

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE DR. JUSTICE P. DEVADASS

W.P. No.36262 of 2015 and M.P. No.1 of 2015

Abid S. Madrasawala
S/o Saifudeen Madrasawala
Proprietor: Tools Center
No.41/83, Armenian Street
Ground Floor
George Town, Chennai 600 001

Petitioner

Vs.

1 The Government of Tamil Nadu
represented by the Secretary
to the Government
Ministry of Housing and
Urban Development
Fort St. George, Chennai

2 The Member Secretary
Chennai Metropolitan
Development Authority
Egmore, Chennai 600 008

3 Mohamed ul Bakir

4 Jaffer Sathik

Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the first respondent to dispose of the appeal dated 20.10.2015 filed as against the impugned notice issued by the second respondent in Letter No.EC/EA/N-1/5589/2015 dated 25.09.2015 within a specified time.

For petitioner :Mr. V.T. Gopalan, Senior Counsel
for M/s. Natthan and Associates

For R1 :Mr. N. Sakthivel
Government Advocate

For R2 :Mr. K. Raja Srinivas
Standing Counsel

O R D E R

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. N. Sakthivel, learned Government Advocate, accepts notice for the first respondent. Mr. K. Raja Srinivas, learned Standing Counsel, accepts notice for the second respondent. Notice to the private respondents is dispensed with at this stage, since no adverse order is passed against them in this writ petition. Thus, with the consent of the learned counsel for the petitioner, learned Government Advocate appearing for the first respondent and learned Standing Counsel appearing for the second respondent, 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 directing the first respondent to dispose of the petitioner's appeal (sic) application dated 20 October 2015 preferred under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 (for short "the Act") against the locking, sealing and demolition notice and de-occupation notice dated 25 September 2015 issued by the second respondent, within a specified time.

3 From a perusal of the records, it is seen that the second respondent, viz., Chennai Metropolitan Development Authority, has issued a locking, sealing and demolition notice and de-occupation notice on 25 September 2015 under Sections 56 and 57 read with Section 85 of the Act against the petitioner. Thereagainst, the petitioner has preferred an application before the first respondent under Section 80-A of the Act on 20 October 2015, which is pending consideration.

4 At this juncture, it is worth pointing out that as against the notice issued under Section 56 and/or 57 of the Act, what lies under Section 80-A before the Government is only an "application" and not an "appeal", as has been mistakenly used by the authorities. Under the said provision, on an application, the Government is vested with special powers to modify, annul or reverse or remit back for fresh consideration, the notices issued by the appropriate planning authority under Section 56(2-A) or Section 57(4), if it thinks fit.

5 Be that as it may, without going into the merits of the case, we are of the considered view that if the petitioner has filed an application under Section 80-A(3) of the Act, the same has to be considered within a period of two weeks.

6 Accordingly, we direct the first respondent to consider the petitioner's application for interim relief, if any, as early as possible, preferably within a period of two weeks and also to consider the petitioner's main application within the

statutory period prescribed under the provisions of law, on its own merits and in accordance with law, in the light of the order dated 29th September 2015 passed by a Division Bench of this Court, wherein, one of us (Satish K. Agnihotri, J.) was a Member, in Lalithkumar C. Soni Vs. Government of Tamil Nadu and others¹. It is made clear that for a period of two weeks from today, i.e., 16 November 2015, status quo as obtained today, in respect of the property in question, shall be maintained by both the parties and the petitioner is restrained from making any further construction in the property in question.

7 With the above directions, the writ petition stands disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Secretary to the Government
Government of Tamil Nadu
Ministry of Housing and Urban Development
Fort St. George, Chennai
- 2 The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai 600 008

+ 1 cc to M/s. Nathan & Asso. Advocate SR.61880
+ 1 cc to Mr.K. Raja Srinivas, Advocate Sr.61890
+ 1 cc to the Government Pleader Sr.62334

W.P. No.36262 of 2015

KK(CO)
EU 24.11.15

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1 W.PNos. 16392 of 2015 batch.