

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

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

Writ Petition Nos.24140 to 24142 of 2016
and
WMP.Nos.20667 to 20669 of 2016

J.Venugopal ...Petitioner in WP.No.24140 of 2016
N.S.Shanmugam ...Petitioner in WP.No.24141 of 2016
P.Anandraj Swaminathan ...Petitioner in WP.No.24142 of 2016

Vs.

- 1.The Secretary to Government of Tamil Nadu
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.

...Respondents
in all WPs

Writ Petitions 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 first respondent in G.O.(3D) No.100 dated 08/06/2016 and quash the same and further forbear the respondents 2 to 4 from taking any enforcement action against the petitioners' buildings at Flat No.1, Block No.334; Flat No.12, Block No.332; and Flat No.11, Block No.332 respectively in Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai-600 040 until the petitioners are enabled to apply for regularisation under Section 113-C of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.S.J.Jagadev in all the WPs

For R1 : Mr.P.S.Sivashanmugasundaram, SGP

For R2 : Mr.K.Raja Shrinivas

For R3 & R4 : Mr.V.C.Selvasekaran
in all the WPs

COMMON ORDER

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

Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, Mr.K.Raja Shrinivas and Mr.V.C.Selvasekaran, learned standing counsel, accept notice on behalf of respondents 1, 2 and 3 and 4 respectively. With the consent of both the parties, all the writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioners in the above Writ Petitions, being aggrieved by the order passed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, are before this Court seeking to quash the impugned rejection order dated 08.06.2016 passed by the first respondent/Government. The petitioners also seek a suitable direction to respondents 2 to 4 to forbear them from taking any action against their buildings, till they file revision under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971.

3. It is averred by the petitioners in their respective writ petitions as follows:

(i)The petitioners are the owners of their respective flats at Flat No.1, Block No.334; Flat No.12, Block No.332 and Flat No.No.11, Block No.332 in Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai-600 040. The said Galaxy Apartments consist of 5 Blocks containing 42 flats measuring to an extent of 521 sq.ft., which were developed by Tamil Nadu Housing Board

in the year 1983 and sold the same to 42 Flat owners either directly from Tamil Nadu Housing Board or through second sale from the previous flat owners.

(ii) Since the extent of flats was only 521 sq.ft., which was not sufficient for occupation, the Association decided to go for additional construction of all the flats. In the year 1999, after obtaining No Objection Certificate from Tamil Nadu Housing Board for putting up additional construction, the Association applied for planning permission to Chennai Metropolitan Development Authority. The CMDA, on scrutiny, issued a demand notice dated 13.03.2001 to the Association for payment of development charges, security deposit and other charges, amounting to Rs.1,54,500/-, which was paid by the Association on behalf of its members.

(iii) In the mean while, there was a dispute among the members, due to which, some of the members have withdrawn the power of attorney given to the Association. Even though the planning permission was ready, the approval could not be received and the planning permission was returned on 28.09.2001 on the ground of incomplete submission, objections raised by some members of the Association and withdrawal of power of attorney. Subsequently, the second respondent issued demolition notices dated 29.07.2004, 20.09.2005 and 20.09.2005 respectively.

(iv) Thereafter, the third respondent issued Locking and Sealing and Demolition notice dated 23.07.2014, which was followed by De-occupation notice dated 25.09.2014 issued by the fourth respondent. Challenging the same, the petitioners filed appeals to the first respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. The said appeals were rejected vide G.O.(3D) No.100 dated 08.06.2016, which is impugned herein.

4. Learned counsel for the petitioners submits that the impugned order is in violation of Section 113-C of the Tamil Nadu Town and Country Planning Act (hereinafter called as "Act"). He further submits that the Writ Petitioners soon after rejection of their appeals under Section 80-A of the Act, have got enabling provision under Section 113-C of the Act to seek appropriate remedy in respect of approval of their buildings.

5. Learned Special Government Pleader appearing for the first respondent/Government submits that already a final decision has been taken by the Government, with respect to the issue involved herein, by the impugned order. However, if the petitioners file revision under Section 113-C of the Act, the same may be considered by the first respondent.

6. We have also heard learned standing counsel appearing for CMDA and Corporation of Chennai and perused the available materials.

7. It is seen from the order impugned herein that the first respondent rejected the appeals filed by the petitioners under Section 80-A of the Act, on the following grounds:

"...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 and 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 and also in few cases the additional construction is being used for commercial purpose."

8. However, after hearing the learned counsel appearing for the respective parties, we are of the view that alternative remedy is available to the petitioners 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 Petitioners, 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.

9. Therefore, we permit the petitioners to file revision under Section 113-C of the Tamil Nadu Town and Country Planning Act before the first respondent/Government within a period of one month from the date of receipt of a copy of this order and seek appropriate remedy. Thereafter, it is for the first respondent/Government to take a decision in accordance with law within a period of two months from the date of receipt of the revision from the petitioners. 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.

10. Accordingly, all the Writ Petitions are disposed of.
No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu
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Chennai 600 030.

+3 ccs to Mr.S.J.Jagadev Advocate sr.39246
+1 cc to Mr.K.Rajashrinivas Advocate sr.39390
+1 cc to Government Pleader sr.39546

W.P.Nos.24140 to 24142 of 2016

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