

xvcIN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.10.2017
CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.26667 of 2017
and WMP.No.28395 of 2017

R.Kalyanaraman

.. Petitioner

Vs.

The Chennai Metropolitan Development Authority
Rep. By its Member Secretary
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

.. Respondent

Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of Letter No.EC/N-I/14116/2017 dated 09.10.2017, issued by the respondent and to quash the same and direct the respondent to consider the case of the petitioner for regularization in terms of G.O.Ms.Nos.110 & 111 of the Housing and Urban Development Department dated 22.06.2017, within a reasonable time frame fixed by this Court.

For Petitioner : Mr.S.Shanmugavelayutham
Senior Counsel
for Mr.L.Prabakaran
For Respondent : Mr.A.Kumar

O R D E R

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

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

2. Mr.A.Kumar, learned counsel accepts notice on behalf on behalf of the sole respondent.

3. The deponent of the affidavit is the wife of the petitioner and she is the Power of Attorney of the petitioner namely R.Kalyaraman. It is averred in the affidavit that her husband, the petitioner herein is working in abroad and he became the owner of the property bearing Municipal Door No.198/5, F-Block, Anna Nagar East, Chennai, with a plinth area

of 2,620 sq.ft. together with an undivided share area of 1,229 sq.ft. through a registered sale deed bearing Document No.5177 of 2004 dated 15.12.2004 on the file of the Sub-Registrar Office, Anna Nagar. The petitioner would further aver that she herself, her husband and her children continued to remain in possession and enjoyment of the said superstructure. It is further averred by the petitioner that originally the land in which the superstructure has been put up belonged to her father-in-law namely Mr.L.Ramaswamy and he had entered into an agreement during the year 2002 with one R.Ganesh, S/o.N.Rajagopalan, who is the proprietor of M/s.Sugan Builders to develop the said property and thereafter, a portion of the developed property was settled in favour of her husband, vide settlement deed bearing Doc.No.5177 of 2004 dated 15.12.2004. The petitioner would further claim that her father-in-law has appointed the said Ganesh to carry out all the construction works including obtaining planning permission and co-ordinating with the respondent-Authority for development of the property. Her father-in-law was stated to have died on 04.10.2016.

4. It is further stated by the petitioner that to her shock and surprise, she received the impugned notice dated 09.10.2017 from the respondent and the said notice was issued to all the occupants of the said premises, calling upon them to de-occupy from the premises and on enquiry, it came to know that the builder namely R.Ganesh has filed W.P.No.25427 of 2003, praying for issuance of writ of certiorarified mandamus to quash the proceedings of the first respondent therein/CMDA dated 22.08.2003 and to further direct the said authority to accord planning permission pursuant to the application dated 05.09.2003 and vide order dated 13.08.2017, the said writ petition was dismissed as withdrawn and it has also been observed by the learned Single Judge in the said order that "if any construction is made in violation of the planning permission, the first respondent/CMDA is directed to demolish the building and submit a report to the Registrar General of this Court within fifteen days and thereafter, shall produce the compliance report before the learned Judge within a week on furnishing the report, and if no action has been taken by the officials of the respondents in this case, departmental action has to be initiated against them and punishment has to be imposed".

5. Mr.S.Shanmugavelayutham, learned Senior Counsel appearing for the petitioner, assisted by the learned counsel Ms.Kritika Kamal, would submit that the builder/developer on an earlier occasion had approached this Court by filing W.P.No.25427 of 2003, challenging the notice of the first respondent/CMDA dated 22.08.2003 and with a consequential direction to the CMDA, in pursuant to his application dated 05.09.2003, and upon request

made by the builder/writ petitioner therein, the said writ petition was dismissed as withdrawn, vide order dated 18.07.2017, and admittedly, the petitioner in the present case is one of the occupants and he having not been arrayed as a party in W.P.No.25427 of 2003, he was not aware of the filing of the earlier writ petition filed by the builder, as well as the order of withdrawal in the said writ petition. It is the further submission of the learned Senior Counsel appearing for the petitioner that though the Single Bench of this Court has permitted the petitioner therein to withdraw W.P.No.25427 of 2003 and also made an observation that the first respondent/CMDA has to carry out the demolition of building, in case the construction is made in violation of the planning permission and to file a compliance report, and in pursuant to the said order only, the present impugned notice came to be issued. It is further contended by the learned Senior Counsel that the father-in-law of the deponent of the affidavit had entered into an agreement with one R.Ganesh, the proprietor of M/s.Sugan Builders, to develop the property in question and later appointed him as his Power Agent and it is he, who had put up the deviated construction in the form of additional floor in the property, where the writ petitioner and her family now resides and it is further contended that in the light of the de-occupation notice being put into effect and if demolition takes place, the entire family would be left with no other alternative accommodation and further pointed out that the writ petitioner/husband of the deponent, is staying in abroad and that it may not be possible to get an alternative accommodation at this stage and prays for appropriate orders.

6. Per contra, the learned counsel appearing for the respondent would contend that admittedly the planning permission was accorded by the Corporation of Chennai to construct Ground + First Floor in the property in question, being a residential unit, but in deviation of the same, Ground + Two Floors have been put up in the said property and therefore, action has been taken rightly in accordance with law. It is further submitted that the petitioner is having an effective alternative remedy in force, before the Government under Section 80-A of the Town and Country Planning Act, 1971 and in the light of the same, this writ petition is not maintainable.

7. This Court has carefully considered the rival submissions and perused the materials placed before it.

8. A perusal of the materials placed before this Court would prima facie indicate that the planning permission was obtained only to put up the superstructure in the Ground + First Floor of the property in question, which is meant to be used only for residential purpose, but, an additional floor has been constructed and the petitioner is in occupation of one of the

portions of the said property along with his family.

9. In the light of the fact that the premises in question is being used as a residential unit and that the husband of the deponent of the affidavit, who is the owner of the premises, is staying in abroad and further the Deepavali Festival is fast approaching and that there is an alternative remedy open to the petitioner, this Court, permits the petitioner to file a Special Revision Petition under Section 80-A of the Town and Country Planning Act, 1971 along with the petition for stay under Section 80-A(3) of the said Act, by enclosing the necessary documents along with prescribed fee, if any, within a period of four weeks from the date of receipt of a copy of this order to the Secretary to Government, Tamil Nadu Housing and Urban Development Department, Secretariat, Chennai and the said Authority, on receipt of the Special Revision Petition along with the petition for stay, shall entertain the petitions, if the papers are otherwise in order and it is directed to take up the petition for stay at the first instance and give disposal on merits and in accordance with law, within a period of four weeks from the date of entertainment of the revision petition and thereafter the said official or the delegated authority is also at option to take up the main petition and give a disposal on merits and in accordance with law within a period of ten weeks from the date of disposal of the petition for stay and communicate the decision taken, to the petitioner and till the disposal of the petition for stay by the Revisional Authority viz., The Secretary to Government, Tamil Nadu Housing and Urban Development Department, Secretariat, Chennai, the respondent shall defer further proceedings in terms of the impugned notice dated 09.10.2017.

10. The petitioner, till the disposal of the special revision petition by the Revisional Authority, shall not alter the physical features of the property in question and shall not create any third party rights in respect of the lands and superstructures in question.

11. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Secretary to Government
Tamil Nadu Housing and Urban Development Department
Secretariat
Chennai.

+1 cc to Mr.L.Prabakaran Advocate sr 73138

W.P.No.26667 of 2017

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