

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.4917 of 2018

G.P.Kannaki

... Petitioner

Vs.

The Member - Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natrajan Maligai,
Gandhi Irwin Road,
Egmore, Chennai - 600 008. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondent to remove the lock and seal of the premises situated at 119/13, Jawaharlal Nehru Salai, Pari Nagar, Jaffarkanpet, Chennai - 600 083 and grant a time of Three months to the petitioner so as to enable her to rectify the deviations and additions in the building and restore the same as per the planning permission granted vide P.P.A.No.2271/09 & B.L.No.3764/09 dated 25.08.2009 and comply with the order dated 05.09.2011 passed by this Court in W.P.No.17463 of 2011.

For Petitioner : Mr.K.Elangoo

For Respondent : Mr.C.Johnson

O R D E R

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

Heard the Learned Counsel for the Petitioner. Mr.C.Johnson, Learned Standing Counsel takes notice for the Respondent. With the consent on either side, the Writ Petition itself is taken up for final disposal.

2.No counter affidavit is filed on behalf of the Respondent.

3.According to the Petitioner, as per the Development Regulation Rules, she is entitled to put up an additional floor of construction in the property situated at No.119/13, Jawaharlal Nehru Salai, Chennai - 600 083. Originally she had obtained a planning permission dated 25.08.2009 to put up stilt

+ 2 floors of commercial building in the said property. Anticipating that the Respondent would accord permission, she had constructed 3rd floor and submitted a revised plan for planning permission. The Respondent on 29.12.2009 after inspecting the property had issued Stop Work Notice calling for an approved plan from her in respect of the property in question. At that point of time, according to the Petitioner, her husband was hospitalised and underwent a major surgery of Kidney Transplantation, and she was attending him and therefore, she was not in a position to give suitable reply to the aforesaid notice dated 29.12.2009 issued by the Respondent.

4.As a matter of fact, on 16.04.2010 the Respondent issued locking and sealing and demolition notice under Section 56 of the Tamil Nadu and Country Planning Act, 1971. On 07.06.2010 she made an application for regularisation of the construction in the premises in question. However, on 06.08.2010 her application came to be rejected. Being aggrieved against the order of rejection dated 06.08.2010 she filed a statutory Appeal before the Secretary to the Government, Housing and Urban Development Department. During the pendency of the Appeal, she filed W.P.No.17463 of 2011 before this Court seeking for issuance of necessary direction to the Respondent to remove the lock and seal dated 16.04.2010 affixed in the premises so as to enable her to rectify the deviations and additions in the building in conformity with the building permission.

5.It comes to be known that on 05.09.2011, this Court, after recording her specific undertaking to rectify the deviations and additions in the building in the premises in question, passed an order in the aforesaid W.P.No.17463 of 2011 directing the Respondent to remove the lock and seal so as to enable her to restore the building as per the original planning permission. On 05.07.2012, the Respondent communicated that they proposed to break open the lock and seal of the premises only for the purpose of carrying out the demolition and alteration of the unauthorised portions and to restore the construction to the approved plan. In the meanwhile, her husband once again fell ill and again he was under intensive medical care and subsequently after prolonged treatment, he died on 06.06.2014. She was not able to communicate to the Respondent notice dated 05.12.2011 because she was bereaved and also to comply with the order dated 05.09.2011 passed in W.P.No.17463 of 2011 and took long time for her to recover from her husband grief and apart from that, she had spent all her savings and wealth for treatment of her husband.

6.It transpires that the Petitioner made a representation on 17.01.2018 to the Respondent praying to remove the lock and seal of the premises for the purpose of carrying out the demolition and alteration of the unauthorised portions and to

restore the construction to the approved plan. On 22.01.2018, the Respondent received the aforesaid representation dated 17.01.2018, but no action was taken so far, the negation on the part of the Respondent is a negation of Principles of Fairness in approach. Hence, she has filed the present Writ Petition.

7.It is not in dispute that this Court in W.P.No.17463 of 2011 [filed by the present Petitioner] on 05.09.2011 at paragraph 7, had observed the following:

"7.Considering the above circumstances and also taking into account the undertaking filed by the petitioner and in terms of the above order this writ petition is also disposed of with a direction to the respondent herein to remove the lock and seal put up by him in petitioner's premises on receipt of a copy of this order and thereafter, petitioner is directed to remove the unauthorised and deviations within three months from the date of removal of the seal and lock. If the petitioner does not comply with the above said direction within the stipulated time, the respondent authority is at liberty to proceed in accordance with law. Both the parties are directed to comply with the direction as above. Connected miscellaneous petition is closed. There shall be no orders as to the costs."

8.Later, on 05.07.2012 the Respondent communicated to the Petitioner that they had proposed to break open the lock and seal of the premises for the only purpose of carrying out the demolition and alteration of unauthorised portions to restore the construction to the approved plan.

9.The grievance of the Petitioner is that she spent all her savings and wealth on the medical expenses to her husband who ultimately died on 06.06.2014 and he took some time for her recovery from the grief and ultimately, she made a representation on 17.02.2018 (which was received by the Respondent on 22.01.2018) and that the Respondent has not taken any further action in regard to her representation. Considering the fact that the Petitioner has come out with reasons that her husband was hospitalised and he was under intensive medical care and after prolonged treatment he died on 06.06.2014 etc. and added further, she had spent all her savings and wealth for his treatment during his lifetime, this Court, without going into the merits of the matter and also not expressing any opinion on the merits of the subject matter of the issue, at this stage, simpliciter, directs the Respondent to remove the lock and seal

of the premises situated at No.119/13, Jawaharlal Nehru Salai, Pari Nagar, Jaffarkanpet, Chennai - 600 083 and in this regard, the Petitioner is granted three months time to enable her to rectify the deviations and additions in the building and restore the same as per the planning permission granted vide PP.No.D9/2271/2009 dated 25.08.2009 and comply with the order dated 05.09.2011 in true letter and spirit.

10.It is abundantly made clear that if the Petitioner is not availing the present opportunity within the three months time granted by this Court, in the present Writ Petition, then, it is open to the Respondent to proceed further without any haziness or hesitation and that the parties are directed to comply with the direction issued by this Court without any deviation or default whatsoever. If the Respondent is not adhering to the directions issued by this Court in crystalline fashion, then, the concerned erring officials against the action can be taken by the Member-Secretary of the Chennai Metropolitan Development Authority by taking departmental proceeding and the Respondent shall see to it that the said proceedings are taken to its logical end.

11.Before parting with the case, it is lucidly made clear that the removal of 'Lock and Seal' can only be availed of by the Petitioner only to rectify the deviation and additions in question. It is made clear that the Petitioner shall not occupy or create any third party rights or encumbrance over the property during the three months period granted by this Court.

12.With the aforesaid observations, the Writ Petition stands disposed of. No costs.

Sgl

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Member - Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natrajan Maligai,
Gandhi Irwin Road, Egmore, Chennai - 600 008.

+1CC to Mr.K.Elango, Advocate in SR.NO. 17171/18
+1CC to Mr.C.Johnson, Advocate in SR.NO. 17157/18

W.P.No.4917 of 2018

VGI [CO]
MLT-26/03/2018