

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018
CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.Nos.8903 to 8905 of 2018
and WMP.Nos.10757 to 10759 of 2018

Soni Gurnani
Represent by its Power of Attorney
Mr.Rukiman Devi Das Gurnani,
M/s.Cinebels ...Petitioner in WP.No.8903/18

Dr.G.M.Basiruddin ...Petitioner in WP.No.8904/18

S.M.Hiriya @ S.M.Hariay ...Petitioner in WP.No.8905/18

Versus

1.The Secretary to the Government,
Housing and Urban Development Department,
Secretariat, Chennai.

2.Chennai Metropolitan Development Authority,
rep.by Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

3.The Commissioner,
Corporation of Chennai,
Ribbon Building, Chennai. ..Respondents in all Wps.

COMMON PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari calling for the records leading to pass the impugned order of the 2nd respondent dated 26.03.2018 in Letter No.EC/C-I/26736/1995 (1) in WP.Nos.8903 & 8905/2018 and Letter No.EC/C-I/26736/1995 (2) in WP.No.8904/2018 and quash the same.

For Petitioners in all WPs. : Mr.C.Jagadish

For Respondents in all WPs. : Mr.R.Udhayakumar

Additional Government Pleader for R1

Mr.K.Rajasrinivasa for R2

Mr.A.Nagarajan for R3

COMMON ORDER

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

By consent, all these writ petitions are taken up for final disposal. Since the issue, to be adjudicated is one and the same and the facts are intervened, all the writ petitions are disposed of by this common order.

WP.No.8903 of 2018:

2(a). The petitioner claims to be a owner of the Ground floor portion of the commercial Apartment known as ''Park Circle'' bearing Municipal Door No.18/3, (Old No.20), Moors Road, Chennai-600 006, which was purchased by registered Sale Deed dated 27.10.1999, before the Joint Registrar-II, Thousand Lights, Chennai. It is also the case of the petitioner, the construction has been put strictly in accordance with the plan and after purchase, the said property is subjected to statutory levies and leased out the same in favour of ''M/S.Cinebels'' (Sound System). The petitioner would state that as per the approved plan, the ceiling height is to be within 18 feet and for the sake of convenience, she had put up false ceiling and also made partition by using temporary plywood structure so as to reduce the consumption of electricity for the air conditioner and also for effective use of the place and as such as per Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971, no action can be taken under Section 56(2) and 2A of the said Act. The petitioner also expresses his grievances that the action is taken scrupulously in order to ward off the contempt proceedings in WP.No.37175/2006, which came to be disposed of on 05.10.2017 and would further aver that challenging the impugned De-occupation notice dated 26.03.2018, she has filed appeal/special revision under Section 80-A of the Town and Country Planning Act, 1971 before the 1st respondent on 09.03.2018 along with petition for stay and despite the said fact, the 2nd respondent had locked and sealed the premises today morning and prays for appropriate orders.

WP.No.8904 of 2018:

2(b). The petitioner claims to be a owner of the property at Mezzanine Floor of commercial commercial apartment known as ''Park Circle'' bearing Municipal Door No.18/3, (Old No.20), Moors Road, Chennai-600 006, which was purchased by registered Sale Deed dated 20.12.2016, before the Joint Registrar-II,

Thousand Lights, Chennai. It is also the case of the petitioner that the construction has been put up strictly in accordance with the plan and after purchase, the said property is subjected to statutory levies and leased out the same in favour of 'M/S.Viz Infinity'. The petitioner would state that as per the approved plan, necessary internal alteration had been done to that effect and opening through main stair case within premises will not amount to unauthorised development within the meaning of Tamil Nadu Town and Country Planning Act, 1971 and also relied upon Proviso to Section 2(13) of the said Act, no action can be taken under Section 56(2) and 2A of the said Act. The petitioner also expresses his grievances that the action is taken scrupulously in order to ward off the contempt proceedings in WP.No.37175/2006, which came to be disposed of on 05.10.2017 and would further aver that challenging the impugned De-occupation notice dated 26.03.2018, he has filed appeal / special revision under under Section 80-A of the Town and Country Planning Act, 1971 before the 1st respondent on 05.03.2018 along with petition for stay and despite the said fact, the 2nd respondent had locked and sealed the premises today morning and prays for appropriate orders.

WP.No.8905/2018

2(c). The petitioner claims to be a owner of the property at Ground Floor of commercial commercial apartment known as 'Park Circle' bearing Municipal Door No.18/3, (Old No.20), Moors Road, Chennai-600 006, which was purchased by registered Sale Deed dated 20.12.2016, before the Joint Registrar-II, Thousand Lights, Chennai. It is also the case of the petitioner that the construction has been put strictly in accordance with the plan and after purchase, the said property is subjected to statutory levies and leased out the same in favour of 'M/S.K.C.Dos'. The petitioner would state that as per the approved plan, the ceiling height is to be within 18 feet and for the sake of convenience, he had put up false ceiling and also made partition by using temporary plywood structure so as to reduce the consumption of electricity for the air conditioner and also for effective use of the place and as such as per Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971, no action can be taken under Section 56(2) and 2A of the said Act. The petitioner also expresses his grievances that the action is taken scrupulously in order to ward off the contempt proceedings in WP.No.37175/2006, which came to be disposed of on 05.10.2017 and would further aver that challenging the impugned De-occupation notice dated 26.03.2018, he has filed appeal/special revision under Section 80-A of the Town and Country Planning Act, 1971 before the 1st respondent on 09.03.2018 along with petition for stay and despite the said fact, the 2nd respondent had locked and sealed the premises today morning and prays for appropriate orders.

3. The learned counsel appearing for the petitioners would submit that admittedly, it is only a minor alteration and in terms of Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971, it cannot be construed as unauthorized development or additional construction and there is no violation in construction of the building in question and it has been constructed in accordance with the sanctioned plan and got infuriated by the fact, De-occupation notice has been issued and the 2nd respondent has taken the said action urgently and locked and sealed the premises and would further prayed that till the disposal of the appeals by the 1st respondent, the lock and seal put up on the respective premises owned or in occupation of the petitioners can be de-sealed and prays for appropriate orders.

4. This Court has taken into consideration the submissions made by Mr.R.Udhayakumar, learned counsel who accepts notice on behalf of 1st respondent and Mr.K.Rajasrinivas, learned standing counsel appearing for the 2nd respondent and Mr.A.Nagaraj, learned standing counsel appearing for the 3rd respondent.

5. The learned standing counsel appearing for the 2nd respondent would submit that admittedly internal alteration has been done without any prior approval or planning permission and in terms of Section 56(2) and 2A of the Tamil Nadu Town and Country Planning Act, 1971 and admittedly, the petitioners are yet to move their appeal/special revision filed by them and as such there may not be any impediment on the 2nd respondent to take action in accordance with law and it has been sought so accordingly and prays for dismissal of this writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. 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 herein, either in their appeal/special revision or in this writ petition and also in the light of Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971, directs the 1st respondent to entertain the appeal filed by the petitioners along with petition for stay, if the papers are otherwise in order and the 1st respondent or the delegated official shall take up the petition for stay initially and give a disposal in accordance with law within a period of four weeks from the date of entertainment of the appeal. It is also open to the 1st respondent or the delegated authority to take up the main appeal or special revision 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/special revision and communicate the decision taken, to the petitioners and the 2nd

respondent, till the disposal of the petition for stay by the 1st respondent, desal the premises of the petitioners. It is also made clear that the petitioner till the disposal of the appeal/special revision by the 1st respondent shall not create any third party rights in respect of the site/superstructure in question and shall not alter the physical features also.

8. With the above direction, the writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to the Government,
Housing and Urban Development Department,
Secretariat, Chennai.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
- 3.The Commissioner,
Corporation of Chennai,
Ribbon Building, Chennai.

+3cc to Mr.K.Raja Shrinivas, Advocate, S.R.No.27070,27071,27073

+3cc to Mr.C.Jagadish, Advocate, S.R.No.26961

+1cc to the Government Pleader, S.R.No.27263

WP.No.8903 to 8905 of 2018

AK(CO)

RRK(25/04/2018)