

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM

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

Writ Petition No.18375 of 2016
and WMP.Nos.16075 and 16076 of 2016

V.Thiraviam

...Petitioner

Vs.

- 1 State of Tamil Nadu rep. by
The Secretary to Government
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.
 - 5 The Tamil Nadu Housing Board
Rep. by its Secretary
No.331, Anna Salai
Nandanam, Cennai-600 035
- ...Respondents.

Writ Petition filed under Article 226 of the Constitution of India 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.6 dated 11.01.2016 and quash the same and further direct the respondents to reconsider the Regularisation Application submitted by the petitioner on merits with reference to Building Rules prescribed under Development Regulations and Section 113-C Tamil Nadu Town and Country Planning (Amendment) Act 2012.

For Petitioner : Mr.R.Bharath KUMar

For Respondents : Mr. P.S.Sivashanmuga Sundaram,
Spl.G.P for R1
Mr.C.Johnson for R2
Mr.A.Nagarajan for R3 & R4
Mr.V.Anandahmoorthy for R5

O R D E R

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

Being aggrieved by the order passed under Section 80-A of the Town and Country Planning Act, 1971, the Writ Petitioner is before this court, seeking to quash the impugned rejection order dated 11.01.2016 passed by the Housing and Urban Development Department. The petitioner further seeks a suitable direction to respondents to reconsider the Regularisation Application submitted by him on merits with reference to Building Rules prescribed under Development Regulations and under Section 113 (c) of the Tamil Nadu Town and Country Planning (Amendment) Act, 2012 (hereinafter called as "Act").

2. In the accompanying affidavit filed along with the Writ Petition, it is stated that the Petitioner is the flat owner 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 the respective flats in the said Apartment, 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 Petitioner, 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 petitioner along with other flat owners 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 dated 07.10.2014 to the petitioner and other flat owners and directed to discontinue the

occupation of the premises within 7 days. Hence, the petitioner filed appeal dated 17.10.2014 to Government under Section 80-A of the Act and also filed stay application. In the said appeal, the impugned rejection order dated 11.01.2016 was passed by the Government, against which, some of the flat owners filed W.P.Nos.7362 and 7363 and 7438 to 7444 of 2016 before this court, which came to be dismissed by order dated 01.03.2016. Thereupon, the aggrieved flat owners filed Special Leave to Appeal (C).Nos.8150-8152 of 2016, wherein, the Supreme Court, by order dated 04.04.2016, held as follows:-

"Learned counsel for the petitioner(s) argues that under the provisions of Section 113(C) of the Tamil Nadu Town and Country Planning Act, 1971, the petitioner(s) is entitled to regularisation of the additional construction made by him. In these circumstances, permit the petitioner(s) to file Review Petition before the High Court. Such Review Petition shall be filed within 15 days. For the period of 15 days no coercive steps shall be taken. However, whether the stay shall be extended or not would entirely be the discretion of the High Court."

3. We have perused carefully the impugned order passed by the Housing and Urban Development Department, in G.O.(3D).No.6 dated 11.01.2016, under Section 80-A of the Act, wherein, the reasons stated for the rejection of the appeal 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."

4. 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.

5. It is seen that on the apprehension of the Writ Petitioner and other flat owners 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 including the

petitioner under Section 80-A also came to be rejected.

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

7. After hearing the learned counsel appearing for the respective parties, we are of the view that alternative remedy is available to the petitioner 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 Petitioner, 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.

8. The foregoing discussions lead us to the following conclusion:-

For the present, we find that the Writ Petitioner can exhaust his remedy as provided under Section 113-C of the Act, raising all his grievances including the issue of exemption in respect of development of certain buildings. The petitioner is directed 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, if not already filed. Thereafter, it is for the 1st 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.

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

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nvsri

To

1

The Secretary to Government
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.

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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-30.

5

The Tamil Nadu Housing Board, Rep. by its Secretary
No.331, Anna Salai, Nandanam, Chennai-600 035

1 CC TO Mr.C. Johnson, Advocate Sr. 34516

1 cc to Mr.A. Nagarajan, Advocate, Sr. 34571

1 cc to M/s. R. Bharathkumar, Advocate, Sr. 34684

1 cc to Government Pleader, Sr. 34960

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