

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P. No.29048 of 2017

R.Varadarajan

.. Petitioner

Vs

1. The Secretary
Housing and Urban Development Dept.,
Government of Tamilnadu,
Fort.St.George, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irvin Road,
Egmore, Chennai-8.
3. The Commissioner,
St.Thomas Mount Panchayat Union,
Chitalapakkam, Chennai.
4. The Executive Engineer,
Chennai Corporation Zone-IV,
Puzhuthivakkam, Chennai - 600 091.

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Respondents

Prayer:- Petition filed Under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to consider the representations dated 26.05.2016 and 01.08.2017 consequently direct the respondent to take necessary action to remove the encroachment and de-seal my flat A-3 in plot No.4 Jeevanagar First Street, Madipakkam, Chennai-91.

For Petitioner	: Mr. S.N.Subramani
For R-1	: Mr.A.N.Thambidurai Spl.Government Pleader
For R-2	: Mr.A.Kumar
For R-3	: Mr.R.Prathap kumar Additional Public Prosecutor
For R-4	: Mr.K.Soundararaj

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O R D E R

(Order of the court was made by M.Sathyanarayanan, J.,)

By consent this writ petition is taken up for final disposal.

2. The petitioner claims that he had purchased a flat A-3 in Plot No.4, Jeevanagar First Street, Madipakkam, Chennai during the year 2004, believing the representation made by the builder of the said flats that the building consist of 10 flats and the said flats have been constructed in accordance with the approved/sanctioned plan. The petitioner would state that the purchaser of flat in question by spending the money, paid to him by way of terminal or other benefits. The petitioner having found that unauthorized construction has been put up in plot No.3, made a representation to the 2nd respondent and since it was considered and disposed of by filing W.P.No.1761 of 2011 he prayed for appropriate action to remove the encroachment made in plot No.3 and since it was not complied with, the petitioner filed Cont.P.No.1165 of 2011 and based on the report submitted by them, it was closed.

3. The petitioner would further aver that having agreed by the initiation of the contempt proceedings, his premises in Plot No.A-3 and in Plot No.A-4 have been sealed and it is nothing but the apprehending attitude and in this regard, he has submitted representations dated 26.05.2016 and 01.08.2017 to the concerned official respondents for lifting the lock and seal for the reason that he was residing in the said premises along with his family and since his representations have not been given disposal by the officials and hence came forward to file this writ petition.

4. The writ petition was entertained on 14.11.2017 and notices were ordered. The writ petition was listed today and the 4th respondent has filed the counter affidavit along with typedset of documents wherein he took a stand that in compliance of the orders passed in W.P.No.1761 of 2011, the 3rd respondent had sent show cause notice to Plot No.3 for the purpose of demolishing the superstructure and they have informed them that the civil suit is pending before the Court of District Munsif, Alandur and yet another said notice dated 06.09.2011 were issued to occupants of plot Nos.3 and 4.

5. It is further averred that the Madipakkam Panchayat got merged with Greater Corporation of Chennai and the occupants

of plots No.3 and 4 gave their objections on 02.07.2012 & 17.07.2012 and they had filed W.P.Nos.19842, 21817 & 25091 of 2013, challenging the locking and sealing, demolition notices dated 14.06.2012 and 16.06.2012 and this court vide common order dated 30.09.2013, has directed the concerned respondents to consider and dispose of the representations and enquiry was also conducted and the occupants of plot No.3 had filed the appeal / special revision under Section 80 A of the Tamil Nadu Town and Country Planning Act, 1971 and the said appeal / special revision was disposed of on 23.10.2015 by the first respondent by permitting them to avail remedy under Section 113 (c) of the Town and Country Planning Act, 1971.

6. The learned counsel appearing for the petitioner would submit that since the petitioner had purchased the land in question out of his terminal benefits and though, the persons similarly placed have been granted the remedy by the first respondent under Section 113(c) of the Town and Country Planning Act, 1971, appropriate orders may be passed.

7. The learned counsel appearing for the standing counsel of Greater Corporation of Chennai would submit that the remedy is open to the petitioner if any to avail under Section 80 A of the Tamil Nadu Town and Country Planning Act, 1971 and in the light of the said availability of alternative remedy, the writ petition is not maintainable.

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

9. This Court taking into consideration of the above facts and circumstances without going into the merits of the claim projected by the petitioner, permits the petitioner to avail the remedy in the form of appeal / special revision under Section 80 A of the Tamil Nadu Town and Country Planning Act, 1971 by submitting an appeal along with petition for stay to the first respondent herein along with copy of this order and also annexing authenticated and relevant documents within a period of two weeks from the date of receipt of copy of this order and the 1st respondent upon receipt of the same shall entertain the appeal / special revision if the papers are otherwise in order, and shall take up the petition for stay filed under Section 80A (iii) of the Town and Country Planning Act, 1971 and give a disposal in accordance with law within a further period of two weeks from the date of receipt of the stay petition and the said official or the delegated official to take up the main appeal or the revision itself and give a disposal on merits and in accordance with law within a further period of six weeks from the date of entertainment of the appeal/special revision and pass orders on merits in accordance with law and communicate the

decision taken to the petitioner.

10. Accordingly, the Writ petition stands disposed of. No costs. Consequently, the connected WMPs are also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kv/rka

To

1. The Secretary
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 4. The Executive Engineer,
Chennai Corporation Zone-IV,
Puzhuthivakkam, Chennai - 600 091.
- + 1 cc to MR. A. Kumar, Advocate Sr.85935
+ 1 cc to Mr.K. Soundararajan, Advocate Sr.86127
+ 1 cc to MR. S.N. Subramani, Advocate SR.86122
+ 1 cc to MR. Government Pleader Sr.86795

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(CS-IV)
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