

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.12670 of 2015 and M.P. No.1 of 2015

Arvind Kumar

Petitioner

Vs.

1 Government of Tamil Nadu
represented by its Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai 600 009

2 Corporation of Chennai
represented by its Commissioner
Ripon Buildings
Chennai 600 003

3 The Corporation of Chennai
represented by its Executive Engineer
Enforcement (North)
Zone V, Division 58
Choolai, Chennai 600 112

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents 2 and 3 from in any way interfering with the petitioner's building at Old Door No.44, New Door No.97, Samy Pillai Street, Choolai, Chennai 600 112, particularly by way of locking and sealing or demolition of the same pending final determination of the petitioner's statutory appeal dated 10.04.2015 under Section 80-A of the Town and Country Planning Act, 1971, by the first respondent.

For petitioner Mr. D.S. Rajasekaran

For R1 Mr. N. Sakthivel
Government Advocate

For RR 2 & 3 Ms. Karthikaa Ashok
Standing Counsel

ORDER

(Order of the Court was made SATISH K. AGNIHOTRI, J.)

Mr. N. Sakthivel, learned Government Advocate, accepts notice for the first respondent. Ms. Karthikaa Ashok, learned Standing Counsel, accepts notice for respondents 2 and 3. With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal, at the admission stage itself.

2 Feeling aggrieved by the notice dated 01.04.2015 issued by the third respondent under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 (for short "the Act"), the petitioner has preferred an appeal under Section 80-A of the Act before the first respondent-Government, with an application for interim relief, on 10.04.2015. Without waiting for a reasonable time, the petitioner has rushed to this Court with the instant writ petition on 20.04.2015, seeking the relief as stated above.

3 At this stage, it is better to point out certain provisions of law under which an appeal is to be decided. The second proviso to Section 80-A of the Act prescribes that the application for revision/appeal filed under Section 80-A of the Act shall be disposed of by the Government within 90 days from the date of receipt of the application. Grant of 90 days time to dispose of the appeal is certainly with some object, perhaps, to obtain views of the authorities and also to provide an opportunity of hearing to all the parties concerned. In that process, 90 days time may be required to render justice between the parties.

4 Now, the petitioner has come up with the instant writ petition in 10 days from the date of preferring the appeal, seeking a mandamus which is normally issued against an authority for non-action or inaction or against wrong action. Certainly, this is not a case where issue of non-action, wrong action or inaction has arisen, as, the Appellate Authority has not been given an opportunity to take action, within the reasonable time. Thus, this writ petition for issuance of a writ of mandamus is not maintainable, at this stage.

5 We deprecate this practice of rushing to the Writ Court invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without waiting for a decision within the prescribed statutory period. This practice is tantamount to abuse of judicial process.

6 It is also brought to our notice that an application for interim relief has also been filed under Section 80-A(3) of the Act. We expect that the authorities will consider the application for interim relief, at the earliest, preferably within a period of

two weeks, whenever an application for interim relief is filed along with the memorandum of appeal and the appeal also will be disposed of in accordance with law and on its own merits, within the statutory period prescribed under the provisions of law. However, status quo, in respect of the property in question, as obtained today, shall be maintained for a period of two weeks from today.

7 The writ petition stands disposed of, with the above observations. No costs. Connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar()

True Copy

Sub-Assistant Registrar

To

1 The Secretary to Government
Housing and Urban Development Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009

2 The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003

3 The Executive Engineer
Corporation of Chennai
Enforcement (North)
Zone V, Division 58
Choolai, Chennai 600 112

+ 1 cc to M/s.Kathika Ashok, Advocate, SR 22835

+ 1 cc to M/s.E.Martin Jeyakumar, Advocate SR 23130

+ 1 cc to the Govt.Pleader, High Court, Madras 104 (SR 23245)

rsk(co)
prk28/4

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