

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.16127 of 2016

and

W.M.P.Nos.13929 & 13930 of 2016

Ayesha Majeed

.. Petitioner

Vs.

1.Housing and Urban Development,
Rep. By its Secretary to Government,
UV-VI(1) Department,
5th Floor CMDA Tower 1,
No.1, Gandhi - Irwin Road,
Chennai - 600 008.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi - Irwin Road,
Chennai - 600 008.

3.The Commissioner,
Corporation of Chennai.
Chennai - 600 003.

4.The Executive Engineer,
Zone-VIII,
Corporation of Chennai
64, Kalaivanar Salai,
Kodambakkam, Chennai - 600 024.

5.Mrs.Leela Vijayan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 1st Respondent in G.O.(3D) No.72 dated 28.12.2015 and quash the same as illegal against the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.R.Sivakumar
For M/s.K.M.Vijayan
Associates

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

For 2nd Respondent : Mr.C.Johnson

For RR 3 & 4 : Mr.R.Arunmozhi

For 5th Respondent : Mr.B.Mohan
For Mr.Manoj Sreevatsan

O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J.]

The present writ petition has been filed challenging the regularisation order of the 1st Respondent dated 28.12.2015, even though the violations are said to have been confirmed.

2.According to the petitioner, the appeal has not been filed within 30 days as contemplated under Section 80(A) of the Town and Country Planning Act, 1971 (in short 'the Act') and that she has filed a petition in W.P.No.10091 of 2013 seeking a direction to the respondents 2 and 3 to take action as per the proceedings dated 04.08.2011. Pursuant thereto, an appeal has been filed by the 5th Respondent, which was received on 13.10.2015 after a period of 30 days as contemplated under the said Act. The Secretary to Government, instead of considering the case of the petitioner on merits, has observed that an opportunity of personal hearing was given to him and that during the time of construction itself, one residential unit in the ground floor had been converted for commercial use for which no prior permission has been sanctioned and directed the authorities to consider the request/plan of the applicant under Section 113(A) of the Act, for regularisation.

3.According to the petitioner, he is the complainant and in terms of the provisions of the Act, he should have been heard and that one authority directing other authorities under Section 113(A) of the Act to consider the request for regularisation is illegal, and that there is a categorical finding by the 1st respondent that there is violation as could be seen from paragraph Nos.2, 4 and 5 of the impugned order dated 28.12.2015 and the same are extracted below:

"2.The petitioners were given personal

hearing on 02.11.2015. During the hearing, they have stated that they obtained planning permission during the year 1994 to construct ground + 3 floor building with one commercial unit on the ground floor and 8 residential units in the ground and other 3 floors. The construction had been completed in the year 1997 itself. Property Tax assessment has been made from the 2nd half of the year 1997-1998 itself and is being paid to Corporation of Chennai since then for each unit. During the time of construction itself one residential unit in the ground floor had been converted for commercial use in the front portion adjoining the approved commercial portion. Cantilever projection on the first, 2nd and 3rd floor had been made on northern and eastern side to the extent of about 1.3 mtrs. Further, 2 rooms to an extent of 150 sq.ft. each have been constructed below the over head water tank without changing the area of the over head water tank as per the approved plan for the purpose of storage of materials and electrical items etc., required for the purpose of over all maintenance of the building. The commercial shops on the ground floor house medical, plumbing, electrical and tailoring shop and Dr.Clinic which are incidental to the requirements of the occupants of the building. Chennai Metropolitan Development Authority has also issued notice in the year 1997 marking these deviations and forfeited their Security Deposit vide letter No.EC2/30502/96, dated 27.08.1997. They have applied for regularisation under Section 113(A). However they are unable to trace the details of regularisation application since the issue was dealt by her son who died in 2008.

4.The Corporation of Chennai had stated that since the building was constructed in violation of the approved plan by way of providing cantilever projection in the set back area on the first to 3rd floor and construction of rooms beneath the over head tank to a total extent of 270 sq.ft. on the terrace below

the two over head tanks and since part of the ground floor area approved for usage as residential has been converted for commercial usage.

5. After perusal of the submission made by the petitioner and the Corporation of Chennai along with related records, it was observed that there are clear evidence to prove that the construction of the building has been completed prior to the cut off date of 28.02.1999. Show cause notice of the Chennai Metropolitan Development Authority dated 24.05.1997 as well as subsequent forfeiture of security deposit due to the violations mentioned in the building vide letter No.EC2/ 30502/96, dated 27.08.1997 and payment receipts of Property Tax from 1997 onwards would go to prove that the construction of the building was completed prior to 28.02.1999. Further, the petitioners are eligible for benefit under section 113(C) of Town and Country Planning Act, 1971 for which the rules are yet to be notified by the Government. Also, the violations noted are in the form of aerial projection in the set back area and construction of two rooms below the area covered under the over head tanks without extending the Over Head Tank area besides converting one portion on the Ground Floor for commercial use which in no way affect the safety of the habitants of the building or cause any inconvenience to the neighbourhood."

4. Per contra, Mr.C.Johnson, learned standing counsel for the 2nd respondent contended that in terms of Section 79 of the Act, the authorities are empowered to consider the appeal within a period of two months from the date of filing of the same and that prejudice would be caused to the writ petitioner if his application is considered in terms of provisions of the Tamil Nadu Town and Country Planning Act, 1971.

5. It is not in dispute that there was a sanctioned Plan and no commercial place was permitted in the Plan, as could be seen from the observation made by the 1st respondent in the impugned order.

6. That apart, in terms of Sections 80(A) and 113(A) referred to supra, it is clear that the complainant need to be heard and that there is no provision for condoning the delay, if any application is filed after 30 days from the date of receipt of the lock and seal notice. Reference to Section 79 of the Act may not be applicable to the present facts and circumstances, as the 5th Respondent has not preferred any appeal under Section 79. Section 79 empowers the Authority to entertain an Appeal after two months, such is not the case when an application is preferred under Section 80-A or 113-A of the Town and Country Planning Act, 1971.

7. Sections 79 and 80(A) are meant for different purpose and it cannot be read together or conjointly. The contention that harmonious construction need to be given to Section 80(A) and reading Section 79 into Section 80(A), may not be acceptable. The violation is very material and the petitioner's request cannot be accepted. That apart, there is no hearing given to the complainant.

8. This Court, time and again had held, that the complainant would be the right person to bring to the attention of this Court about the violation that may be committed by the violators. For the reasons best known to the 1st respondent, he has passed the order in a perfunctory manner that regularisation has to be done by the authorities under Section 113(A).

9. We have come across several orders passed by the authorities and that they are questionable ones. Now leaving open the issues to be decided in the appropriate cases and that in the present case as stated supra, since the decision of the 1st respondent is a slipshod one, we are of the view that the impugned order dated 28.12.2015 is contrary to the provisions of the Tamil Nadu Town and Country Planning Act, 1971 as there cannot be any conversion of residential portion into a commercial one and that when there is violation as could be seen from paragraph Nos. 2, 4 and 5 of the impugned order, we find much force in the contentions of the writ petitioner.

10. Accordingly, the Writ Petition is allowed and the impugned order is quashed. We make it very clear that the violated portions will have to be razed to the ground within a period of 30 days from the date of receipt of a copy of this order, failing which, the authority, who is responsible to initiate action against the violators will have to be proceeded with departmentally and major/ appropriate punishment shall be imposed, which shall be reflected in his

service records. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. Secretary to Government,
Housing and Urban Development,
UV-VI(1) Department, 5th Floor CMDA Tower 1,
No.1, Gandhi - Irwin Road,
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Zone-VIII, Corporation of Chennai
64, Kalaivanar Salai,
Kodambakkam, Chennai - 600 024.

+1cc to Mr.K.M.Vijayn Associates SR.No.5396

+1cc to The Government Pleader SR.No.6192

+1cc to Mr.Manoj Sreevalsan Advocate SR.No.5942

+1cc to Mr.R.Arunmozhi Advocate SR.No.5759

+1cc to Mr.C.Johnson Advocate SR.No.5698

SDR 26.03.2018

W.P.No.16127 of 2016

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