

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM

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

Writ Petition No.28804 of 2016
and WMP.Nos.24856, 24857, 24858 of 2016

1.D.Rajappa
2.R.Jayalakshmi

...Petitioners

Vs.

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government
Housing and Urban Development Department
Secretariat, St.Fort George
Chennai-600 009
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi-Irwin Road
Egmore, Chennai-600 008
- 3.The Executive Officer
Naravarikuppam Town Panchayat
Redhills, Chennai-600 052
- 4.B.Dhayalan

...Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relevant to the order in G.O.(3D).No.111, dated 28.07.2016 passed by the 1st respondent and quash the same as illegal, improper, unreasonable and against the principles of natural justice and thereby direct the respondents to regularize the building of the petitioners by namely D.R.Super Market and Furniture, situated at Survey No.86/2, Naravarikuppam Village, G.N.T.Road, Redhills, Chennai-600 056 under Section 113-C of the Town and Country Planning Act, 1971.

For Petitioners : Mr.B.Gopalakrishnan

For Respondents : Mr.P.S.Sivashanmugasundaram
Spl.G.P. For R1
Mr.K.Raja Srinivas for R2
Mr.V.Jayaprakash Narayanan, for R3.

O R D E R

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

Heard Mr.B.Gopalakrishnan, learned counsel for the petitioner, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, accepting notice for the 1st respondent, Mr.K.Raja Srinivas, learned Standing counsel accepting notice for the 2nd respondent and Mr.V.Jayaprakash Narayanan, learned counsel accepting notice for the 3rd respondent.

2. This Writ Petition is filed challenging the order passed by the 1st respondent dated 28.07.2016, wherein, the petitioners' appeal filed under Section 79/80 A of Tamil Nadu Town and Country Planning Act, 1971, (hereinafter called as "Act") was rejected.

3. It appears that the petitioners herein had already approached this court by way of W.P.No.19869 of 2016 praying for a direction to the respondents 1 to 3 therein to remove the lock and seal put up in the petitioner shop viz., D.R.Super Market, till the disposal of the statutory appeal pending before the 1st respondent-Government. This court, also by order dated 10.06.2016, directed respondents 1 to 3 to remove the lock put to premises; further directed not to take coercive steps till the disposal of statutory appeal.

4. The Government examined the Appeal under Section 79/80A of the Act and rejected the appeal by G.O.(3D).No.111 Housing and Urban Development (UD-VII(1)] Department dated 28.07.2016, holding that the building of the petitioner has been constructed without any planning permission and also violates development regulations in respect of Floor Space Index, set back, parking besides encroachment and the same is not liable for regularization. It was further pointed out that Government vide G.O.(Ms).No.279, dated 21.06.2005 had rejected his appeal under Section 113 A (6) of the Act; there is no record regarding the petitioner having made appeal application to the Justice Rajeswaran Committee; in any case, till date, Government have not invited applications under section 113-C of Tamil Nadu Town and Country Planning Act, 1971.

5. The learned Counsel appearing for the Petitioner submits that as against the rejection of appeal under Section 79 of the Act, there is a provision under Section 113-C of the Act and under Section 113-C exemption of any clause of building developed on or before 01.07.2007 could be considered by the Government as per Ordinance No.6 of 2012. He further submits that a direction may be granted to the respondents not to take any coercive action against the petitioners' building, in pursuant to rejection of appeal under Section 79 of the Act, till the case of the petitioners is considered by the Government under Section 113-C of the Act.

6. On a perusal of the Typed set of Papers filed in the Writ Petition, we find that the Petitioners raised additional grounds of appeal on 30.06.2016 in Appeal under Section 79\80A of the Act and the same was forwarded to the office of the 1st respondent with a request to consider their case under Section 113-C of the Act.

7. Considering all the above facts and circumstances of the case, we are of the considered view that it is for the 1st respondent/Government to consider the case of the petitioners under Section 113-C of the Act, if need be, after giving a personal opportunity of hearing to the petitioners and do the needful in accordance with law within three months from the date of receipt of a copy of this order. Till such time, the respondents shall not take any coercive steps against the petitioners' building in question. It is open to the Writ Petitioners to give a detailed representation to the 1st respondent in respect of the regularization scheme of the building.

8. Further, 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.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvsri

To

1. The Secretary to Government
The State of Tamil Nadu
Housing and Urban Development Department
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Chennai-600 009
 - 2.The Member Secretary
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 - 3.The Executive Officer
Naravarikuppam Town Panchayat
Redhills, Chennai-600 052.
- +1 cc to M/s.B.Gopalakrishnan Advocate sr 47120
+1 cc to M/s.K.Rajasrinivas Advocate sr 47436
+1 cc to Government Pleader sr 47706

W.P.No.28804 of 2016

aa23/08/2016

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