

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.26745 of 2016

A.Appees

... 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 Certiorarified Mandamus, calling for the records of the first respondent comprised in their order dated 08.06.2016 bearing G.O.(3D) No.100, Housing and Urban Development Department [UD-VI(2)] Department and quash the same as arbitrary, illegal, unconstitutional and consequently forbear the respondents from taking any action against the petitioner's building at Flat No.334/2, Block No.334, Galaxy Apartment, 2nd Avenue, Anna Nagar, Chennai 600 040 till the petitioner exhaust his remedy under provisions of the Tamil Nadu Town and Country Planning Act.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.P.S.Sivashanmugasundaram
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 certiorarified mandamus, calling for the records of the first respondent comprised in their order dated 08.06.2016 bearing G.O.(3D) No.100, Housing and Urban Development Department [UD-VI (2)] Department, quash the same as arbitrary, illegal, unconstitutional and consequently forbear the respondents from taking any action against the petitioner's building at Flat No.334/2, Block No.334, Galaxy Apartment, 2nd Avenue, Anna Nagar, Chennai 600 040 till the petitioner exhausts his remedy under the provisions of the Tamil Nadu Town and Country Planning Act.

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. Aggrieved by the said notice, the petitioner is 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 and the same has been rejected by the impugned Government Order. Hence the petitioner is before this Court.

4. 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.Nos.22965 & 22966 of 2016 are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Secretary to Government
Housing and Urban Development Department
Fort St.George
Chennai 600 009
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4. The Executive Engineer, TP-Enforcement
Central Regional Office
2nd Cross Street (East)
Pulla Avenue, Shenoy Nagar
Chennai 600 030

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.44335
+1cc to Mr.S.Ramesh, Advocate, S.R.No.44737
+1cc to Mr.K.Raja Shrinivas, Advocate, S.R.No.44391
+1cc to the Government Pleader, S.R.No.44764

सत्यमेव जयते

W.P.No.26745 of 2016

NM(CO)
CA(18/08/2016)

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