

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.07.2016

CORAM

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

W.P.No.24494 of 2016
and
WMP NO.20923 OF 2016

Y. Sivaarul Durai

... Petitioner

Vs.

1. Chennai Metropolitan Development Authority,
rep. By its Member Secretary,
No.1 Gandhi Irvin Road, Egmore,
Chennai-600 008.

2. Government of Tamil Nadu,
rep. By its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, to forbear the first respondent or anybody on their behalf from initiating any coercive action of locking and sealing and demolition with regard to the building put up at Door No.2, 23/2, 23/3, New No.3, 6 & 8, 10/2 and 10/3, Duraiswamy Road, Mangesh Street, T.Nagar, Chennai-17, pending determination of the appeal dated 6.7.2016 submitted by the petitioner to the second respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act.

For Petitioner : Mr.V.J.Arul Raj

For Respondents: Mr.K.Raja Shrinivas (R1)

Mr.A.Srijayanthi, Spl.GP (R2)

ORDER

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

This Writ Petition has been filed by the petitioner, praying for the issuance of a writ of Mandamus, to forbear the first respondent or anybody on their behalf from initiating any coercive action of locking and sealing and demolition with regard to the building put up at Door No.2, 23/2, 23/3, New No.3, 6 & 8, 10/2 and 10/3, Duraiswamy Road, Mangesh Street, T.Nagar, Chennai-17, pending determination of the appeal dated 6.7.2016 submitted by the petitioner to the second respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

2. It is the case of the petitioner that after obtaining planning permission from the first respondent, he constructed above mentioned building and after getting completion certificate, he put it for usage. While so, a notice, dated 11.4.2016 was issued by the officials of the first respondent to the petitioner under Sections 56 and 57 of the Tamil Nadu Town and Country Plan Act, 1971, calling upon him to stop work and for approved plan. The petitioner has sent a reply to the said notice along with planning permit, copy of the approved plan and necessary documents in detail. However, by letter, dated 12.4.2016, the first respondent issued Locking, Sealing and demolition Notice, dated 30.5.2016, stating that basement floor has been converted as Jewellery shop as against the approval for usage of AHU Lumber room (Non FSI area). According to the petitioner, this notice was issued without affording an opportunity to him and contrary to the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

3. It is further case of the petitioner that he gave a reply on 15.6.2016 to the said notice, dated 30.5.2016 along with revised plan for change of usage of basement floor for commercial purpose and requested the first respondent to drop all further actions. Further, the petitioner also preferred an appeal on 6.7.2016 to the second respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act along with stay petition. The grievance of the petitioner is that despite pendency of the appeal before the second respondent, the officials of the first respondent now and then used to come to the premises and threaten to initiate action by locking and sealing the building. Being apprehending with the said action, the petitioner has come forward with the present writ petition.

4. Heard both sides and perused the available materials.

5. Admittedly, the petitioner has preferred an appeal before the second respondent against the proceedings, dated 30.5.2016 under Section 80-A of the Act and it is pending for consideration. Therefore, it is for the second respondent authority to consider the same and pass appropriate orders therein, in accordance with law, after affording an opportunity to the petitioner.

6. Accordingly, without advertng to the merits of the case, the second respondent is directed to consider the appeal, dated 6.7.2016 preferred by the petitioner, in accordance with law and on merits, after affording an opportunity to the petitioner, within a period of two months from the date of receipt of a copy of this order. Till such orders are passed, the respondents are directed not to take any coercive steps.

7. The Writ Petition is disposed of, with the above direction. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

2. Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.

1 cc to The Government Pleader, sr.41927
1 cc to Mr.V.J.Arulraj, Advocate, sr.41772
1 cc to Mr.K.Rajashrinivas, Advocate, sr.41755

W.P.No.24494 of 2016

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kra 08.08.2016