

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition Nos.13208 of 2016 and 8752 of 2016
and WMP.Nos.16351, 7753 and 7754 of 2016

M.S.Chandrasekaran ...Petitioner in W.P.13208/2016

- 1.M.Rangaswamy
- 2.R.Samuel
- 3.J.R.Krishnan
- 4.Juliet Selvakumar
- 5.Nithya Celene Yesudian
- 6.K.R.Palaniappan
- 7.A.Sankar Raj
- 8.A.Venkata Krishnan
9. V.G.Kannan
- 10.B.Vijayakumari
- 11.S.Sukanya

...Petitioners in W.P.8752/2016
Vs.

- 1.The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai-600 009
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajar Building
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008
- 3.The Commissioner
Corporation of Chennai
Ripon Building, No.113, Periyar EVR Salai
Park Town, Chennai-600 003
- 4.The Executive Engineer,TP-Enforcement
Central Regional Office
2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai-600 030

...Respondents in W.P.13208 of 2016

1.The Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009

2.The Chennai Metropolitan Development Authority
Rep. By its Member Secretary
Thalamuthu Natarajan Maligai
No.8, Gandhi Irwin Road
Chennai-600 008

3.The Secretary
Tamil Nadu Housing Board
No.493, Anna Salai
Nandanam, Chennai-600 035

4.The Regional Office-Central
Corporation of Chennai
Rep. By Executive Engineer
-TP Enforcement, 2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai-600 030

5.The Corporation of Chennai
Rep. By its Commissioner
113, Periyar EVR Salai
Chennai-600 003

...Respondents in W.P.8752/2016

Prayer in W.P.13208 of 2016:- Writ Petition filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned rejection order passed by the 1st respondent in G.O.(3D).No.70 dated 29/02/2016 and quash the same and further forbear the respondents 2 to 4 from taking any enforcement action against the petitioner's building in Flat No.9, Block No.332, in Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai-40.

Prayer in W.P.8752/2016:- Writ Petition filed praying to issue a Writ of Certiorari to call for the records of the respondents leading to the passing of the impugned Government Order G.O.(3D) No.6 dated 11.01.2016 Housing and Urban Development (UD VI(2) Department rejecting the petitioner's applications and in so far as the petitioners are concerned, quash the same since the impugned order is in violation of Section 113(c) of the Tamil Nadu Town and Country Planning Act and the guidelines framed by the Committee have not been notified by the first respondent.

For Petitioner
in W.P.13208/2016 : Mr.S.J.Jagadev

For Petitioner
in W.P.8752 of 2016 : Mr.S.Namasivayam

For Respondents
in W.P.13208/2016 : Mr.P.S.Sivashanmugasundaram,
Spl.Govt.Pleader, for R1
Mr.C.Johnson, Stndg counsel for R2
Mr.R.Arunmozhi, Stndg counsel for R3 and R4

For Respondents
in W.P.8752/2016 : Mr.V.Anandamurthy for TNHB (R3)
Mr.A.Nagaraj, for R4 and R5
Mr.P.S.Sivashanmugasundaram for R1
Mr.N.Sampath for R2

COMMON ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

The petitioners in the above Writ Petitions, being aggrieved by the order passed under Section 80-A of the Town and Country Planning Act, 1971, are before this court seeking to quash the impugned rejection order dated 29.02.2016 and 11.01.2016 respectively passed by the Housing and Urban Development Department.

2. In W.P.No.13208 of 2016, the petitioner seeks a suitable direction to respondents 2 to 4 to forbear them from taking any action against his building. In W.P.No.8752 of 2016, the petitioners sought to contend that the impugned order is in violation of Section 113(c) of the Tamil Nadu Town and Country Planning Act (hereinafter called as "Act").

3. In the accompanying affidavit filed along with the Writ Petitions, it is stated that the Petitioners are flat owners residing in Galaxy Apartment, 2nd Avenue, Anna Nagar, Chennai-40 and the construction of the said Apartment was way back in the year 1982-1983 and hence to renovate their respective flats, in the year 1999, an application with the proposed plan\orientation sketch was submitted to the 3rd respondent seeking "No Objection" and for additional construction. Accordingly, the 3rd respondent also submitted "No Objection Certificate". The flat owners also furnished development charges, security deposit which were duly remitted. According to the Petitioners, the construction was completed and applied for regularization of the construction. On 29.09.2005, the 2nd respondent issued a demolition notice dated 20.09.2005. Aggrieved by the said demolition notice, the petitioners filed W.P.Nos.33488 to 33503 of 2005 challenging the

said demolition notice. This court by order dated 20.10.2005 disposed of the said Writ Petitions by directing the 2nd respondent not to demolish the building in view of the fact that regularization application filed by the petitioner and other members were pending. The 2nd respondent, by letter dated 25.09.2014 and 01.10.2014, rejected all the applications seeking regularization. An appeal was filed before the 1st respondent under Section 80(A)(1) and (2) of the Town and Country Planning Act, 1971. Subsequent thereto the 4th respondent issued de-occupation notice to the petitioners and directed the petitioners to discontinue the occupation of the premises within 7 days. A representation was made to the 1st respondent seeking stay of the operation of the said notice dated 25.09.2014 and 07.10.2014. Petitioners also filed Writ Petitions before this court for restraining the 4th respondent from initiating any coercive action till the disposal of Appeal under Section 80(A) of the Act by the 1st respondent. In the said writ petitions, this court ordered status quo.

4. The Housing and Urban Development Department, by G.O. (3D).No.6 dated 11.01.2016 [W.P.No.8752/2016] and by G.O.(3D).No.70 dated 29.02.2016 [W.P.No.13208/2016], passed the order under Section 80-A of the Act, rejecting the said appeals. The operative portion of the rejection order is as under:-

"Since orientation sketch was obtained by hiding the fact of availability of common passage and open space; further for the additional construction, no plan approval was obtained. As regards the regularization application, the same has been rightly rejected by the CMDA, since the additional construction was carried out only after the cut off date of 28.02.1999. Also in few cases the additional construction is being used for commercial purpose."

5. At the time of admission of W.P.No.8752 of 2016, this court directed the Standing counsel for the Corporation of Chennai to get instruction regarding regularisation in the appeal under Section 113-C of the Act. The Secretary to Government, Housing and Urban Development Department also filed a counter affidavit reiterating the grounds taken in the impugned order.

6. In the above said W.P.No.8752 of 2016, W.M.P.No.16351 of 2016 has been filed seeking to implead the petitioner-N.Sekar, residing in No.333/1, Galaxy Apartment, 2nd Avenue, Anna Nagar, as 6th respondent in the main Writ Petition. It is stated in the affidavit filed in support of the said petition that the flat owners obtained No Objection from T.N.H.B., by manipulating the orientation plan and submitted false orientation plan to the 2nd respondent-CMDA. It is further stated that the impleading

petitioner filed W.P.5737 of 2016 before this court seeking a direction to the Authorities to demolish the unauthorised construction, erected by the individual owners pursuant to the appeal rejected by the Appellate Authority. It is further stated that he is a necessary party in the above Writ Petition and he is one of the aggrieved persons due to the acts and omission on the part of the Writ Petitioners and flat owners of Galaxy Apartment.

7. The learned counsel appearing for the impleading petitioner vehemently submitted that the construction carried out by the flat owners is an unauthorised construction and it caused encroachment in the Common Park area.

8. However, on the other hand, the learned counsel for the Writ Petitioners in both Writ Petitions submitted that as regards the encroachment and other aspects, a civil suit is pending and in the said civil suit, the impleading petitioner and the writ petitioners are parties and thus, there is no vested right lies with the impleading petitioner, whatsoever, to intermeddle in these Writ Petitions and thus, learned counsel for the Writ Petitioners sought to reject the application filed by the impleading petitioner.

9. We have heard the learned counsel for the Corporation of Chennai, CMDA and the learned Special Government Pleader, appearing for the Tamil Nadu Housing and Urban Development Department.

10. It is seen that on the apprehension of the Writ Petitioners that their common interest is likely to be affected by non-approval of the plan, they have subsequently filed application for approval of the modified plan and they were under the bonafide belief that the said modified plan would be approved and had proceeded to put up construction, however, belatedly the appeal filed by them under Section 80-A also came to be rejected.

11. The learned counsel for the Writ Petitioners submitted that the Writ Petitioners soon after rejection of their application under Section 80-A of the Act, have got enabling provision under Section 113-C of the Act to seek appropriate remedy in respect of approval of the building.

12. The learned counsel appearing for the impleading applicant submits that since already a final decision has been taken by the Government in the matter, the application filed by the Writ Petitioners under Section 113-C of the Act may not be allowed to be entertained further.

13. After hearing the learned counsel appearing for the respective parties, we are of the view that alternative remedy is available to the petitioners under Section 113-C i.e., exemption in respect of development of certain buildings, before the Government by way of revision. As per Section 113-C of the Act, Government is vested with special powers. The Proviso to Section 113-C enables the Government to dispose of application for revision within 90 days. Hence, the Government is the authority, which has to take a decision in the application for revision, if any, filed by the Writ Petitioners, keeping in mind the ecological balance, environmental problems, public interest and such other social, environmental issues in order to reduce the inconvenience to general public and also to ensure public safety.

14. Insofar as the Impleading Petition in WMP.No.16351 of 2016 is concerned, as contended by the learned counsel for the Writ Petitioners, there are allegations even against the proposed respondent/impleading petitioner in respect of some irregular development of property and unauthorised construction, so too, encroachments. Hence, we have no hesitation in disposing of the said impleading application with a direction to the impleading petitioner to approach the Government seeking proper relief.

15. The foregoing discussions lead us to the following conclusions:-

(i) For the present, we find that the Writ Petitioners can exhaust their remedy as provided under Section 113-C of the Act, raising all their grievances including the issue of exemption in respect of development of certain buildings and also allegations, if any, against the petitioner who filed impleading application herein in respect of encroachment and unauthorised development of the property, who is stated to be the owner of one of the floors situated in the property in question.

(ii) As discussed earlier, since a civil suit is stated to be pending before the civil court in respect of allegations of encroachment by the impleading petitioner vis-a-vis Writ Petitioners, it is for them to establish their case on the disputed questions of fact, which can be dealt only by the civil court after framing issues and making enquiry and as such, this court cannot intermeddle on such issues.

(iii) It is for the petitioners to file revision under Section 113-C before the Government within 1 month from the date of receipt of a copy of this order and seek appropriate remedy. Thereafter, it is for the respondent/Government to take a decision in accordance with law. Until a decision is taken by

the Government in the revision under Section 113-C of the Act, status quo as on date shall be maintained by the parties concerned.

With the above observation, the Writ Petitions are disposed of. No costs. Consequently, connected MPs are closed.

nvsri

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government of Tamil Nadu
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Fort St.George, Chennai-600 009
 - 2.The Member Secretary
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-TP Enforcement, 2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar, Chennai-600 030.
- + 1 cc to The Govt. Pleader, Sr 34731
+ 1 cc to Mr.V.Anandamurthy, Advocate Sr 34419
+ 1 cc to Mr.N.Sampath, Advocate Sr 35027
+ 1 cc to Mr.G.Palani, Advocate Sr 34249
+ 1 cc to M/s.R.Arunmozhi, Advocate Sr 34180
+ 2 ccs to S.Namasivayam, Advocate Sr 34232
KR/13/7/16

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