Chennai-600 003.
2. The Assistant Engineer,  
Division 50, Chennai Corporation,  
Zone-IV,  
Jawahar Nagar, Chennai-82.

1 cc to Mr.R.Kannan, Advocate, SR.64578

1 cc to Mr.A.Mohammed Gouse, SR.64646

bs (co)

dv/22.12.06

Writ Petition No.50048 of 2006

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