

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.21216 of 2016
and WMP.Nos.18134 and 18135 of 2016

K.Mohamed Ambalam

...Petitioner

Vs.

1 The Government of Tamil Nadu
Rep.by its Secretary to Government
Housing and Urban Development (UD-VI(1) Department
Secretariat, Chennai-600 009.

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

...Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent in G.O.(3D) No.94 dated 20.05.2016 in consequence of the order of the C.M.D.A's letter No.BC1/13913/ 10 dated 27.10.2010 insofar as approval of planning permission for regularization of the building put up at New Door No.69/2 (Old No.37/2), Sir Theyagaraya Road, Pondy Bazaar, T.Nagar Chennai-17 by quashing the same and consequently forbear the respondents 1 and 2 from initiating any coercive action of locking and sealing with regard to the above property.

For Petitioner : Mr.R.Mohan

For Respondents : Mrs.A.Sri Jayanthi,
Special Government Pleader for R1
Mr.C.Johnson for R2

O R D E R

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

Heard the learned counsel for the petitioner, Mrs.A.SriJayanthi, learned Special Government Pleader and Mr.C.Johnson, learned Standing counsel, who accept notice for the 1st and 2nd respondents.

2. This writ petition is filed praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent in G.O.(3D) No.94 dated 20.05.2016 in consequence of the order of the C.M.D.A's letter No.BC1/13913/ 10 dated 27.10.2010 insofar as approval of planning permission for regularization of the building put up at New Door No.69/2 (Old No.37/2), Sir Theyagaraya Road, Pondy Bazaar, T.Nagar Chennai-17 by quashing the same and consequently forbear the respondents 1 and 2 from initiating any coercive action of locking and sealing with regard to the above property.

3. Pursuant to the petitioner's appeal filed under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, the first respondent herein passed the impugned order dated 20.05.2016, rejecting the appeal pointing out that building has violations in respect of vital planning parameters. It is further pointed out that Appeals under Section 79 of the Act are purely of technical nature and their scope cannot be extended seeking exemption under Section 113 of the Act.

4. According to the learned counsel for the petitioner, the first respondent has passed the impugned order without affording any opportunity to the petitioner and also failed to assign any reason with regard to the grounds raised by the petitioner in the appeal petition. The learned counsel also contended that Sub-Section 3 of Section 79 requires the Appellate Authority to give an opportunity to the parties to make their representations before any orders are passed and as such, the order impugned has been passed in non-compliance of the principles of natural justice.

5. Taking into consideration the submissions made by the learned counsel for the petitioner, we are of the view that it is always open to the Appellate Authority to consider the request of the petitioner regarding opportunity of personal hearing. In fairness to the contention of the Writ Petitioner with regard to non-compliance of the principles of natural justice, the matter is remanded back to the 1st respondent for de novo consideration in accordance with law and after affording an opportunity of personal hearing.

6. In the result, the impugned order dated 20.05.2016 passed by the 1st respondent is set aside and the matter is remanded back for de novo consideration. The Writ Petition is disposed of accordingly. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1 The Government of Tamil Nadu
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Secretariat, Chennai-600 009.

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

+1 cc to Mr.R.Mohan, advocate,sr.34374

+1 cc to Mr.C.Johnson, Advocate,sr.34515

rj(co)
krd 22/7

W.P.No.21216 of 2016



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