

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2015

CORAM

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

W.P. No.22264 of 2015
and
M.P. No.1 of 2015

Singaravelan Rep.by Power agent
M.V.Subbiah

... Petitioner

vs.

1. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore
Chennai 600 008
2. The State, by
The Secretary to Government
Housing and Urban Development (UD1) Department
Secretariat
Fort St. George
Chennai 600 009

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents not to initiate enforcement proceedings based on the notice dated 08.06.2015 in L.R. No.EC/N/II/11432/2012 issued by the first respondent, pending disposal of the revision before the 2nd respondent dated 15.06.2015.

For petitioner : Mr.J.Kalidas

For Respondent 1 : Mr.C.Johnson

For Respondent 2 : Mr.P.S.Shiva Shanmugasundaram
Special Government Pleader

ORDER

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

Mr. C. Johnson, learned Standing Counsel, accepts notice for the first respondent. Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the second respondent. 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. This writ petition is filed seeking a mandamus directing the respondents not to initiate enforcement proceedings based on the notice dated 08.06.2015 in L.R. No.EC/N/II/11432/2012 issued by the first respondent, pending disposal of the revision before the 2nd respondent dated 15th June 2015.

3. The petitioner is stated to be the Power Agent of his son in respect of the plot and building at Plot No.MIG-1/422, New No.25, Mogappair East, Chennai - 50 comprised in S. No.314 part measuring about 2,376 sq. ft. The said property was purchased by the petitioner's son from one C.K. Raman under sale deed dated 7th July 2000. The construction of the building was properly approved by the Ambattur Municipality. The petitioner has thereafter put up additional three floors and applied for regularisation on 24th December 2001. The petitioner was called upon to produce documents in relation to approval in respect of the building, which was constructed prior to 28th February 1999. However, the same could not be done as the building was purchased only in the year 2000. The petitioner's application for regularisation was rejected by the first respondent on 27th June 2012. Thereagainst, an appeal was preferred to the second respondent/State under the provisions of Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 (for short "the Act"), which was also rejected on 6th January 2014, holding as under:

"6. The Government have examined the appeal filed by Thiru. M.V. Subbiah against order of Chennai Metropolitan Development Authority under Section 113A (6) of the Town and Country Planning Act, 1971 along with the remarks of the Member Secretary, Chennai Metropolitan Development Authority and the decision taken in the 49th Monitory Committee meeting held on 14.06.2013 and decided to reject the above said appeal filed under section 113(A) (6) of Tamil Nadu Town and Country Planning Act, 1971, since he has not furnished any credible evidence to prove that the construction was made prior to 28.02.1999. Accordingly, Government hereby reject the appeal filed by Thiru M.V. Subbiah under Section 113(A)(6) of Town and Country Planning

Act, 1971 for regularisation of Ground Floor + 3rd floor + 4th floor (part) commercial building (shops cum lodge) at MIG Plot No.1/422, New No.25, Valayapathy Street, Mogappair - East, R.S. No.314 (Part) of Mogappair Village."

4. Needless to state that the order rejecting the regularisation attained finality as the same was not questioned in any judicial forum. Thus, by locking, sealing and removal of unauthorised development notice dated 1st April 2014, the petitioner was called upon by the first respondent to restore the building in accordance with the approved plan by removing the unauthorised and deviated portions, within a period of 30 days from the date of receipt of the said notice. In default, the petitioner was informed that locking and sealing of the building shall be carried out in accordance with the provisions of Section 56(2A) and 57(4) of the Act.

5. The second respondent rejected the petitioner's representation dated 24th December 2014 for reconsideration on 8th June 2015. The petitioner has not taken any step thereafter. However, it appears that the petitioner has made one more revision purportedly under Section 80-A of the Act on 15th June 2015, seeking reconsideration of his request for regularisation in the light of G.O. Ms. Nos.234 and 235 Housing and Urban Development (JD4(1) Department dated 30.10.2012.

6. From the aforestated facts, it is eloquent that both the notices, as aforestated, issued by the first respondent remained unchallenged and also the petitioner's request for construction of additional floors was rejected. Subsequent application for reconsideration is not permissible under any provisions of law. However, since the application is filed before the Government for reconsideration, we are not inclined to make any observation in respect of maintainability or merit.

7. The instant writ petition seeking a direction not to enforce proceedings for eviction, pending disposal of revision dated 15th June 2015 is not maintainable. The petitioner has exhausted all the opportunities afforded to him. The authorities have examined the case only after giving full opportunity to the petitioner and had taken a final decision, rejecting the regularisation holding that the building in question is constructed unauthorisedly.

8. In view of the foregoing, we are of the considered view that the petitioner is not entitled to any relief in respect of stalling the proceedings from removal of the admitted encroachment.

Resultantly, the writ petition fails and is accordingly dismissed. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

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Housing and Urban Development (UD1) Department
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+1cc to Mr.S.Jaganathan, Advocate, S.R.No.37840
+1cc to Mr.C.Johnson, Advocate, S.R.No.37891
+1cc to the Government Pleader, S.R.No.38023

W.P. No.22264 of 2015

VD(CO)
CA(11/08/2015)

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