

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.373 of 2018

P.R.Nirmala

... Petitioner

vs.

1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
St. George Fort,
Chennai 600 001.
2. The Member Secretary,
CMDA, Gandhi Irwin Road,
Egmore,
Chennai 600 008.
3. The Commissioner,
Corporation of Chennai,
Chennai 600 003.
4. The Executive Engineer,
Mogappair Division,
Tamil Nadu Housing Board,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records pertaining to Letter No.Reg.II/B5/1028/2000, dated 29.11.2017 issued by the 2nd Respondent and quash the same as unlawful and illegal and further issue Writ or Order or Direction directing the 2nd and 3rd Respondents to accord approval of the building constructed on 1st and 2nd Floors of the building in Plot No.1/67 (LIG Plot), Block No.1, Survey No.305 (Part), Mogappair Village.

For Petitioner : Mr.P.Veeraraghavan

For 1st Respondent : Mr.A.N.Thambidurai,
Special Government Pleader

For 2nd Respondent : Mr.C.Johnson
For 3rd Respondent : Mr.A.Nagarajan
For 4th Respondent : Mr.V.Anandhamoorthy

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

Seeking to quash the proceedings of the 2nd Respondent, dated 29.11.2017 and for a further direction to the 2nd and 3rd Respondents to accord approval of the 1st and 2nd Floors of the building in Plot No.1/67 (LIG Plot), Block No.1, Survey No.305 (Part), Mogappair Village, the Petitioner has come up with the present Writ Petition.

2. According to the Petitioner, he was allotted a Plot bearing No.1/67 in Survey No.305 (part) of Mogappair village, measuring an extent of 1200 sq. ft., by the 4th Respondent on 10.03.1984 and thereafter, the 4th Respondent executed a Sale Deed, dated 19.10.1990 in his favour, for a valid sale consideration. It is further stated by the petitioner that on 30.11.1988, Planning and Building permit were given for construction of residential house in ground floor. However, the petitioner raised construction for first and second floors after applying for Planning Permission in the year 1991.

3. It is the case of the petitioner that one Hemraj, his neighbour lodged a complaint against him as regards construction of first and second floors in the said property and hence, necessary Plan approval was not given to the petitioner for construction of first and second floors in the said property, despite paying necessary fee on 22.12.2000 in favour of the 2nd Respondent. However, the petitioner completed construction of first and second floors and is in possession of the same since 1994 and paid property tax and also obtained electricity service connection.

4. While so, the 2nd Respondent sent a Letter dated 17.08.2016 to the petitioner about the submission of his application on 22.12.2000, seeking further evidence for construction of building prior to 28.02.1999 after 18 years delay. The petitioner sent a reply on 24.11.2016 enclosing a copy of the Sale Deed, permission obtained for construction of Ground Floor, Property Tax Payment Receipts, etc and also submitted all details with supporting documents on 30.08.2000, seeking regularization of first and second Floor building construction. The 2nd Respondent, finally rejected his application on 29.11.2017, on the ground that 'No credible evidence like property tax working sheet was produced to prove

that the construction was made prior to 28.02.1999 and directed the petitioner to file a fresh application as per G.O.Ms.No.110, dated 26.02.2017.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. Admittedly, the petitioner has not preferred any appeal, however, he has approached this Court by way of the present Writ Petition. The Writ Petition has been filed within a period of 30 days from the date of receipt of a copy of the impugned order, as the impugned order was signed on 30.11.2017. Since no appeal is filed, it is open to the petitioner to prefer an Appeal under Section 113-A of the Town and Country Planning Act, 1971, and if it is well within time, it is open to the authorities concerned to entertain the same. It is needless to mention that there is no bar for the petitioner to seek exemption under Section 113-C of the Act by preferring a fresh application, subject to the compliance of the Rules. The authorities, while taking a decision, must ensure that the building is in accordance with the Plan, with proper set backs.

7. At this juncture, it is worth referring to a Supreme Court decision in the case of Priyanka Estates International Pvt. Ltd. v. State of Assam reported in (2010) 2 SCC 27, wherein, the Apex Court declined the appellant's prayer for directing the respondents to regularize the illegal constructions and observed as follows:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

8. In yet another decision pertaining to buildings constructed in violation of rules, in the case of Shanti Sports Club v. Union of India (2009) 15 SCC 705, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

9. With regard to set back, the First Bench of this Court, in W.P.No.18777 of 2014, by an order dated 08.11.2016, has held as under:

"8. ... We may add here that this Court also is not granting interim orders (in

such cases) as a matter of routine, because the deviations/violations made have to be looked into, to see whether under the Master Plan, it is capable of being regularised on payment of charges or not. If it is incapable of being regularised - if say there are no set backs left with the construction made on it, then the whole appeal or revision process becomes futile and only delays the ultimate action."

10. It is pertinent to note that the First Bench of this Court in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

'4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he

should be able to do his task without fear or favour, for which necessary Court protection is available.''

11. In view of the decisions referred to supra, this Court makes it clear that if there are no set-backs, and if there is violation with regard to the construction, the request of the petitioner has to be rejected. The party seeking an order under any of the provisions of the Tamil Nadu Town and Country Planning Act, needs to file an affidavit/statement to the effect that the building is constructed in accordance with the Plan and that there are set-backs provided as per the plan. If the averment is false based on record or on inspection, the person is deemed to have approached the authority with unclean hands and no indulgence shall be shown to him.

12. It is further made clear that if anyone is going to pay property tax for the past period, in order to circumvent the provisions of the Act/Regulations and in order to project that the building has been completed prior to the cut-off date, the subsequent payment for the earlier period could not be taken into account for the purpose of regularization, more particularly, to exempt from any of the provisions of the Act/Rules/Regulations or even by preferring an application as per G.O.Ms.Nos.110 and 111, dated 26.02.2017 or under Sections 113-A or 113-C of the Town and Country Planning Act, 1971.

This Writ Petition is disposed of with the above observation(s) and direction(s). No costs. Consequently, connected W.M.P.No.430 of 2018 is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To:

1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
St. George Fort,
Chennai 600 001.
2. The Member Secretary,
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3. The Commissioner,
Corporation of Chennai,
Chennai 600 003.
4. The Executive Engineer,
Mogappair Division,
Tamil Nadu Housing Board,
Chennai.

+1cc to Mr.P.Veeraraghavan, Advocate, S.R.No.9127

+1cc to Mr.C.Johnson, Advocate, S.R.No.9467

+1cc to Mr.V.Anandamoorthy, Advocate, S.R.No.9122

+1cc to the Government Pleader, S.R.No.9379

W.P.No.373 of 2018

RRK(09/02/2018)



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