

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition Nos.31221 to 31225 of 2016
& WMP Nos.27090 to 27094 of 2016

R.Ganapathy ...Petitioner in W.P.No.31221/2016
V.Mangalam ...Petitioner in W.P.No.31222/2016
Sumathi Dora Manoranjini ...Petitioner in W.P.No.31223/2016
T.Venkatesan ...Petitioner in W.P.No.31224/2016
G.Appakudam ...Petitioner in W.P.No.31225/2016

Vs.

- 1 The Secretary to Government of Tamilnadu
Housing and Urban Development Department
Fort St.George, Chennai-9
 - 2 The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajar Building
No.1 Gandhi Irwin Road
Egmore Chennai-8
 - 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 W.Ps.

Prayer in W.P.No.31221/2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from taking any enforcement

action against the additional construction put up by the petitioner in Flat No.332/10, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petition SR 101972/2016 pending on the file of this Honourable court.

Prayer in W.P.No.31222/2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/7, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petition SR 101976/2016 pending on the file of this Honourable court.

Prayer in W.P.No.31223/2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/5, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petitions SR.101980/2016 pending on the file of this Honourable court.

Prayer in W.P.No.31224/2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/6, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petition SR 101988/2016 pending on the file of this Honourable court.

Prayer in W.P.No.31225/2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/8, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petition SR 101984/2016 pending on the file of this Honourable court.

For Petitioner
in all W.Ps. : Mr.S.J.Jagadev

For Respondents : Mrs. K.Dhananjeyan
n all W.Ps. Special Government Pleader for R-1
Mr.K.Raja Shrinivas for R-2
Mr.A.Nagarajan for R-3

COMMON ORDER

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

Heard the learned counsel for the petitioner, Mr.K.Dhananjayan, learned Special Government Pleader, accepting notice for the 1st respondent, Mr.K.Raja Shrinivas, learned Standing counsel accepting notice for the 2nd respondent and Mr.A.Nagarajan, learned Standing counsel accepting notice for the 3rd respondent.

2. The petitioner seeks a direction to the respondents to forbear them from taking any enforcement action against the additional construction put up by the petitioner in Flat No.332/8, Galaxy Apartments, 2nd Avenue, Anna Nagar, Chennai 600 040 until disposal of the Review Petition SR 101984/2016 pending on the file of this court.

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 14.07.2016, observing as follows:-

" 89. 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, connected WMPs are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government of Tamilnadu,
Housing and Urban Development Department,
Fort St.George, Chennai-9.
 - 2 The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Building,
NO.1 Gandhi Irwin Road,
Egmore Chennai-8.
 - 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.
- +5cc to M/S.A.Nagarajan, Advocate Sr.51945,
51944, 51943, 51942, 51941
- +5cc to M/S.S.J.Jagadev, Advocate Sr.51952, 51951, 51949, 51953,
51950
- +5cc to M/S.K.Raja Srinivas, Advocate Sr.52328, 52327,
52324, 52325, 52326
- +1cc to the Government Pleader Sr.52221

W.P.Nos.31221 to 31225 of 2016

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srg 17/10/2016

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