

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.26400 of 2017
and
W.M.P.No.28063 of 2017

Paul T.Vedamuthu

...

Petitioner

Vs

1. The Commissioner and Secretary
Town & Country Planning
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2. The Member Secretary
Chennai Metropolitan Development Authority
Gandhi Irvin Road, Chennai

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance a Writ of Certiorarified Mandamus to call for the rescords from the second respondent in No.EC/C-II/8506/2017 dated 19.09.2017 under sections 56 (2) sub clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act 1971 requiring discontinuation of the usage of the deviated / unauthorized building as alleged by the second respondent and to restore the construction in compliance with the planning permission granted as per P.P.A. Approved by C.M.D.A. Vide their letter No.BC1/11111/2008 dated 13.09.2011 relating to the property / building in New No.42 (D.No.79/51), Thirumalai Pillai Road, T.Nagar, Chennai comprised in T.S.No.6897, Block No.108-B, Zone No.08, Division No.119

and quash the said proceedings and further directing the second respondent to refrain himself from proceedings any further pursuant to this notice No.EC/C-II/8506/2017 dated 18.09.2017 under sections 56 (2) sub clause (iii) and (2A) of the Tamil Nadu Town and Country Planning Act 1971.

For Petitioner : Mr.S.A.Rajan
For R1 : Mrs.M.E.Raniselvam, AGP
For R2 : A.Kumar

ORDER

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

By consent, the writ petition itself is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mr.A.Kumar, learned standing counsel accepts notice on behalf of the 2nd respondent.

2 The premises bearing New Door No.79, Old No.51, Thirumalai Pillai Road, T.Nagar, Chennai-600017, is owned by the petitioner and according to him, as per the original planning permission, Ground + First floors office building has been put up and subsequently, vide Planning Permit No.6679 in Letter No.BCI/11111/2009 dated 09.10.2011 and the 2nd respondent has accorded planning permission to put up an additional construction of second and third floors residential building with three

dwelling units over the existing superstructure. The petitioner was issued with Locking and Sealing and Demolition Notice dated 27.06.2017, alleging that usage of second and third floors have been converted from residential to commercial purpose and certain deviations and violations have also been noted. The petitioner, in response to the said notice, submitted his reply dated 25.07.2017 denying the same and however, it was followed by De-Occupation notice dated 18.09.2017, for which also, the petitioner has submitted his response dated 28.09.2017 stating that he is in the process of regularisation of the above deviations and therefore, requested the second respondent not to proceed with the De-Occupation notice dated 18.09.2017 and also give him an opportunity to regularise the deviation as observed by them. The petitioner challenging the legality of the De-Occupation Notice dated 18.09.2017 has filed this writ petition.

3 Mr.S.A.Rajan, learned counsel appearing for the petitioner would submit that the petitioner may be granted liberty to file a special revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, along with a petition for stay and also moved the second respondent for regularisation of the deviated construction and till such time, further proceedings may be deferred.

4 The Court heard the submissions of Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the 1st respondent and Mr.A.Kumar, learned standing counsel appearing for the 2nd respondent, who would submit that since the petitioner has unauthorisedly converted the user from residential to commercial purpose and also encroached upon the space gifted for road widening, action has been rightly taken in accordance with law.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 It is relevant to extract the deviations/ violations pointed out in the Locking and Sealing and Demolition Notice dated 27.06.2017 issued by the second respondent.

<i>S.No.</i>	<i>Parameter</i>	<i>As per approved plan</i>	<i>As on site</i>	<i>Deviation to approved plan</i>
1.	Usage	2 nd and 3 rd floor – Residential	2 nd & 3 rd floor – Commercial (office use)	Converted from Residential to Commercial (office use)
2.	Splay	4.5m x 4.5m	3.0 m x 3.0m	Less by 1.5m X 1.5m
3.	Space gifted for Road widening has been encroached.			

The petitioner was also issued with the impugned De-Occupation Notice dated 18.09.2017.

7 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, grants liberty to the petitioner to file a special revision under Section 80 -A of the Tamil Nadu Town and Country Planning Act, 1971, to the 1st respondent along with a petition for stay with necessary and authenticated documents within a period of two weeks from the date of receipt of a copy of this order and upon the receipt of the same, the first respondent or the official delegated, shall entertain the revision petition, if the papers are otherwise in order and shall take up the stay petition and give a disposal in accordance with law within a further period of two weeks thereafter and dispose of the main revision petition itself in accordance with law within a further period of twelve weeks from the date of disposal of the stay petition and communicate the decision taken to the petitioner. The second respondent, till the entertainment of the revision petition as well as the petition for stay, shall defer the further proceedings in terms of the impugned De-Occupation Notice dated 18.09.2017. It is made clear that till the disposal

fo the revision petition by the 1st respondent, the petitioner shall not create any third party rights and shall not alter the physical features of the superstructure in question.

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

[M.S.N., J.] [N.S.S., J.]
10.10.2017

Internet : Yes

AP

To

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Town & Country Planning
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Fort St. George, Chennai – 600 009.

2. The Member Secretary
Chennai Metropolitan Development Authority
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M.SATHYANARAYANAN, J.,
and
N.SESHASAYEE, J.,

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