

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.26228 of 2016

G.Soundari

.. Petitioner

-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 Buildings
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

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Mandamus, forbearing the
respondents from taking any enforcement action against the
additional construction put up by the petitioner in Flat
No.332/2, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600
040, until disposal of the Review Petition R.P.No.54/2016,
pending on the file of this Hon'ble Court.

For Petitioner

:: Mr.S.J.Jagadev

For Respondents :: Mrs.A.Srijayanthi
 Special Government Pleader for R1
 Mr.K.Raja Shrinivas for R2
 Mr.A.Nagarajan for R3 & R4

ORDER

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

The petitioner seeks for issuance of a writ of mandamus, forbearing the respondents from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/2, Galaxy Apartments, Second Avenue, Anna Nagar, Chennai 600 040, until disposal of the Review Petition R.P.No.54/2016 pending on the file of this Hon'ble Court.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader as well as the respective learned standing counsel for the CMDA and the Corporation.

3. It appears that the petitioner had put up additional construction in the property in question and alleging that the said construction is an unauthorized one, the second respondent is said to have issued a demolition notice followed by the notices of locking and sealing and de-occupation being issued by the third respondent. The petitioner is also said to have preferred a special revision petition before the first respondent under Section 80-A of the Tamil Nadu Town and Country Planning Act, which came to be rejected on 11.1.2016. Though the petitioner unsuccessfully challenged the said order, the matter is now pending in review petition before this Court after the order of the Supreme Court in S.L.P.Nos.8150 to 8152 of 2016 dated 4.4.2016.

4. Be that as it may, considering the fact that an alternative remedy of revision is available under Section 113-C of the Tamil Nadu Town and Country Planning Act before the Government, under similar circumstances, at the instance of the very same flat owners who were similarly placed like that of the petitioner, we have disposed of the W.P.Nos.24140 to 24142 of 2016, by order dated 14.7.2016, observing as follows:-

"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 the 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."

5. In the light of the above, we permit the petitioner to file a 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 petitioner. 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. The writ petition is disposed of accordingly. Consequently, W.M.P.No.22488 of 2016 is closed. No costs.

sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ss

To

1. The Secretary to Government
Housing and Urban Development Department
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Chennai 600 009
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2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar
+ 1 CC to Mr.S.J.Jagadev, Advocate SR NO 42338
+ 1 CC to Mr.A.Nagarajan, Advocate SR NO 42493
+ 1 cc to K.Raja Shrinivas, Advocate SR NO 42560

W.P.No.26228 of 2016

CTR[CO]
GP/

सत्यमेव जयते

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