

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.18106/2017 & WMP.No.19651/2017

Jasti Nageswara Rao rep.by the  
General Power of Attorney S.Santhakumari .. Petitioner

Vs

1.The Executive Engineer, Zone VI  
Greater Chennai Corporation  
No.5, Anderson Road,  
Ayanavaram, Chennai 600 023.

2.The Commissioner  
Greater Chennai Corporation  
Rippon Buildings, Chennai-3.

3.The Member Secretary  
CMDA, Egmore, Chennai – 8.

4.The Secretary to Government  
of Tamil Nadu, Housing and Urban  
Development Department  
Fort St George, Chennai 600 009.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the 4<sup>th</sup> respondent to dispose the petitioner's appeal dated 04.03.2017 on merits within the time frame as fixed by this Court after giving opportunity of being heard.

|                |                     |
|----------------|---------------------|
| For Petitioner | : Mr.G.Thangavel    |
| For RR 1 & 2   | : Mr.R.Arunmozhi    |
| For R3         | : Mr.N.Sampath      |
| For R4         | : Mr.M.Elumalai, GA |

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Arunmozhi, learned counsel accepts notice on behalf of the respondents 1 and 2 ; Mr.N.Sampath, learned counsel accepts notice on behalf of the 3<sup>rd</sup> respondent and Mr.M.Elumalai, learned Government Advocate accepts notice on behalf of the 4<sup>th</sup> respondent.

**2** The petitioner claims that a house plot No.9 was allotted by the Tamil Nadu Slum Clearance Board under "Loco Work Scheme" in favor of Mr.Jasti Nageswar Rao and he had purchased the same through a registered Sale Deed bearing Doc.No.2687/2009 registered on the file of the office of the Sub Registrar, Anna Nagar, Chennai and the owner has appointed the petitioner as his Power of Attorney Agent through a registered document bearing No.451/2012 dated 02.05.2012 registered on the file of the very same Sub Registrar. The petitioner would further aver that the Principal had constructed the house flats and had old four flats in the ground floor and first floor and requested the Power of Attorney Agent to construct a portion in the

second floor for residence and he also sold the said flat to the deponent of the affidavit. The deponent had also obtained approved building plan and permission to construct the second floor from the Greater Chennai Corporation in B.A.No.5958/2012 dated 04.07.2012. It is the case of the deponent of the affidavit that inadvertently, she has forgot to obtain the additional building plan permit for the construction of a portion in the second floor from the authorities as she was busy with her daughter's marriage at the relevant point of time. She would further aver that one of the purchasers, namely, Tmt.Uma Devi, who is in occupation of the first floor, tried to occupy upon the open space in the second floor which led to a misunderstanding with the deponent of the affidavit and it appears that she has lodged a complaint against the deponent as if she has deviated from the plan and has put up unauthorised construction with deviation from the sanctioned plan. The deponent has also approached the Government in that regard and the Secretary to Government, Housing and Urban Development Department, vide proceedings dated 20.05.2016, has directed her to demolish the entire second floor and also to carry out other possible rectifications to the building and then apply for regularisation of her building within a period of six months from the date of issuance of the said order and in the interregnum, it ordered that lock and seal notice shall be kept in

abeyance for a period of six weeks subject to the condition that the builder/deponent of the affidavit shall furnish an undertaking to that effect that she will demolish the second floor and carry out necessary rectifications to the building and thereafter, apply for regularisation of the building within a period of six months.

**3** The learned counsel for the petitioner would submit that since time granted in the above said order had expired, lock and seal notice has been issued and once again the premises in question, has been kept under lock and seal and challenging the same, she filed a special revision dated 04.03.2017 under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, and prays for early disposal of the same.

**4** *Per contra*, the learned Standing counsel appearing for the 3<sup>rd</sup> respondent would submit that the order of the Housing and Urban Development Department, Chennai-9, dated 20.05.2016, has clearly indicated that before seeking regularisation of the building, the deponent of the affidavit was called upon to demolish the unauthorised construction in the second floor and despite the time granted, she did not do so and after following due process of law only, the premises has

been now kept under lock and seal and unless and until the deponent of the affidavit carry out the demolition of the second floor, her application for regularisation of the planning permission, may not be considered.

**5** Heard the submissions of Mr.R.Arunmozhi, learned counsel appearing for the respondents 1 and 2 and Mr.M.Elumalai, learned Government Advocate appearing for the 4<sup>th</sup> respondent and perused the materials placed on record.

**6** Admittedly, the deponent of the affidavit did not comply with the direction given in the Letter of the Housing and Urban Development Department dated 20.05.2016. But, however chosen to avail the benefit of the order by submitting an application for regularisation of the unauthorised construction and unless and until the unauthorised construction of the second floor is demolished, regularisation of the unauthorised construction, which according to the petitioner amounts to small deviation, in the considered opinion of the Court, cannot be considered. Be that as it may, the learned counsel for the petitioner, on instructions, prays for disposal of the special revision filed by the deponent of the affidavit on merits and in accordance of law within the stipulated time frame.

**7** In the light of the above facts and circumstances, this Court, without going into the merits of the claim projected by the petitioner in the special revision dated 04.03.2017, directs the 4<sup>th</sup> respondent to entertain the special revision, filed under section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, if the papers are otherwise in order and give a disposal in accordance with law and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner / deponent of the affidavit.

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

[M.S.N., J.] [N.S.S., J]  
18.07.2017

Index : No  
Internet : Yes  
AP

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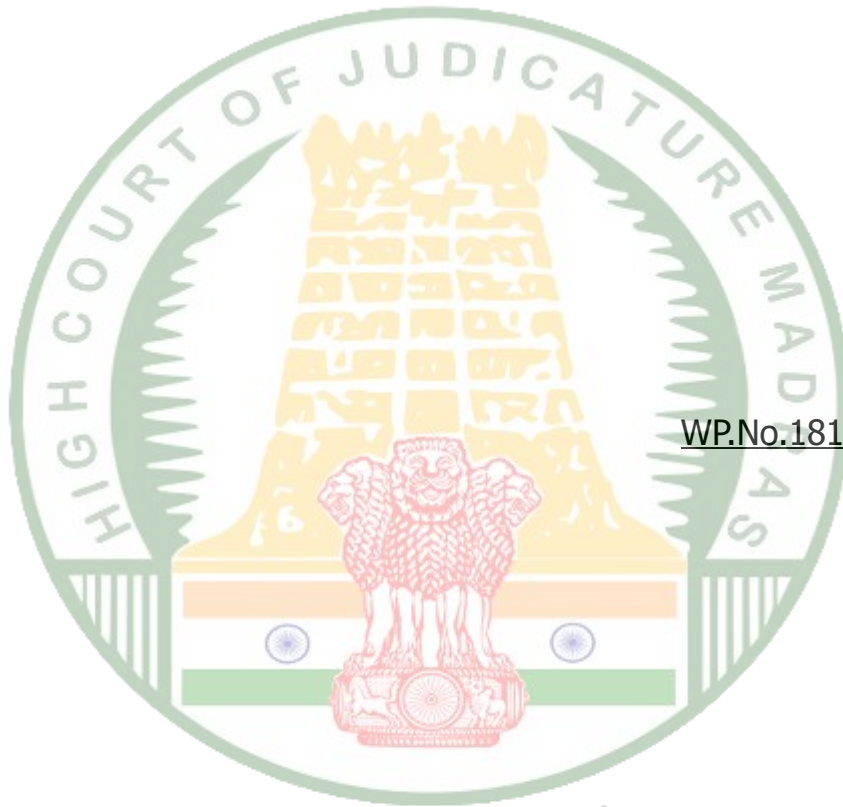
To

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