

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2016

CORAM

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

Writ Petition No.23408 of 2016
and
WMP.Nos.20068 and 20069 of 2016

M/s.Sankranti Hotels Pvt. Ltd
rep. by its Director
Mr.D.Velusamy

...Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by Secretary,
Housing and Urban Development,
Fort St. George, Chennai- 600 009.

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

3.Tipirneni Praveena
W/o.Rama Rao

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the order of the first respondent - Letter No.8325/UD1/2015-6, dated 31.05.2016 and the consequential communication of the second respondent in Letter No.ESI/11036/2008 dated 16.06.2016 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, SC for
Mr.J.A.S.Sathish Kumar

For R1 : Mrs.A.Sri Jayanthi, Spl.Govt.Pleader
For R2 : Mr.K.Rajasrinivas
For R3 : Mr.P.S.Raman, SC for
Mr.K.Gowtham

ORDER

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

Challenging the order of the first respondent dated 31.05.2016 and the consequential communication of the second respondent dated 16.06.2016, the petitioner has filed this Writ Petition.

2. The case of the petitioner, as averred in the writ petition is as follows:

2.1 The petitioner is a registered company and is carrying on the business of Hotels and Restaurants under the name and style of M/s.Sankranti Hotels. During the course of such business, the petitioner has entered into a lease deed dated 11.02.2011 with the third respondent in respect of the building premises at New No.552, Old No.135, T.T.K. Road, Alwarpet, Chennai-600 018, for running a Hotel with lodging facility along with Pub/Bar and Restaurant. As per the lease deed, the petitioner has paid a sum of Rs.60,00,000/- towards advance and has taken possession of the premises consisting of basement + four floors. Thereafter, the petitioner took over the work of completing the construction and also furnished the building to suit the purpose of running a Hotel and restaurant.

2.2 Later on, the petitioner came to understand that the permissible construction limit for that premises was ground floor + 3 floors only and the building was constructed in deviation from the plan approved by the second respondent, which fact was suppressed by the third respondent/land owner.

2.3 Though certain deviations in the building construction were found out, the petitioner was advised that those deviations could be either regularized or modified/rectified structurally in order to bring it within the permissible parameters. Based on the opinion given by some Engineering Experts, in order to generate some income atleast to cover the investment made by them, the petitioner has started the restaurant alone in the ground floor of the building, without utilizing the upper floors of the same.

2.4 In the mean while, the third respondent demanded possession of the building premises on 'as is where is' condition, which compelled the petitioner to invoke arbitration proceedings as per the lease deed. Arbitration was conducted by a Retired Judge at Hyderabad and an award dated 30.03.2013 was passed against the petitioner. Aggrieved over the award, the petitioner preferred OP.No.1305/2013 before the II Additional Chief Judge, City Civil Court, Hyderabad. The said petition was dismissed on 18.02.2015, against which, CMA No.353/2015 was

filed before the High Court of Andhra Pradesh and a conditional order of interim stay was obtained. The conditional order has been complied with by the petitioner and the appeal is pending.

2.5 While so, the second respondent issued notices against the deviation and usage of the building. Thereafter, the second respondent locked and sealed the building in question on 29.05.2014. In order to protect their investment in the building, the petitioner employed security personnel to safeguard the building from theft and vandalism.

2.6 Thereafter, the petitioner filed an appeal in Appeal No.9913/2014 under Section 80A of the Tamil Nadu Town and Country Planning Act seeking De-sealing of the building premises. Subsequently, the Government vide letter dated 24.03.2015 directed the second respondent to de-seal the building premises for a period of three months, so as to enable the petitioner to carry out the rectifications of the violations and to restore the building as per the plan approved by CMDA. Pursuant to the same, the second respondent vide letter dated 26.03.2015 directed the petitioner to remit Rs.37,710/- towards de-sealing charges, which was also duly paid. Accordingly, the building was de-sealed by the second respondent on 26.03.2015.

2.7 Challenging the action of the second respondent in de-sealing the building, the third respondent/land owner preferred WP.No.9990/2015, which was disposed on 07.04.2015 by directing the second respondent to pass fresh orders on merits, after hearing the third respondent and also suspending the communication dated 26.03.2015 till fresh orders were passed. Thereafter, the third respondent made a representation dated 06.07.2015 expressing her willingness to rectify the deviations and undertook to carry out any modifications that were required by the second respondent and regularise the construction. Based on the said undertaking, the first respondent by an order dated 31.05.2016 directed the second respondent to de-seal the building for a period of six months to rectify the defects/deviations. Pursuant to the same, the second respondent issued a letter dated 16.06.2016 calling upon the third respondent to remit Rs.5,923/- towards expenditure for de-sealing the building. Aggrieved over the same, the petitioner is before this Court with the present writ petition for the relief stated supra.

3. Learned senior counsel appearing for the petitioner submits that apart from paying the security advance of Rs.60 lakhs, the petitioner has invested around Rs.6 crores towards completion of the building and towards furnishing and provision for Hotel infrastructure. Due to the deviations in the building constructed by the third respondent, the petitioner was unable to utilize the entire rooms constructed, so as to satisfy the

actual requirement. As a result, the petitioner was ineligible for getting a pub/bar licence, which would substantially affect the income to be generated by them. Learned senior counsel also submits that due to failure of the third respondent/land owner to take steps to rectify the deviations/defects as pointed out by the second respondent, the petitioner has taken effective steps to regularise the building constructed in accordance with the approved plan, which was stopped by the third respondent by initiating subsequent proceedings. Further, with an intention to dispossess the petitioner from the building premises, the third respondent has given an Undertaking to the first respondent expressing her willingness to rectify the deviations/defects. Therefore, in the event of the third respondent being allowed to carry out the deviations, the investment made by the petitioner in the building in question, would be spoiled, which would in turn cause irreparable loss and hardship to the petitioner.

4. Per contra, learned senior counsel appearing for the third respondent, by relying on Section 115 of the Tamil Nadu Town and Country Planning Act, submits that if the owner fails to execute any work, which he is required to do so, under the provisions of this Act, the occupier shall execute the said work, whereas, in the present case, the third respondent/land owner has expressed her willingness to carry out necessary rectifications as pointed out by the second respondent. In such circumstances, the petitioner being the occupier of the building, has no right to regularise the construction of the building, as per the approved plan.

5. We have considered the submissions made on either side and perused the materials placed before this Court.

6. The facts made available herein would reveal that there are some deviations/defects in the construction of the building in question, as per the plan approved by the second respondent. In order to get optimal use of the entire building premises, it is just and necessary to rectify those deviations/defects in terms of the planning permit. In this case, both the petitioner/occupier as well as the third respondent/owner have sought for permission to carry out the deviations/defects as pointed out by the second respondent. As rightly argued by the learned senior counsel for the third respondent, as per Section 115 of the Act, in the event of the owner being failed to carry out the rectifications/modifications, the role of the occupier to execute the work will take place. Therefore, we are of the view that as the third respondent being the owner of the building in question, has already given an Undertaking before the first respondent to carry out necessary rectifications and has obtained necessary orders in this regard, the question of permitting the petitioner to carry out the deviations/defects with respect to the building in question, does not arise.

Accordingly, we find no reason to interfere with the order so passed by the first respondent and consequential communication issued by the second respondent, in de-sealing the building, so as to enable the third respondent to carry out necessary rectifications. Consequently, the third respondent shall go on with the process of carrying out the necessary rectifications.

7. However, this Court finds some bonafide in the apprehension of the petitioner that in the event of the third respondent being allowed to carry out the necessary rectifications, the investment made by the petitioner to the tune of Rs.6 Crores by way of furniture, interior design, etc., would be spoiled, which would in turn, cause irreparable loss and hardship to them. Therefore, we permit the petitioner to remove all the goods, fixtures and fittings invested by them in the building in question, with the knowledge of the third respondent, before starting the work of rectifications by the third respondent. It is also made clear that the petitioner cannot have any grievance for removal of excess construction, if any, in violation of the approved plan and during the said process, the petitioner is permitted to be present.

8. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous petitions are closed.

rk

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary, Government of Tamil Nadu,
Housing and Urban Development,
Fort St. George, Chennai- 600 009.

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

+ 2 ccs to Mr.J.A.S.Sathish Kumar, Advocate Sr 40244
+ 1 cc to Mr.K.Rajasrinivas, Advocate Sr 40041
+ 1 cc to The Govt.Pleader, Sr 40254
+ 1 cc to Mr.K.Gowtham Kumar, Advocate Sr 40177

KR/5/8/16

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