

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.9261/2018

D.Karunakaran

..Petitioner

Versus

- 1.The Secretary
Housing & Urban Development
Department, Secretariat, Chennai 600 009.
- 2.The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road, Thalamuthu
Natarajan Maligai, Egmore, Chennai 600 008.
- 3.The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai 600 003.
- 4.The Executive Engineer
Zone No.VIII, Greater Chennai Corporation
Revenue Department, Q Block,
Near Chinthamani, Anna Nagar [East]
Chennai 600 102.
- 5.The Assistant Executive Engineer
Unit 22, Anna Nagar, Corporation of Chennai
Q Block, Anna Nagar [East],
Chennai 600 102.

..Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 3 to 5 not to take any coercive action against the petitioner, Bhavani Apartments, R-6-J, Third Floor, 6th Avenue, Anna Nagar, Chennai 600 040, pending regularisation application dated 19.12.2017 before the 2nd respondent till the disposal of the same not to issue Lock and Seal notice or any other coercive action against the petitioner's flat.

For Petitioner :	Mr.V.Ramana Reddy
For R1 :	Mr.R.Udhayakumar, AGP
For R2 :	Mr.Raja Srinivas
For R3 to R5 :	Mr.A.Nagarajan

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent ; Mr.Raja Srinivas, learned Standing Counsel accepts notice on behalf of the 2nd respondent and Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents 3 to 5.

2 The petitioner claims that he is the owner of Flat No.6J, Bhavani Apartments, Plot No.3825, Block No.2, TS.No.32, R6-Block, 6th Avenue, Anna Nagar, Chennai-600 040, admeasuring to an extent of 748 sq.ft., undivided share of land out of 5130 sq.ft., together with flat measuring 1496 sqft. including the common area. It is averred by the petitioner that the said flat was originally owned by one Tmt.Bhavani, and she sold the same to one Jayaprabha, wife of Kalairajan on 28.01.2008 and she, in turn had settled the property in favour of her husband Mr.G.K.Kalairajan and the petitioner had purchased the said Flat from him through a registered Sale Deed bearing Doc.No.4393/2010 dated 15.12.2010, registered on the file of the office of the Sub Registrar, Anna Nagar, Chennai. It is the claim of the petitioner that the said flat is also subjected to all statutory levies and it is more that 30 years old.

3 The petitioner would further aver that he was issued with the Locking, Sealing and Demolition Notice dated 28.09.2012 and challenging the same, he filed WP.No.5359/2013 and initially, interim stay of demolition alone was granted and subsequently, the writ petition was disposed of and thereafter, the 4th respondent issued the De-Occupation Notice dated 04.05.2016 and challenging the same, the petitioner filed a Special Revision u/s.80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent. The delegatee of the 1st respondent, vide communication dated 28.08.2017 in Letter No.13714/UD-VI[2]/2017-5, has granted liberty to the petitioner to apply for regularisation u/s.113-C of the Town and Country Planning Act, 1971, within a period of three months and indicated that the if the application is not filed within three months, the order will become null and void and Greater Corporation of Chennai shall continue the further enforcement. Accordingly, the petitioner has filed an application u/s.113-C of the said Act and it was received and acknowledged by the 2nd respondent on 19.12.2017. The grievance now expressed by the petitioner is that pendency of the application, day-in and day-out, threat is being wielded out to demolish the alleged offending construction and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

4 The learned counsel for the petitioner would submit that as directed by the delegated official of the 1st respondent, vide communication dated 28.08.2017, the petitioner filed an application u/s.113-C of the Act on 19.12.2017 and till the disposal of the application, the officials of the Corporation of Chennai, shall be directed to defer further decision as to the Locking, Sealing and Demolition of the premises in question.

5 Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the 1st respondent would submit that admittedly, the petitioner should have filed the application for regularisation on or before 22.11.2017 and since the petitioner has filed the application u/s.113-C of the Act, only on 19.12.2017, it is open to the Corporation of Chennai to proceed further.

6 The respective learned Standing counsel appearing for the 2nd respondent and respondents 3 to 5 would submit that since the application has been filed belatedly, action is being taken in accordance with law.

7 This Court has carefully considered the rival submissions and also perused the materials placed on record.

8 It is the settled position of law that it is the date of receipt of communication which is relevant for the purpose of calculating the limitation period and it is the submission of the learned counsel for the petitioner that immediately after the receipt of the communication of the office of the 1st respondent dated 28.08.2017, the petitioner has submitted the on-line application u/s.113-C of the Tamil Nadu Town and Country Planning Act, 1971 to the 2nd respondent and it was also received and acknowledged on 19.12.2017 and in the light of the interim orders passed by the Hon'ble First Bench of this Court not to process the said applications, the application of the petitioner is also pending.

9 This Court, taking into consideration the overall facts and circumstances, directs the respondents 3 to 5 to defer further decision as to the demolition of the Flat of the petitioner, bearing Flat No.6J, Bhavani Apartments, Plot No.3825, Block No.2, TS.No.32, R6-Block, 6th Avenue, Anna Nagar, Chennai-600 040, till the disposal of the application submitted u/s.113-C of the Town and Country Planning Act, 1971, by the 2nd respondent. It is also made clear that the petitioner, till the disposal of the application filed u/s.113-C of the Town and Country Planning Act, 1971, by the 2nd respondent, shall not create any third party rights in respect of the undivided share of the land as well as the flat owned by him and shall also not alter the physical features of the same.

10 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary
Housing & Urban Development
Department, Secretariat, Chennai 600 009.
- 2.The Member Secretary
Chennai Metropolitan Development Authority
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- 5.The Assistant Executive Engineer
Unit 22, Anna Nagar, Corporation of Chennai
Q Block, Anna Nagar [East],
Chennai 600 102.

- + 1 cc to Mr. V. Ramana Reddy, Advocate Sr.27934
+ 1 cc to Mr. K. Raja Srinivas, Advocate Sr.28681
+ 1 cc to Government Pleader Sr.28873

WP.No.9261/2018

(CS-DR)
EU(16/05/2018)