

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.17542 of 2017 and WMP No.19039 of 2017

S.Vanaja

..

Petitioner

Vs

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
No.9, Gandhi Irwin Road,
Egmore, Chennai 600 008.
2. The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Assistant Executive Engineer /Unit 23,
2nd Cross Street (East), Pulla Avenue,
Shenoy Nagar,
Chennai 600 030

..

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, forbearing the 3rd respondent from proceeding with Notice No.Zone -VIII/TPENF/2017 dated 06.07.2017 (served on 08.07.2017) relating to residential house at New No.7, Old No.82, Kamaraj Second Lane, Thiruvalluvar Nagar, Ayanavaram, Chennai - 23, pending final determination of application made by the petitioner dated 09.07.2017 under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 for regularization of residential building.

For Petitioner : Mr.G.Sankaran

For RR 1 : Mr.N.Sampath, Standing Counsel

For RR 2 : Mr.AX.Thambidurai
Additional Government Pleader

For RR 3 : Mr.R.Arunmozhi

For Intervenor : Mr.Aswin

ORDER

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

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

2 The petitioner would state that she had purchased a plot bearing No.267, D.No.7/82, Kamaraj 2nd Lane, Thiruvallur Nagar, Ayyanavaram Village, Perambur - Purasawalkam Taluk to an extent of 98.0 Sq.mts along with the superstructure through a registered Sale Deed bearing document No.3457 of 2001 dated 19.11.2001, on the file of the Court of the Sub-Registrar, Anna Nagar. The petitioner would further submit that after the purchase of land, the revenue records had been mutated in her favour.

3 The petitioner would further aver that during the mega flood happened in December 2015, the property got inundated and the entire superstructure got damaged. Therefore, she has to demolish the old construction in order to construct a new residential house and accordingly, she has submitted an application to the 3rd respondent for plan approval for construction of residential house with Ground Floor and First Floor and necessary permission was also accorded by the 3rd respondent vide proceedings dated 29.01.2016. The petitioner had also availed a loan of Rs.45 lakhs from Manipal Housing Finance Syndicate Limited and taking into consideration of the fact that the other family members demanded residential accommodation in the said premises and further one of her sister is also residing with her, required additional accommodation, she had proceeded to construct Ground + 3rd Floors, which has been considered as an unauthorised construction by the 3rd respondent, who issued stop work notice dated 06.07.2017 and in response to the said notice, the petitioner submitted an application for permission under section 49 of the Town and Country Planning Act, 1971 for regularization and hence, prays for appropriate orders.

4 The matter was listed for admission on 11.07.2017 and this Court pointed out to the learned counsel appearing for the petitioner that no supporting affidavit has been filed by the concerned family members. The matter was again listed on 22.08.2017 and it was brought to the knowledge of this Court that locking and sealing and demolition notice dated 14.07.2017 has been issued to the petitioner pointing out the following deviation / unauthorised construction :

Sl.No	Description	As per Plan	As per Site	Deviated / unauthorised
1	Ground Floor	59.65 Sqm	104.05 Sqm	44.4 Sqm deviation
2	First Floor	72.21 Sqm	104.05 Sqm	31.84 Sqm deviation
3	Second Floor	Unauthorised	104.05	104.05 unauthorised
4	Third Floor	Unauthorised	104.05	104.05 unauthorised

5 This Court has taken note of the submission made by the learned counsel appearing for the petitioner as to the filing of Additional typed set of documents containing application for approval / sanction of the revised plan and has granted time and till then, directed the concerned respondent to defer further action. The writ petition was again listed on 14.09.2017 and taking note of the fact that the petitioner has already invoked Section 49 of the Tamil Nadu Town and Country Planning Act, 1971, this Court directed the 3rd respondent to defer further decision in terms of impugned notice dated 06.07.2017.

6 Mr.Aswin, learned counsel appearing for the intervenor, viz., A.Subramaniyan, S/o.Ayyappan, would submit that offending superstructure has been put up by the petitioner right above the roof and therefore, the intervenor should be heard before disposal of the application filed by the petitioner under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971.

7 Heard the submissions of Mr.N.Sampath, learned counsel appearing for the 1st respondent; Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 2nd respondent and Mr.R.Arun Mozhi, learned counsel appearing for 3rd respondent.

8 This Court taking into consideration the affidavit of S.Celine Mary dated 24.07.2017 and other facts and circumstances of this case and without going into the merits of the claim projected by the petitioner, directs the 1st respondent to entertain the application filed by the petitioner dated 09.07.2017 under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971, if the papers are otherwise in order and after putting Mr.A.Submanian, S/o.Ayappan [intervenor] on notice, shall dispose of the said application in accordance with law within a period of six weeks from the date of receipt of copy of this order and till such time, the 3rd respondent shall defer further decision in terms of the locking and sealing and demolition notice dated 14.07.2017 and it is made clear that the

petitioner, till the disposal of the application submitted by her, the petitioner shall not alter the physical features of the superstructure and shall not create any 3rd party right in respect of the superstructure in question.

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

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rka/smn

To

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
No.9, Gandhi Irwin Road,
Egmore, Chennai 600 008.
2. The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Assistant Executive Engineer /Unit 23,
2nd Cross Street (East), Pulla Avenue,
Shenoy Nagar,
Chennai 600 030
4. Mr.A.Submaniyan,
S/o.Ayappan,
No.4/382, CLRI Nagar,
5th Cross Street,
Neelangari, Chennai 41

- + 1 cc to Mr.G.Sankaran, Advocate,SR.72447
- + 1 cc to Mr.N.Sampath, Advocate,SR.72260
- + 1 cc to M/s.M.Aswin, Advocate,SR.72964
- + 1 cc to Mr.R.Arunmozhi Advocate,SR.72220
- + 1 cc to The Govt.Pleader, SR.72880

WP.No.17542/2017

MSM(CO)
NR 08/11/2017