

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

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

W.P.No.42563 of 2016

B.Gomathi

.. Petitioner

Vs.

1.The Secretary to Government
Government of Tamil Nadu,
Housing and Urban Development (UD-V) Department,
Fort St.George, Chennai - 9.

2.The Appeal Committee
by Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

3.The Member Secretary,
Chennai Metropolitan Development Board,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.

4.R.Shobana Devi

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned order of the first respondent in G.O.(3D) No.61 dated 11.02.2016 and quash the same as highly illegal and consequentially direct the first and second respondents to remove the unauthorized constructions at No.23, Kannan Nagar, II Street, Zamin Pallavaram Village, Chennai-44.

For Petitioner : Mr.K.S.Ilangovan
for M/s. Achari & Antoni Associates

For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader [for R1 & R2]
Mr.N.Sampath, Standing Counsel for R3
Mr.R.Mohan for R4

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. The petitioner is the owner of the property bearing Door No.24, Kannan Nagar, II Street, Chrompet, Chennai. According to her, the superstructure put up by her is strictly in accordance with law and also as per the sanctioned plan. The petitioner through her representation dated 06.11.2008, had requested the Commissioner, Pallavaram Municipality, Chrompet, Chennai-600 044, to take appropriate action against the neighbour, who has put up unauthorised construction. The Member Secretary and Commissioner of Pallavaram Municipality has issued Locking & Sealing and Demolition Notice dated 20.07.2009 to the fourth respondent, the neighbour of the petitioner herein, pointing out the following deviations :

S.No	Description	As per Appd Plan	As on site	Deviation
1	Front Set Back	3.35M	1.15M	2.20M
2	Rear Set Back	3.05M	0.75M	2.30M
3	Side Set Back (1)	2.74M	-	2.74M
4	Side Set Back (2)	1.50M	1.00M	0.50M
	Total Area	1558 Sft	3050 Sft	1492 Sft

3. The fourth respondent has submitted a response dated 14.07.2010 praying for regularisation of the offending construction on the ground that the additional construction put up by her is permissible within the space index, as per the Development Control Rules.

4. It appears that the petitioner had also challenged the communication dated 08.05.2009 issued by the first respondent by filing W.P.No.21428 of 2010, directing the local body to take appropriate action against the third respondent therein, who is arrayed as fourth respondent in the present writ petition, with regard to the unauthorised construction put up by her. This Court, vide order dated 20.09.2010 has dismissed the said writ petition in W.P.No.21428 of 2010, observing that in the light of the return of the application for approval submitted by the third respondent therein (4th respondent herein), she cannot proceed with the further construction and it is for the respondents (1 to 2 herein) to take action against the third

respondent, if there is any illegal construction put up by the third respondent therein. Thereafter, the third respondent in the said writ petition, who is the fourth respondent herein has filed the review application to review the order dated 20.09.2010 passed in W.P.No.21248 of 2010. The said application was dismissed on 01.03.2012.

5. The fourth respondent has preferred an appeal under Section 79 of the Town and Country Planning Act, 1971 against the refusal order passed by the Commissioner, Pallavaram Municipality, with regard to the regularisation of the offending construction.

6. The first respondent vide G.O.(3D) No.61 dated 11.02.2016, though came to the conclusion that the construction put by the fourth respondent is in deviation of the sanctioned plan for authorization, based on the decisions and recommendations of the second respondent, thought it fit to exercise the power under Section 113 of the Town and Country Planning Act, 1971, by regularising the construction, subject to collection of regularisation charges under Regularisation Scheme 1999.

7. The petitioner, who is the neighbour of the fourth respondent aggrieved by the said order of regularisation of the offending construction, has filed this writ petition.

8. The learned counsel appearing for the petitioner would submit that since the first respondent has exercised the power of exemption under Section 113 of the Town and Country Planning Act, 1971, he has to assign tenable and sound reasons in granting exemption, but, merely by a cryptic order has decided the issue in favour of the fourth respondent and hence, prays for interference.

9. Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the first respondent would submit that based on the inputs given by the second respondent that the offending construction put by the fourth respondent is a residential one and violation quoted are marginal, has decided to relax the relevant parameters, subject to collection of regularisation charges under Regulation Scheme 1999.

10. The learned counsel appearing for the fourth respondent would submit that admittedly, the fourth respondent has put up construction within the boundaries of her line and the deviation pointed out are very very minimal in nature and that, the same can be exempted and taking note of the same, the Appeal Committee/second respondent made a positive suggestion for

regularisation of the construction and the said fact has been taken into consideration by the first respondent through positive impugned order, relaxing the deviated portion of the construction, subject to collection of regularisation charges under Regularisation Scheme 1999, and hence, it may not be interfered with.

11. It is the specific case of the petitioner that on account of the deviated construction put by the fourth respondent, she was put to great hardship. The offending construction in the form of staircase came into being abutting the compound wall of her premises and had developed cracks on her compound wall. She also added that in all, the first respondent before ordering regularisation, ought to have put the petitioner on notice and thereafter, adjudicated the issue on merits and in accordance with law, and hence, prays for appropriate orders.

12. This Court, considered the rival submissions and also perused the materials placed on record.

13. It is relevant to extract Section 113 of the Town and Country Planning Act, 1971.

113. Exemptions:- Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder.

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113-C.Exemption in respect of development of certain buildings :

Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, by order, exempt any building or class of buildings developed on or before the 1st day of July 2007, from all or any of the provisions of this Act or any Rule or Regulation made thereunder, subject to the guidelines made in this behalf, by collecting such amount, not exceeding three times of the guideline value of the land, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the planning area.

It is to be pointed out that Section 113 of the Town and Country Planning Act, 1970 calls out exemption to Statutory provisions and the Rules framed thereunder. The Act is in nature of regularisation, so as to prevent mushrooming growth of unauthorised constructions and also provides certain parameters for putting up construction and admittedly the fourth respondent, in violation of the same, has put up the offending construction. Therefore, the first respondent being conferred with powers of exemption, is expected to act within parameters with utmost care and caution before granting exemption. As per the observations submitted by the second respondent that the fourth respondent have constructed the building in deviation of the Development Control Rules, it is the categorical stand of the petitioner that on account of offending construction in the form of stair case right on the compound wall, has caused inconvenience to her. Therefore, the petitioner contends that in all, the first respondent before granting exemption and in exercise of power to Section 113-C of the Town and Country Planning Act, 1971, ought to have put the petitioner on notice, and he should have elicited the views of Local Body namely the Pallavaram Municipality, but the said Officer, failed to do so.

14. Therefore, the writ petition is partly allowed and the impugned order dated 11.02.2016 is set aside and the matter is once again remanded to the first respondent for fresh adjudication, and the first respondent shall put the petitioner on notice and after eliciting the views of the Pallavaram Municipality shall consider the appeal submitted by the fourth respondent on merits and in accordance with law, and pass orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as the fourth respondent and till the disposal of the appeal, pursuant to the order of this Court, the fourth respondent shall not proceed with further construction regarding the stair case in the form of plastering etc., No costs.

सत्यमेव जयते

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Sd/-
Asst.Registrar (CS III)
/true copy/

Sub Asst. Registrar

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To:

1. The Secretary to Government
Government of Tamil Nadu,
Housing and Urban Development (UD-V) Department,
Fort St.George, Chennai - 9.
2. The Appeal Committee
by Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
3. The Member Secretary,
Chennai Metropolitan Development Board,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.

+1cc to the Government Pleader Sr. 63375

+1cc to Mr.Achari & Antoni Associates, Advocate Sr. 63164

+1cc to Mr.R.Mohan, Advocate Sr. 62709

+1cc to Mr.N.Sampath, Advocate Sr. 62573

W.P.No.42563 of 2016

CA(CO)
VR(09/10/2017)

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