

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.12.2016

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN  
and

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P. No.44732 of 2016  
and

W.M.P.No.38550 of 2016

R.Masilamani

.. Petitioner

Vs.

1. The Government of Tamil Nadu  
rep. By its Secretary,  
Housing and Urban Development  
Department, Fort St. George,  
Chennai - 9.

2. The Chennai Metropolitan Development  
Authority rep. By its  
Member Secretary,  
Thalamuthu Natarajan Building,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai - 8.

3. The Corporation of Chennai  
rep. By its Commissioner,  
Ripon Buildings, Park Town,  
Chennai - 3.

4. The Corporation of Chennai,  
Zonal Office VII,  
Thiruvalluvar High Road,  
Opp. Dunlop, Ambattur,  
Chennai - 53.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari and mandamus to call for the records relating to the impugned order pertaining to the letter No.17795/UD-VII(1)/2016-3 dated

07.12.2016 issued by the first respondent, rejecting the appeal and quash the same and consequently direct the first respondent to dispose of the Appeal Petition on merits and in accordance with the provisions of Tamil Nadu Town and Country Planning Act, 1971 under Sec.80A(2).

For Petitioner .. Mr.R.Thiagarajan  
For Respondents.. Mr.M.K.Subramanian,  
Govt. Pleader for R1  
Mr.N.Sampath Standing Counsel for R2  
Mr.V.C.Selvasekaran  
for R3 and R4

ORDER  
(Order of the Court was made by S.VAIDYANATHAN, J.)

Heard the learned counsel appearing for the parties.

2.Writ petition has been filed seeking for the issuance of certiorarified mandamus to call for the records relating to the impugned order pertaining to the letter No.17795/UD-VII (1)/2016-3 dated 07.12.2016 issued by the first respondent, rejecting the appeal and quash the same and consequently direct the first respondent to dispose of the Appeal Petition on merits and in accordance with the provisions of Sec.80A(2) of the Tamil Nadu Town and Country Planning Act, 1971.

3.The main grievance of the petitioner is that he was not given an opportunity of personal hearing before passing of the impugned order which is mandatory under Section 80A(2) of the Tamil Nadu Town and Country Planning Act, 1971.

4.A reading of the impugned order, more particularly paragraphs 2(b) and 3 that an opportunity was given but it appears that he was absent on that day and it was represented on his behalf that due to ill health, he could not be present.

5.Be that as it may, now the learned counsel appearing for the petitioner seeks an opportunity of personal hearing to the petitioner to putforth his case before the first respondent. During the course of arguments, the learned counsel appearing for the petitioner also undertakes to rectify the violation, if any, within a week's time. Therefore, the petitioner is permitted to approach the first respondent within a week from the date of receipt of copy of this order and in such event, the first respondent shall afford an opportunity of personal hearing to the petitioner to putforth his claim and thereafter, pass orders afresh, on merits and in accordance with law. In case the petitioner fails to utilise the opportunity of personal hearing, it is open to the authorities

to proceed in furtherance of the order passed by the first respondent.

6. Before parting with, this Court observes that in Chennai, there are lot of violations with regard to construction and also, there are land encroachments which has got to be curbed with iron hands and there is no reason why the authorities are ineffective in taking steps and even if steps are taken, it moves in a snail's pace. We are of the view that the authorities must take dynamic action to decimate the violated buildings without standing on any technicalities.

7. Whenever it is brought to notice that there is land encroachment on the roads or in any other place or violation of construction, it is open to the authorities concerned to call for the following details from the violator by issuing appropriate notice:

- (a) Registered Deed based on which the property has devolved upon the person
- (b) Extent of square feet mentioned in the Schedule property
- (c) Width of the road
- (d) Actual constructed area
- (e) Approved plan
- (f) Whether set back space has been provided as per the Plan/Rules

8. It is the bounden duty of the person, who receives the notice to furnish all the details called for, failing which, it has to be presumed that there are violations and it is open to the authorities to act as per law. Wherever there are encroachments on road, road width has got to be restored. If there is no Building Plan, deviations if any, have got to be removed by the petitioner. If not, the authorities are entitled to remove the same in accordance with law, recovering the demolition costs from the petitioner.

9. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Secretary to Government,  
Housing and Urban Development  
Department, Fort St. George,  
Chennai - 9.
2. The Chennai Metropolitan Development  
Authority rep. By its  
Member Secretary,  
Thalamuthu Natarajan Building,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai - 8.
3. The Corporation of Chennai  
rep. By its Commissioner,  
Ripon Buildings, Park Town,  
Chennai - 3.
4. The Corporation of Chennai,  
Zonal Office VII,  
Thiruvalluvar High Road,  
Opp. Dunlop, Ambattur,  
Chennai - 53.

+2ccs to M/s.R. Thiagarajan, Advocate, S.R.No.76453  
+1cc to M/s. N. Sampath, Advocate, S.R.No.76456

W.P.No.44732 of 2016

UG (CO)  
EU 24.1.17

सत्यमेव जयते

WEB COPY