

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24887 of 2017

&

WMP.26275/2017

N.Varadharajan .. Petitioner

Versus

1. The Zonal Executive Engineer,
Corporation Zone - IX,
Greater Chennai Corporation Zonal Office,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai 600 034.
2. The Assistant Executive Engineer,
Unit 25, Corporation Zone - IX,
Greater Chennai Corporation Zonal Office,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai 600 034.

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct the Respondents to receive the Application u/s.49 of the Town and Country Planning Act, 1971 together with the modified plan for retention of the building in Flat No.1A, Vaikuntam Flats, bearing Door No.34/51, Solaiappan Street, Mylapore, Chennai 600 004.

For Petitioner : Mr.T.K.S.Gandhi
For RR 1 & 2 : Mr.A.Nagarajan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents 1 and 2.

2. The petitioner claims that he and his wife are the joint owners of Flat No.1A, Vaikuntam Flats bearing Door No.34/51, Solaiappan Street, Mylapore, Chennai - 600 004 admeasuring to an extent of 1120 Sq.ft together with an undivided share of 500 Sq.ft of land comprised in Survey No.2974/2 & 2974/3, measuring 2704.28 Sq.ft in very same survey number, Mylapore Village which was purchased from one C.Revathi @ Gowri Chandrasekaran owner of the land and M/s.Geeyam Builders, through a registered Sale Deed bearing Doc.No.3122/2015 dated 19.10.2015.

3. The petitioner would further aver that he and his wife are in absolute possession and enjoyment of the same and it is also accessed to property tax by the Corporation of Chennai and also subject to other statutory levies. The petitioner would further aver that the building is an ordinary building consisting of stilt + ground + first floors consisting of six units.

4. It is the specific case of the petitioner that he and his wife were shocked to receive Stop Work notice dated 23.06.2017 issued by the 2nd respondent alleging that there are deviation in the Stilt Floor and OTS area and immediately, they contacted the builder and informed them that the lift and stair case as per the sanctioned plan was to put up on the northern side and however, it was constructed on the southern side and the first floor OTS area was reduced as the neighbour had objected to the same as it invaded his privacy and easementary rights and also for Vasthu purposes.

5. The petitioner would further aver that the entire construction of the building is in accordance with sanctioned plan and it has been built by minor realignment of the internal walls without modifying the external walls and as such they are entitled for retention under Section 49 read with 56[3] of the Tamil Nadu Town and Country Planning Act, 1971 and accordingly, the petitioner prepared the necessary application along with the relevant documents and prescribed fee and went to the office of the 1st respondent for submission of the same and they refused to receive the same and in the interregnum, further steps are being taken to demolish the offending constructions and therefore, came forward to file this writ petition.

6. This Court heard the submissions of Mr.A.Nagarajan, learned Government Advocate appearing on behalf of respondents 1 and 2 and also perused the materials placed before it.

7. This court in the light of the facts and circumstances of the case and without going into the merits of the claim

projected by the petitioner in this writ petition, grants liberty to the petitioner, if he is so advised, to submit an application to the 1st respondent for retention of the building under Section 49 read with 56[3] of the Tamil Nadu Town and Country Planning Act, 1971 along with necessary documents and the prescribed fees within a period of four weeks from the date of receipt of copy of this order and upon receipt of the same, the 1st respondent may entertain the application if the papers are otherwise in order and thereafter consider and dispose of the application in accordance with law within a period of six weeks thereafter and communicate the decision taken to the petitioner and till such time, the respondent shall defer further action in terms of impugned stop work notice dated 23.06.2017 and it is also made clear, the petitioner till the disposal of the above application by the 1st respondent shall not alter the physical features of the superstructure.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rka/dh

To

1. The Zonal Executive Engineer,
Corporation Zone - IX,
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2. The Assistant Executive Engineer,
Unit 25, Corporation Zone - IX,
Greater Chennai Corporation Zonal Office,
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Nungambakkam, Chennai 600 034.

+1cc to Mr.A.Nagarajan, Advocate in sr.no.67993

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GMR (CO)
NR 26/10/2017