

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No. 26826 of 2015

1. S.S. Haja Mohideen

2. M.Zakir Hussain

3. H. Seyed Ariff

4. H. Ashiq

5. Mrs.M.S.Nabishath Thahira

6. Mrs. Halimath Fathema

7. Mrs. A. Aminathn Hatheesa

..... Petitioners

vs.

1. Government of Tamilnadu,
rep. By Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai.8.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus forbearing the 2nd respondent from in any way interfering with the petitioners' premises constructed at Door No.154, New No.59, Dr.Muthulakshmi Salai, Adyar, Chennai 20, situated in T.S. No.18/5 Block No.16, Kalikundram Village, particularly by way of locking and sealing and demolition of the premises pending final determination of the petitioners' appeal petition dated 13.8.2015 pending before the 1st respondent under Section 80A and 80-A(3) of the Town and Country Planning Act.

For petitioner : Mr. L. Chandrakumar
for Mr.S.Sundaresan

For respondents : Mr. P.S.Sivashanmugasundaram
Spl. Govt. Pleader - R1

Mr. C. Johnson - R2

ORDER

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

Mr. P.S.Sivashanmugasundaram, learned Special Government Pleader accepts notice for the first respondent and Mr. C. Johnson, learned counsel 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 writ of mandamus forbearing the 2nd respondent from in any way interfering with the petitioners' premises constructed at Door No.154, New No.59, Dr.Muthulakshmi Salai, Adyar, Chennai 20, situated in T.S. No.18/5 Block No.16, Kalikundram Village, particularly by way of locking and sealing and demolition of the premises pending final determination of the petitioners' appeal petition dated 13.8.2015 pending before the 1st respondent under Section 80A and 80-A(3) of the Town and Country Planning Act.

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 within 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.

7 In view of the foregoing, status quo, in respect of the property in question, as obtained today, shall be maintained for a period of two weeks from today and the petitioner is also restrained from making any further construction on the property in question, in the meantime.

8 The writ petition stands disposed of, with the above observation. Connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. Secretary to Government,
Government of Tamilnadu,
Housing and Urban Development Department,
Secretariat, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai.8.

+1 cc to Mr.S.Sundaresan, Advocate, sr.45793
+1 cc to Mr.C.Johnson, Advocate, sr.45940
+1 cc to Government Pleader, sr.46275.

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