

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18431 of 2016

M/s. Fortis Malar Hospital Ltd.
rep. by its Director
No.52, 1st Main Road
Gandhi Nagar, Adyar
Chennai 600 020. ... Petitioner

Vs.

1. State of Tamil Nadu
rep. by the Secretary to Government
Housing and Urban Development Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Chennai Metropolitan Development Authority
rep. by its Member Secretary
No.8, Gandhi Irwin Salai
Egmore, Chennai 600 008. ... Respondents

Petition under Article 226 of the Constitution of India
praying for a writ of Certiorarified Mandamus calling for the
records relating to the Letter No.ES2/2965/2007 dated 03.5.2016
issued by the second respondent and quash the same and
consequently, direct the second respondent to refrain from in
any manner interfering with the petitioner's peaceful ownership
and possession of its construction at No.52, 1st Main Road,
Gandhi Nagar, Adyar, Chennai, pending disposal of the appeal of
the petitioner by the first respondent.

For Petitioner : Mr.R.Parthasarathy
For Respondent-1 : Mrs.Srijayanthi, Spl.G.P.
For Respondent-2 : Mr.C.Johnson

O R D E R

(Made by Huluvadi G.Ramesh,J)

This writ petition has been filed seeking to quash the notice dated 03.5.2016 issued by the second respondent and to direct the second respondent to refrain him from in any manner interfering with its peaceful ownership and possession of their construction at No.52, 1st Main Road, Gandhi Nagar, Adyar, Chennai, pending disposal of its appeal by the first respondent.

2. The petitioner is a reputed hospital established in the year 1992. In the year 1990, after obtaining permission, the petitioner demolished the then existed building at No.52, 1st Main Road, Gandhi Nagar, Adyar, Chennai, for re-development and thereafter, obtained permission for the construction of new building and the construction was completed in the year 1993, with certain deviations in the construction. Therefore, the petitioner filed an application before the second respondent for regularisation under Section 113-A of the Town and Country Planning Act, 1971. In the meantime, this Court, in Consumer Action Group v. State of Tamil Nadu [2006 (4) CTC 483], considered the issue of regularisation of unauthorised construction in Tamil Nadu and held that the applications filed before 22.02.1999 were held to be valid and directed to dispose of those applications within three months from the date of that order and also constituted a Monitoring Committee to process the applications for regularisation of unauthorised/deviated constructions. The Monitoring Committee, on 31.10.2007, after examining all the evidence, found that the building of the petitioner had been put up prior to the cut-off date and recommended for the approval of regularisation. However, on 24.3.2016, the petitioner was issued with the order dated 18.3.2016, rejecting the application of the petitioner for regularisation. Hence, the petitioner filed a statutory appeal before the first respondent under Section 113-A(6) of the Act and the same is pending. However, the second respondent has issued the impugned notice dated 03.5.2016, directing that the petitioner's hospital be locked and sealed/demolished within 30 days from the date of receipt of the said notice. Hence, the petitioner has come up with this writ petition.

3. Admittedly, there are some deviations in the construction of the petitioner and therefore, the petitioner has filed an application for regularisation. However, the same was rejected, even though it is recommended for approval by the Monitoring Committee. Hence, the petitioner has preferred the appeal under Section 113A(6) of the Town and Country Planning Act, 1961, within the statutory period and the same is yet to be disposed of. Since the petitioner has been served with the impugned

notice dated 03.5.2016, it apprehends that the building may be put under lock and seal even before the disposal of the appeal and that it could not carry out the essential services, like running of the hospital and that it would be put to untold hardship.

4. In the facts and circumstances of the case, we are of the view that the petitioner has to be protected till the disposal of the appeal against the order of rejection with regard to regularisation of the deviation in the construction, in compliance with the principles of natural justice. In that view of the matter, the second respondent is directed not to proceed further till the disposal of the appeal by the first respondent. This writ petition is ordered accordingly. There shall be no order as to costs. Consequently, WMP Nos.16135 and 16136 of 2016 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Salai,
Egmore, Chennai 600 008.

+lcc to the Government Pleader Sr.29815
+lcc to Satish Parasaran, Advocate sr.29330

W.P.No.18431 of 2016.

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srg 16/6/2016