

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P.No.18777 of 2014

1.N.B.Punniamoorthi

2.C.Vimala Devi

3.Geetha Bai

.. Petitioners

-vs-

1.Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.

3.The Assistant Executive Engineer - II,
Zone No.VII, Ambattur Zone,
Corporation of Chennai,
C.T.H. High Road,
Chennai-600 024.

4.C.Anna Durai

5.R.Kalamani

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 to 3 to remove all illegal and unauthorised constructions at Block No.9, Navarathna Apartments, Seethakathi Salai, Mogappair East, Chennai-600 037 put up by the respondents 4 and 5 and to restore the same in accordance with the planning permission and building plan issued by the respondents 1 to 3.

For Petitioner : Mr.B.Kumar
Senior Counsel
for

M/s.R.Anbukarasu

For Respondents : Mr.K.Rajasrinivas for R1
Mr.K.Soundararajan for R2 & R3

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioners have purchased Flats from the Tamil Nadu Housing Board in Block No.9, Navarathna Apartments, Seethakathi Salai, Mogappair East, Chennai-37. It is the case of the petitioners that respondent Nos.4 and 5, who are also the occupants of the Flats in the same building, have put up an unauthorised additional construction in Flat Nos.9/2 and 9/4 in the year 2013. In view of the unauthorised additional construction, action is stated to have been initiated under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter called "the said Act") calling for an approved plan from the Flat owners of 9/2 and 9/4, which notices are stated to have been served on 15.07.2014. It appears that no plans were submitted and thus, locking, sealing and demolition notices were issued on 06.9.2014.

2. The counter-affidavit filed by respondent No.3/Chennai Corporation states that respondent Nos.4 and 5 have filed W.P.No.22022 of 2014 before this Court and by an order dated 03.09.2014, status quo was granted pending disposal of the stay application. The endeavour of the Court was thus to grant protection till the stay application was disposed of.

3. It appears that thereafter, the appeal filed under Section 80-A of the said Act was rejected and not entertained, as the locking and sealing had actually not taken place. However, in such case, a Special Revision Petition would be maintainable in view of the judgment of this Court in Lalithkumar C.Soni v. Government of Tamil Nadu and others, decided on 29.09.2015. The challenge laid by respondent Nos.4 and 5 in W.P.No.30957 of 2015 to non-entertainment of the appeal was decided on 30.09.2015 by a Division Bench of this Court in view of the said judgment, setting aside the order. As to what transpired thereafter is unknown to the respondent authorities and the private respondents are unrepresented.

4. We may notice from paragraph 7 of the counter-affidavit of respondent No.3, the unauthorised additional building put up is as under:-

Sl.No.	Description	Unauthorised area
1	Ground Floor	136.38 Sq.m.
2.	First Floor	136.38 Sq.m.
	Total Area	262.76 Sq.m.

5. There are some general matters arising out of similar

cases about which we must express our concern here.

6. Firstly, the purpose of issuing notice calling upon the private party to submit a sanctioned plan is to verify the position qua the sanction. This is stated to be so as, if the building is more than the second floor construction, sanction would have been granted by the Chennai Metropolitan Development Authority/respondent No.1, while in any other case, by the Chennai Corporation. Thus, if the plan sanctioned is only upto the second floor, but actually the construction is of more than second floor, though CMDA may issue notice, it would not have any sanctioned plan as such and the sanctioned plan would be only with the Corporation. This being the objective, we do follow the said process, but then, if the authority states that it has no sanctioned plan available (indicated who sanctioned it) or fails to produce the sanctioned plan, then the concerned authorities must look into its own records and interact with the Corporation to verify the position of the sanctioned plan before issuing the locking and sealing notice. We say so as a number of writ petitions are being filed only because of non-production of the sanctioned plan, burdening the docket of this Court. We believe that if this process is followed, no cause of action would arise to approach the Court, as the authority would have verified from the records, whether it be of the CMDA/respondent No.1 or Corporation/respondent No.2, as to the legality of the construction.

7. We clarify that this in no manner absolves the obligation of the private parties from producing the sanctioned plan. But this is only a preliminary measure before the authorities to take the final action.

8. We may also note with concern that the non-disposal of the interim applications pending the appeals and the Special Revision Petitions filed under Section 80-A of the Act is another area where petitions are filed before this Court for obtaining interim stay. If these interim applications are promptly dealt with, the occasion for the same would not arise. As to how there could be an expeditious disposal of these appeals and sufficient officers are made available, it is a matter for the State Government and the Corporation to take care of. We may add here that this Court also is not granting interim orders (in such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action.

9. Now, turning to the given facts of the case, if no appeal/special revision petition is pending, the concerned authorities will proceed in accordance with law within a period of fifteen days of the receipt of the copy of this order. If the appeal/special revision petition is pending, then the same should be disposed of within a maximum period of two months of the receipt of the copy of this order.

10. The copy of this order be circulated by the Chennai Metropolitan Development Authority and the Chennai Corporation to all the concerned officers.

11. The writ petition, accordingly, stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
(to circulate the concerned officers under their control)
- 2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
(to circulate the concerned officers under their control)
- 3.The Assistant Executive Engineer - II,
Zone No.VII, Ambattur Zone,
Corporation of Chennai,
C.T.H. High Road,
Chennai-600 024.

+1cc to Mr.K. Soundararajan, Advocate, S.R.No.63854
+1cc to Mr.K. Rajasrinivas, Advocate, S.R.No.63807
+1cc to Mr. R. Anbukarasu, Advocate Sr.No.63695

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CA(/10/2016)

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