IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2017

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.13144/2017 and WMP.No.14131 of 2017

S.Kanniammal .. Petitioner

vs

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Housing and Urban Development,
Secretariat, Fort St George,
Chennai-600 009.

2.The Corporation of Chennai,
Rep.by its Commissioner,
Ripon Building,
Chennai 600 003.

3.The Executive Engineer,
Zone VIII,
Corporation of Chennai,
Shenoy Nagar,
Chennai 600 030 ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Third respondent, culminating in the notice bearing No.Zone-VIII/Ward-97/894/2017 dated 16.05.2017 and received by the petitioner on 17.05.2017, quash the same.

For Petitioner : Mr.M.Prabharan

For Respondents : Mr.P.Sanjay Gandhi, AGP for R1
Mr.V.C.Selvasekaran for R2 and R3

**ORDER**

By consent, the writ petition is taken up for final disposal.

2. The petitioner is the owner of the residential Plot No.7/3, Chakravarthi Nagar, Ayanavaram, Chennai-600 023 and aggrieved by the de-occupation notice dated 06.11.2014 issued by the 3rd respondent, filed an appeal before the 1st respondent.

3. The said official, vide order dated 17.03.2016, has taken into consideration the plight of the petitioner, who had been living in the plot for over three decades along with the family, passed an order directing the Corporation of Chennai to de-seal the building and if it is ascertained that

any construction has been added to the premises post 01.07.2007, it cannot be regularized and the additional portion should be sealed forthwith. Subsequently, the 3rd respondent has caused inspection and after carried out the inspection and noted the following deviations:

| S.No | Description | Area as on site | Area as per Property tax statemnt | Area not assessed for property tax (Additional Construction area) |
|---|---|---|---|---|
| 1 | Ground Floor | 89SQ M | 400 SQ FT (37.16 SQM) | 51.84 SQ M |
| 2 | **First Floor**<br>RCC Roof<br>Ac Sheet<br>Total Area | <br>30 SQ M<br>38 SQ M<br>68 SQ M | 350 SQ FT (32.52SQ M) | 35.48 SQ M |
| | **Total Area** | **157 SQ M** | **69.68 SQ M** | **87.32 SQ M** |

4. The 3rd respondent, vide communication dated 09.02.2017, addressed that the petitioner has brought to the knowledge about the deviated construction and observed that 87.32 SQ M area is unauthorised and that no further assessment has been made between the assessment year 1993 and 01.07.2007 and also informed that follow up action, for the unauthorised additional construction portion, as per the Tamil Nadu Town and Country Planning Act, 1971 will be initiated without further intimation. The 3rd respondent has also issued the impugned De-occupation Notice dated 16.05.2017 and challenging the legality of the same, the present

writ petition is filed.

5. The writ petition was entertained and taking note of the submission made by the learned counsel appearing for the petitioner that the inspection of the premises has been carried out, this Court, vide order dated 26.07.2017, directed the 3rd respondent to cause inspection of the premises of the petitioner subject to payment of necessary charges and in compliance of the same, the inspection was carried out and it was found that the petitioner has put up construction after 01.07.2007, which was evidenced by the Property Tax receipt of the petitioner.

6. The learned counsel appearing for the petitioner would submit that due to inadvertence, the additional construction which came into being prior to 2007, having brought within the head of the property tax assessment and levy and she may be permitted to avail the remedy under Section 113 C of the Tamil Nadu Town and Country Planning Act, 1971 read with G.O.Ms.No.110 and 111, Housing and Urban Development [UD4(3)] dated 22.06.2017.

7. Mr.P.Sanjay Gandhi, learned Additional Government Pleader

appearing for the 1st respondent and Mr.V.C.Selvasekaran, learned Standing counsel appearing for the respondents 2 and 3 would submit that action has been taken on deviated construction in accordance with law.

8. This Court has considered the rival submission and also perused the materials placed before it.

9. The 3rd respondent, vide communication dated 09.02.2017, after noting down the deviated construction has also observed that "from the above statement it is ascertained that 87.32 sq m area is unauthorized and also no further assessment has been made between the previous assessment year 1993 and 01.07.2007". It is the categorical stand of the petitioner in their additional affidavit dated 21.09.2017 that she had put up construction during the year 1984 and thereafter, she did not made any additional construction and not put up any unauthorized construction post 01.07.2017.



10. In the light of the stand of the petitioner, if the petitioner is so advised and if permissible under law, she is at liberty to avail the benefit under Section 113-C of the Tamil Nadu Town and Country Planning Act,

1971 read with G.O.Ms.No.110 and111, Housing and Urban Development [UD4(3)] dated 22.06.2017. The petitioner is also at liberty to submit an application to the Revenue Department, Corporation of Chennai for assessment of the property tax for the additional construction area admeasuring to an extent of 87.32 sq m and as and when such application is received, shall give disposal in accordance with law as expeditiously as possible. The petitioner is also having an effective alternative remedy under 80-A of the Tamil Nadu Town and Country Planning Act, 1971 against the impugned notice dated 16.05.2017.

11. In the light of the stand of the petitioner that no construction has been made post 01.07.2007, the petitioner is at liberty to file a Special Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 against the impugned De-occupation dated 16.05.2017, before the 1st respondent along with the relevant authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the 1st respondent, upon receipt of the same, shall entertain the said revision, if the papers are otherwise in order and then take up the petition for stay and give disposal within a period of two weeks and in the alternative, shall take up the revision and give disposal within a period of

ten weeks by passing pass orders on merits and in accordance with law and depending upon the result of the petition for stay and main revision itself, the petitioner is at liberty to work out her remedy in accordance with law. The respondents 2 and 3, till the disposal of the petition for stay filed along with the special revision petition, shall defer further decision in terms of the impugned notice dated 16.05.2017. It is also made clear that till the disposal of the special revision petition by the 1st respondent, the petitioner shall not alter the physical structure of the property and shall not create any third party right in respect of the superstructure in question.

12. The writ petition stands disposed of with the above direction. No Costs. Consequently, connected Miscellaneous Petition is closed.

 [M.S.N.,J] [N.S.S.,J]

21.09.2017

Index : No

Internet : Yes



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**Note**: Registry is directed to return the original impugned order to the learned counsel for the petitioner under due and proper acknowledgment.

M.SATHYANARAYANAN,J.

And

N.SESHASAYEE,J.

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To

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