

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.04.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.8639 of 2018
and WMP.Nos.10572 to 10575 of 2018

1.A.Shafi Mohamed Khan
2.A.Razia Sulthana
3.A.Aslam Sherkhan
4.A.Rahim Khan Petitioners

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
St.George Fort,
Secretariat, Chennai-600 009.
- 2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings, Chennai-600 003.
- 3.The Zonal Officer, Zone-VIII,
Greater Chennai Corporation,
Door No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.
- 4.The Executive Engineer, Zone-VIII,
Greater Chennai Corporation,
Door No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.
- 5.The Assistant Executive Engineer,
Unit-22, Zone-VIII,
Greater Chennai Corporation,
Chennai Battai Street,
Villivakkam, Chennai-600 049.

6.The Assistant Engineer,
Division-100, Unit-22, Zone-VIII,
Greater Chennai Corporation,
Shanthi Colony, Anna Nagar,
Chennai-600 040.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O.(3D)No.130, Housing and Urban Development (UD-V) Department dated 26.07.2017 and quash the same and consequently forbearing the respondents their men, subordinates and persons claiming through them from interfering with the peaceful possession by way of locking and sealing the petitioners property at Plot No.2543, Door No.112, AH Block, IV Street, Shanthi Colony, Anna Nagar, Chennai-600 040.

For Petitioners : Ms.Y.Kavitha

For Respondents : Mr.R.Udhayakumar,
Additional Government Pleader for R1
Dr.C.Ravichandran for R2 to R5

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 petitioners would aver that the property bearing Plot No.2543, Door No.112, AH Block, IV Street, Shanthi Colony, Anna Nagar, Chennai-600040, comprised in T.S.Nos.23 and 24, admeasuring to an extent of 1 ground 1050 sq.ft. was originally allotted to their father late Mr.Adam Khan by the Tamil Nadu Housing Board and he died intestate on 29.12.1997, leaving behind his wife and children as his legal heirs. The wife of late Adam Khan, in-turn, executed Settlement Deed in favour of her children with varying undivided shares of land and therefore, the petitioners became owners to the property of their respective undivided shares. Subsequently, the petitioners entered into Joint Venture Agreement with a builder, namely Anirudh Foundations Pvt. Ltd., for construction of six dwelling units. The petitioners would further aver that earlier they were issued with de-occupation notice dated 11.03.2016 by the Executive Engineer (Enforcement-Region Central) and challenging the same, they filed a Special Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 [in short "TCP Act"] before the first respondent, who, vide Letter No.3948/UD-VI(2)/2017-8 dated 21.04.2017, has ordered de-

sealing of the premises for a period of one month so as enable the petitioners to carry out rectifications and submit an appeal to the Government under Section 113 of the TCP Act and the first respondent, vide G.O.(3D)No.130, Housing and Urban Development [UD-V] Department dated 26.07.2017, has rejected the appeal filed by the petitioners. Challenging the legality of the same, the petitioners have filed the present writ petition.

3. The learned counsel appearing for the petitioners would submit that the deviations are only minimal in nature and are within the condonable limits and rectifications have already been carried out by M/s.Anirudh Foundations Pvt. Ltd., and they have also submitted a representation bring out the said fact and the first respondent, vide communication dated 05.12.2017, has directed the Chennai Metropolitan Development Authority (CMDA) to offer their remarks, followed by a reminder dated 26.12.2017. The learned counsel appearing for the petitioners would further submit that to the shock and surprise of the petitioners, the fourth respondent has issued a de-occupation notice dated 02.03.2018 in Notice No.REGION/CENTRAL/ PENF/1374/2018 under Sections 56, 57 read with Section 85 of the TCP Act and aggrieved by the same, they filed a Special Revision Petition under Section 80-A of the TCP Act along with petition for Stay under Section 80-A(3) of the said Act.

4. The learned counsel appearing for the petitioners would also submit that despite pendency of the special revision along with petition for stay, the officials belonging to the Corporation landed on the petitioners' premises today and making attempt to seal the premises and thereafter, they will go for demolition of the superstructure. The learned counsel appearing for the petitioners would further submit that admittedly the dwelling units are residential in nature and school/college going children are residing with their family and that examinations are going on and in the event of lock and seal, they will be put to grave hardship and irreparable loss and prays for some protection till the disposal of the special revision by the first respondent.

5. Per contra, Mr.C.Ravichandran, learned Standing Counsel, who takes notice for the respondents 2 to 5, would submit that the construction has been put up in deviation of the sanctioned plan and therefore, action has been taken strictly in accordance with law.

6. Mr.R.Udhayakumar, learned Additional Government Pleader, who takes notice on behalf of the first respondent would submit that special revision filed by the petitioners will be given disposal in accordance with law at an early date.

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

8. It is relevant to extract the details of violation as shown in the de-occupation notice dated 02.03.2018 issued by the fourth respondent:

S.No	Description	As per Approved Plan	As per site	As per site	Deviation
			G.F. Difference	F.F. Difference	
IV. Set back					
1	Front	1.50m	1.50m	1.50m	-
2	Rear	1.50m	1.50m	1.50m	-
3	Side 1(E)	1.50m	1.50m	1.50m	-
4	Side 2(E)	1.50m	1.50m	1.50m	-
V. Floor Area					
1	Ground Floor	136.07 sq.m	149.72 sq.m		13.65 sq.m
2	First Floor	229.29 sq.m	261.58 sq.m		32.29 sq.m
3	Second Floor	114.27 sq.m	158.04 sq.m		43.77 sq.m
VI. Usage of the building - floor wise					
1	Ground Floor	Residential	Residential		
2	First Floor	Residential	Residential		
3	Second Floor	Residential	Residential		
IV. Number of Car Parking			4 Nos.		5 Nos.

9. Though the petitioners pray for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners and two others in the special revision field by them and also taking note of the fact that the premises in question consists of six dwelling units, is of the view that the following order would meet the ends of justice:

(i) The first respondent or his delegated official shall entertain the Special Revision Petition filed by the petitioners under Section 80-A of the TCP Act along with the petition for stay under Section 80-A (3) of the TCP Act, if the papers are otherwise in order and shall take up the stay petition initially and give disposal on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order and till such time, the respondents 2 and 6 shall defer further decision in terms of the de-occupation notice dated 02.03.2018.

(ii) The first respondent or his delegated official shall also take up the main appeal itself and give disposal on merits and in accordance with law within a period of twelve weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioners.

(iii) The petitioners and two others, who are owners/occupants of the dwelling units/apartments, till the disposal of the special revision by the first respondent or his delegated official, shall not create any third party rights in respect of the superstructure in question and shall not alter it's physical features also.

(iv) It is made clear that if sealing has already been done, it shall be de-sealed till the disposal of the petition for stay by the first respondent or his delegated official.

It is represented that electricity service connection, water supply and sewerage connection has been disconnected and the said amenities be restored forthwith subject to compliance of norms.

10. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)
//True Copy//
Sub Assistant Registrar

jvm

To

- 1.The Secretary to Government,
Housing and Urban Development Department,
St.George Fort,
Secretariat, Chennai-600 009.
- 2.The Commissioner,
Greater Chennai Corporation,
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+1 cc to the Govt pleader sr 27230

+1 cc to Dr.C.Ravichandran Advocate sr 26259

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