

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.10.2016

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice R.MAHADEVAN

W.P.No.35514 of 2016

S.Edison

... Petitioner

Versus

1.The Secretary to Government
Housing and Urban Development
Department, Fort St.George,
Chennai 600 009.

2.The Member Secretary,
Chennai Metropolitan Development
Authority, Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road, Chennai.

3.The Commissioner,
Corporation of Chennai,
Park Town, Chennai.

4.The Regional Deputy Commissioner,
(South), Enforcement Cell,
Adyar, Chennai 600 020.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 1st respondent vide letter No.2450/UD-VII(2)/2016-3, dated 13.07.2016 confirming the notice vide No.5634/2015 dated 06.01.2016 issued by the 4th respondent and quash the same and consequently, forbearing the respondents Nos.2 to 4 from taking any enforcement action against the petitioner building at Guru Complex, Plot No.B9/A2, 2nd Main Road, S.No.216 PT, Thiruvalluvar Nagar, Thiruvannamipur, Chennai - 600041.

For Petitioner ::: Mr.D.Selvam
For Respondents ::: Mr.M.K.Subramanian
Government Pleader for R.1
Mr.C.Manishanker
Additional Advocate General
assisted by
Mr.N.Sampath for R.2
Mr.A.Nagarajan for R.3 and R.4.

O R D E R

(The Order of the Court was made
by The Hon'ble The Chief Justice)

The petitioner claims to be the owner of the Shops Nos.G-1 to G-4 at Guru Complex, Plot No.B9/A2, 2nd Main Road, S.No.216 PT, Thiruvalluvar Nagar, Thiruvannamipur, Chennai. The plot was originally allotted to one D.Sumathy by the Tamil Nadu Housing Board on 11.08.1989 and on possession being handed over on 13.10.1998, a sale deed was executed in her favour in 1999. On application being made, approval was granted for construction of ground plus two floors by approval No.1409/1999 on 14.09.1999.

2.It appears that there may be certain deviation in the building which resulted in issuing of communication dated 08.11.2002 to D.Sumathy for payment of regularisation fee. There were further amounts demanded by letter dated 22.06.2004. D.Sumathy is stated to have sold the ground floor shops to A.V.Paramaguru by sale deed dated 22.07.2004.

3.D.Sumathy also paid the charges for Metrowater infrastructure on 02.12.2004 on demand being raised on 01.12.2004 and this was informed by the CMDA to CMWSSB. D.Sumathy was informed by CMDA that final orders on her regularisation application would be taken up after the general issue is dealt with by the High Court as per intimation dated 02.12.2004.

4. The petitioner purchased the property, which vested in A.V.Paramaguru by a sale deed registered on 24.12.2008. A Government Order was issued on 30.10.2012, containing Rules under Section 113-C of the Town and Country Planning Act, 1971 (hereinafter referred to as 'the said Act') for assessment and collection of amount for exemption of buildings. We may note that this Government Order was subsequently quashed by the Judgment in K.R.Ramaswamy alias Traffic Ramaswamy v. State of Tamil Nadu, rep by its Chief Secretary (2014(2)CTC 225). In view of the pronouncement of the said Judgment on 10.02.2014, the regularisation application filed by the petitioner was rejected on 21.04.2014 and a show cause notice was issued by the

CMDA/second respondent on 25.08.2014 citing deviations in the approved plan, and the petitioner was asked to produce the original approved plan. The said document is stated to have been produced and the petitioner made a representation on 10.11.2014, but vide notice dated 06.01.2016, the Regional Deputy Commissioner, Enforcement Cell, Chennai/4th respondent directed the petitioner to restore the building to its prior condition, failing which action will be taken to lock and seal the premises under Sections 56 and 57 of the said Act.

5. The petitioner filed a revision petition under Section 80-A of the said Act. Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 reads as under:

'80-A. Special Powers of Government.- (1) Notwithstanding anything contained in section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2-A) of section 56 or under section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing:

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section(1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they deem fit, pending the exercise of the powers under sub-section (1) in respect thereof.'

6. In view of the threat held out by the notice dated 06.01.2016 to lock and seal the petitioner's premise, W.P.No.9718 of 2016 was filed. That writ petition was disposed of along with other writ petitions by a common order dated 17.03.2016, in view of an earlier Division Bench Judgment in Lalith Kumar C.Soni vs. Government of Tamil Nadu and others (2015(6) CTC 107) directing that the application preferred by the petitioner under Section 80-A of the said Act could be treated as filed within the statutory period of time and as per

the provision of law. A decision on merits was directed to be made. We may add that the Judgment in Lalith Kumar C.Soni vs. Government of Tamil Nadu and others (2015(6) CTC 107) has dealt with the interpretation of Sections 80-A, 56 and 57 of the said Act qua unauthorised constructions, opining that in case of initiation of proceedings to lock, seal and demolish the building, the remedy of statutory revision before the Government was available, as the denial of such a remedy and to take recourse only to the appeal provision of Section 80-A of the said Act would imply that till the appeal is decided, the premise would remain sealed. This special revision petition also is maintainable under Section 80-A of the said Act. Interim protection was granted to the petitioner for two weeks. We may also note that the petitioner availed of the appeal remedy on 08.02.2016.

7. Notice was also issued by the 4th respondent to the petitioner to de-occupy the premises on 30.05.2016, and subsequently, personal hearing was granted to the petitioner on 29.06.2016 and 06.08.2016. Finally, all the aforesaid aspects were dealt with on 13.07.2016 by the impugned order, rejecting the case of the petitioner.

8. In order to appreciate the impugned order, we would like to set out the perspective regarding introduction of certain provisions in the said Act to save persons who had violated building plans. The enabling provisions introduced were Sections 113-A and 113-C of the said Act. Section 113-A was introduced by Amendment Act 58 of 1998. These provisions were assailed and ultimately, the Hon'ble Supreme Court upheld the validity of the said provisions by Judgment in Consumer Action Group and Another vs. State of Tamil Nadu and Others (2000) 7 SCC 425), but quashing the 62 Government Orders stated to have been passed in terms of the said Sections. The Hon'ble Supreme Court observed that Section 113-A was a one time measure brought by the State Government.

9. In order to once again get over this difficulty, Ordinance 7/2007 was brought in, which was later on converted into Act 31 of 2000, extending the time for regularisation of the building constructed unauthorisedly on or before 31.08.2000 by filing an application on or before 31.10.2000. There was subsequently Ordinance 5 / 2001, resulting in Amendment Act 17 of 2001 and Amendment Act 7 of 2002. All the three aforesaid were quashed by the Division Bench of this court on 23.08.2006 in Consumer Action Group vs. State of Tamil Nadu (2006 (4) CTC 483). The result of the aforesaid was that initially, the cut-off date of 28.02.1999 alone survived for regularisation of the building, for which a monitoring committee was constituted on 30.11.2006.

10. Once again, the State Government gave a window period of one year by issuing Ordinance 1 / 2007 for violations up to 02.06.2007, but the same was quashed by the Division Bench vide Judgment in J.Venugopal and others vs. The Secretary to Government of Tamil Nadu, Housing and Urban Development, Chennai and Others (CDJ 2016 MHC 3785).

11. The Honourable Supreme Court was thus approached, where status quo order was passed qua demolition of the unauthorised construction. There was another Ordinance 4/2008, which was also promulgated, extending the date for regularisation up to 25.07.2009, which was assailed in W.P.No.20765 of 2008 before this Court. That writ petition was dismissed, as the matter was pending before the Honourable Supreme Court and the appeal filed was tagged with the pending matter before the Hon'ble Supreme Court.

12. The second Master plan came to be notified on 02.09.2008, which is stated to have relaxed many Rules, and Ordinance 2/2009 was passed, replaced by Act 7/2010. The challenge to the same in W.P.No.3885 of 2010 was also directed to be listed after the disposal of the SLPs pending before the Hon'ble Supreme Court.

13. The Hon'ble Supreme Court by an order dated 15.03.2007 vacated the status quo order granted earlier in the pending SLPs, making it clear that the pendency of the SLPs would not come in the way of the progress or the disposal of any pending matters. The SLPs were subsequently disposed of on 23.02.2013. A further Ordinance No.6 of 2012 was issued under Section 113-C of the said Act. The validity of Section 113-C was upheld by the Judgment in K.R.Ramaswamy alias Traffic Ramaswamy v. State of Tamil Nadu, rep by its Chief Secretary (2014(2)CTC 225) delivered on 10.02.2014, but Government Orders Nos.234 and 235 notifying the Rules under Section 113-C were quashed on the ground that the relevant material and important aspects for giving proper effect to amendments have not been taken into consideration while framing the guidelines and the Rules.

14. We may note that these Rules have still not been framed, though Justice S.Rajeswaran Committee was formulated and made its recommendations. We are thus of the view that in a sense, the remedy under Section 113-C is illusory and cannot be availed of till the Rules are framed. We say so, in view of the order passed by a coordinate Division Bench in J.Venugopal and others vs. The Secretary to Government of Tamil Nadu, Housing and Urban Development, Chennai and Others (CDJ 2016 MHC 3785) that the remedy under Section 113-C is separate from Section 80(A) of the said Act, a proposition which cannot be disputed.

15. We may also add that these provisions have been inserted as a matter of relaxation to the offenders and thus, unless the Rules under Section 113-C are notified, they cannot come to the aid of the defaulters, as stated aforesaid.

16. Now turning to the impugned order, the obstruction in the way of the petitioner is that he has been unable to establish that the building in the present form existed prior to the cut-off date 23.02.1999. In fact, it could never be so established as the plan itself was granted on 14.09.1999, after the cut-off date. That being the position, really there is no ground to assail the impugned order. The deviations in the case of the petitioner have been set out in paragraph-2 of the impugned, which reads as under:

S.No	Decription	As per approved Plan	As per Site	Remarks
1.	Northern side setback	2.00m	--	2.00m deviated
2.	Eastern side setback	3.00m	2.82m (avg)	0.17m deviated
3.	Western side setback	3.00m	2.20m (avg)	0.80m deviated
4.	Southern side setback	3.50m (avg)	3.23m (avg)	0.27 m deviated
5.	Ground Floor area	204m ²	369.60m ²	274.6m ² deviated
6.	First Floor area	95m ²	369.60m ²	369.60 m ² unauthorised-residential usage
7.	Second Floor area	--	369.60m ²	369.60m ² unauthorised Residential usage.
8.	Third Floor area	--	369.60m ²	369.60m ² unauthorised Residential usage.
9.	Terrace	--	129.22m ²	129.22m ² unauthorised Temporary Tin Sheet Roof structure (Gym & Karate Centre) and Vodafone Tower.

If one may say so, there are large deviation from the sanction of the plan.

17. The only submission of the learned counsel for the petitioner, faced with the aforesaid position, is that the remedy under Section 113-C of the said Act is a separate remedy. We believe that it is really not a remedy, but in the nature of a relaxation and certainly, the petitioner is not precluded from moving an application under Section 113-C of the said Act. But the ground reality is that at present, it may be a futile exercise, as the Government has not notified the rules. In the absence of the Rules, it cannot be said that there is an inherent right to seek regularisation, more so in view of the orders passed by the Hon'ble Supreme Court and this Court referred to aforesaid. We may not say more on this subject at present.

18. No ground is made out to interfere under Article 226 of the Constitution of India in respect of the impugned order dated 13.07.2016.

19. The aforesaid will not preclude the petitioner to seek time from the respondent/authority to bring the building in conformity with the original plan.

20. We once again emphasise to the respondents/authorities the importance of having a culmination to the issue of framing of Rules qua Section 113-C of the said Act.

21. The writ petition accordingly stands dismissed, leaving the parties to bear their own costs. Consequently connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government, Housing and Urban Development
Department, Fort St.George, Chennai 600 009.

2.The Member Secretary, Chennai Metropolitan Development
Authority, Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road, Chennai.

3.The Commissioner, Corporation of Chennai, Park Town, Chennai.

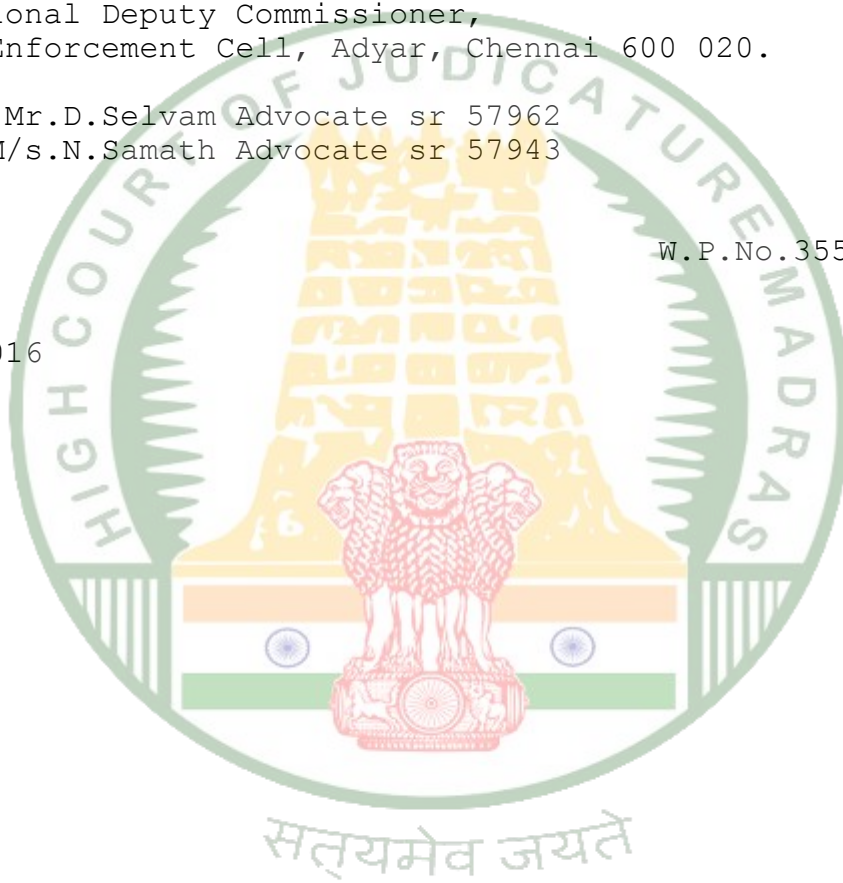
4.The Regional Deputy Commissioner,
(South), Enforcement Cell, Adyar, Chennai 600 020.

+2 ccs to Mr.D.Selvam Advocate sr 57962

+1 cc to M/s.N.Samath Advocate sr 57943

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