

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.11318/2018 & WMP.No.13214/2018

Dr.L.Aarthi

.. Petitioner

Versus

1.The Secretary to Government
Tamil Nadu Housing and Urban
Development Department
Fort St. George, Chennai-9.

2.The Member Secretary
Chennai Metropolitan Development
Authority, Gandhi Irwin Road
Egmore, Chennai 600 008.

3.The Director
Directorate of Town and Country Planning
Chengalvarayan Building, 4th floor
807 Anna Salai, Chennai 600 002.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 2nd respondent and to process the regularization plan of the petitioner dated 04.03.2018 in Receipt No.CMDA/Reg-113C/288/2018 under section 113-C of Town and Country Planning Act, 1971, subject to the order of WP.No.23889/2017.

For Petitioner : Mr.K.Rajasekaran
For RR 1 & 3 : Mr.A.N.Thambidurai, Spl.GP
For R2 : Mr.K.Raja Srinivas

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 and 3 and Mr.K.Raja Srinivas, learned Standing counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner claims to be a resident of Flat No.6, 2nd Floor, Vantage Castle Apartments, Old No.11 and 12, New No.17/3, 1st Cross Street, Kasturba Nagar, Adyar, Chennai 600 020 and she claims to be a qualified Medical Practitioner and so also her husband and apart from residing in the said Flat, she is also using the said Flat for running as a Consulting Room for Dermatology patients. It is further averred that at the instance of the adjacent owners, viz., Tvl.G.Vivekanandan, Tmt.Rajam Santhanam and Mr.V.S.Elumalai, WP.No.29945/2017 came to be filed, pointing out the alleged unauthorised illegal conversion of the residential Flat owned by the petitioner herein and this Court, vide order dated 22.11.2017, directed the concerned respondent therein to cause inspection of the premises, after putting the petitioner herein as well as the above said complainants on notice and take action in accordance with law and in pursuant to the same, inspection was carried out and it was followed by Locking, Sealing and Demolition Notice dated 06.02.2018 issued by the 2nd respondent alleging unauthorised conversion. The petitioner, in this regard, has also submitted an application dated 04.03.2018, u/s.113-C of the Town and Country Planning Act, 1971, and the grievance now expressed by the petitioner is that despite the pendency of the said application, the impugned notice dated 23.04.2018 for discontinuance of the usage, came to be issued by the 2nd respondent and therefore, the petitioner came forward to file the present writ petition, praying for appropriate direction to consider her application dated 04.03.2018, filed u/s.113-C of the Town and Country Planning Act, 1971.

3 The learned counsel for the petitioner would submit that on account of the pendency of the said application, appropriate direction may be issued to the 1st respondent to consider and dispose of the same and till such time, further proceedings in terms of the notice of the 2nd respondent dated 23.04.2018, may be deferred.

4 Per Contra, Mr.K.Raja Srinivas, learned Standing counsel appearing for the 2nd respondent would submit that in strict sense, the application filed u/s.113-C of the Act, said to have been by the petitioner is not maintainable for the reason that according to the 2nd respondent, the residential flat has been converted and used for commercial purpose and therefore, the remedy open to the petitioner, if any, is to file an application u/s.49 read with 54 of the Town and Country Planning Act, 1971.

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

6 In the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner and taking note of the submissions made by the

learned Standing Counsel appearing for the 2nd respondent, on instructions, is of the view that it may be open to the petitioner to file an application u/s.49 read with 54 of the Town and Country Planning Act, 1971, if it is permissible under law, in the prescribed form by paying prescribed fee and also enclosing relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order to the 2nd respondent and upon receipt the same, the 2nd respondent may entertain the said application, if the papers are otherwise in order and after putting Tvl.G.Vivekanandan, Tmt.Rajam Santhanam and Mr.V.S.Elumalai, who are residents of Vantage Castle Apartments, Old No.11 and 12, New No.17/3, 1st Cross Street, Kasturba Nagar, Adyar, Chennai-20, on notice, shall consider and dispose of the said application on merits and in accordance with law within a period of twelve weeks from the date of entertainment of the said application and communicate the decision, to the petitioner as Tvl.G.Vivekanandan, Tmt.Rajam Santhanam and Mr.V.S.Elumalai, and till such time, the petitioner shall use the Flat in question only for residential purpose and not otherwise and also as per original usage. The 2nd respondent shall defer further decision in terms of the Locking, Sealing and Demolition Notice dated 06.02.2018 and the Notice for Discontinuance of Usage dated 23.04.2018, till the disposal of the said application.

7 The writ petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

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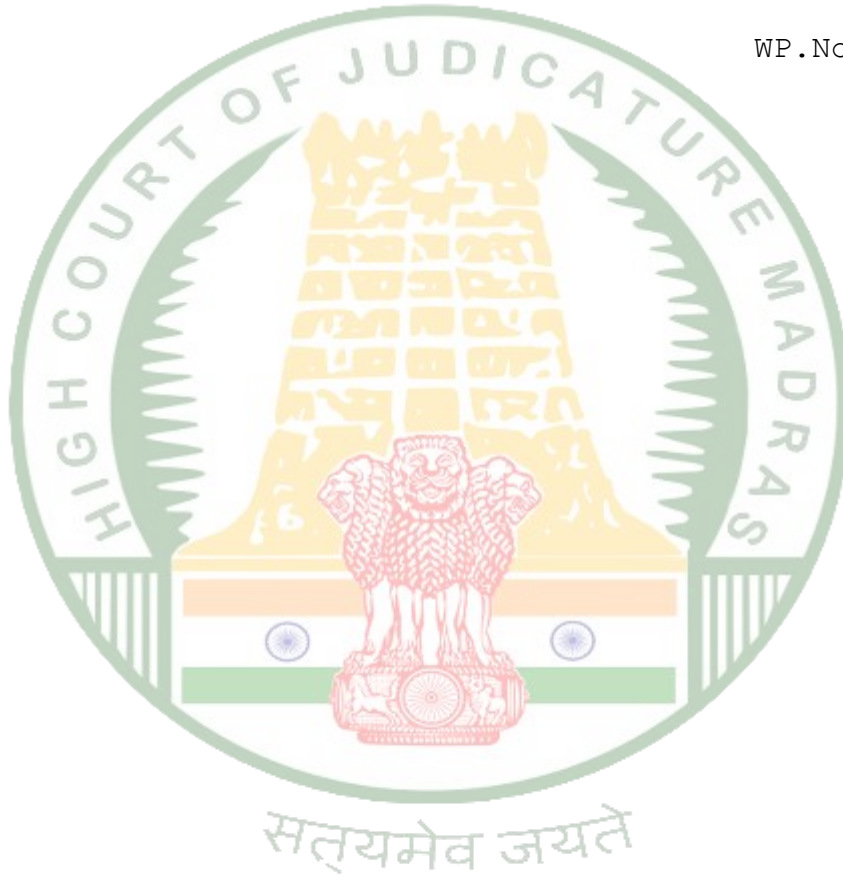
+1cc to Mr.K.Rajasekaran, Advocate Sr.No.32190

+1cc to Mr.K.Raja Srinivas, Advocate Sr.No.32524

+1cc to Government Pleader SR.No.32936

sm:8.6.2018

WP.No.11318/2018



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