

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.09.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P.No.23352 of 2018 and
W.M.P.No.27258 of 2018

L.Kalyani

.. Petitioner

Vs

1.The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Greater Corporation of Chennai
Rippon Building, Chennai - 600 003.

3.The Executive Engineer,
Zone-6, Greater Corporation of Chennai,
No.5, Anderson Road, Ayanavaram,
Chennai - 600 023.

4.The Assistant Engineer,
Division - 77, Zone - 6,
Greater Corporation of Chennai
No.19, Choolai High Road,
Choolai, Chennai 600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF MANDAMUS directing the Respondents 3 and 4 herein not to take any coercive steps based on the De-occupation proceedings No.06/00017/2018 dated 27.08.2018 till the disposal of the Appeal pending on the file of the 1st Respondent herein with regard to the Petitioners property.

For Petitioner : Mr.R.Ramesh

For 1st Respondent : Mr.R.Udayakumar
Additional Government Pleader

For RR 2 to 4 : Mr.Arunmozhi

O R D E R

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

Heard the Learned Counsel for the Petitioner; Mr.R.Udayakumar, Learned Additional Government Pleader takes notice for the 1st Respondent and Mr.Arunmozhi, Learned Standing Counsel takes notice for Respondents 2 to 4.

2.No counter is filed on behalf of the Respondents 1 to 4.

3.According to the Petitioner, the property bearing Town Survey O.S.No.4357 and 367 Part R.S.No.1736/1 part and 1736/2 part, C.C.No.684 part of Patta C.A.No.116/13 as per Patta R.S.No.13736/221 in Block No.39, Vepery Village having an extent of 618 sq.ft. was purchased by her late Husband M.K.Loganathan with his hard earned money in her name on 13.02.2013. Ever since the date of purchase, she is residing in the said property without any let or hindrance from anyone along with her family. All the Government and Revenue Records do stand in her name in respect of the property. The Respondents 2 to 4, after completion of the construction, inspected her property and assessed the same for property tax on 03.12.2013. She is paying the property tax without any default. As a matter of fact, the Respondents are very well aware of the development made by her in the said property. Also that, the Respondents 3 and 4 received urban land tax from her and issued receipt for the same in the year 2013 itself. She had obtained all the amenities like water and sewerage connection and electricity connection in her name and enjoying the property for more than five years from the date of possession without any hindrance from anyone whatsoever.

4.The Petitioner's husband died in the year 2014 and hence she was very much affected physically as well as financially and leading her life in a very pathetic condition. The Respondents 3 and 4 issued Lock and Seal Notice dated 04.01.2018 as per Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 to remove the unauthorised construction. The Respondents issued notice after the period of Limitation of three years as contemplated under Section 56(1) of the Act, 1971. Hence, the demolition notice was issued after a period of four years, which is barred by Limitation. Apart from that, without obtaining permission from the 2nd Respondent, the 3rd Respondent had issued a notice which is ab initio void. She is running a shop at Shop No.2, Demellows Road, Pattalam, Chennai and one B.Sukumar is the Ex. Trustee of Siddi Buddi Sundara Vinayagar Koil, who is jealous on her and on taking vengeance, had filed a vexatious complaint against her before the 3rd Respondent with a

mala fide intention and the notice dated 04.01.2018 was issued to her.

5. On 24.07.2018 the Respondents 3 and 4 had again issued the Lock and Seal Notice to the Petitioner's property. Earlier she had filed an Appeal before the 1st Respondent bearing Appeal No.141/2018 during January, 2018 itself. However, the same was returned for complying with certain defects. Only during the month of June, 2018, the Appeal was represented before the Competent Authority. While the Appeal is pending before the 1st Respondent, the Respondents 3 and 4 issued the De-occupation notice on 27.08.2018 for the Petitioner's property.

6. The principle plea taken on behalf of the Petitioner is that the building was constructed some 20 years ago. Also that, the Government had issued a G.O.(Ms).No.110 dated 22.06.2017 stating that the properties, which are constructed in the City on or before 01.07.2007 without obtaining any permission, the concerned person can apply for regularisation and the same may be considered by the authorities concerned. In fact, she had applied for regularisation before the 3rd and 4th Respondents and the same is pending. While her representation for regularisation of the building and also the Appeal preferred by her before the 1st Respondent, the 3rd and 4th Respondents had issued De-occupation Notice dated 27.08.2018, which is highly illegal and unwarranted one. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing the 3rd and 4th Respondents not to take any coercive steps based on the De-occupation Proceedings No.06/00017/2018 dated 27.08.2018 till the disposal of the Appeal pending on the file of the 1st Respondent.

7. Per contra, it is the submission of the Learned Counsel for the Respondents 2 to 4 that the 3rd and 4th Respondents had issued Lock and Seal Notice dated 04.01.2018 to the Petitioner, in terms of the ingredients of Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 to remove the unauthorised construction. Even on 24.07.2018, the 3rd and 4th Respondents had issued another Lock and Seal Notice to the Petitioner's property. Although the Petitioner claims in the Writ Affidavit that she had applied for regularisation before the 3rd and 4th Respondents and the same is pending. Further, it is represented that pending decision on the same, there is nothing in the Act, 1971 which precludes the Respondents 2 to 4 to take such action as they deem fit when the construction of the Petitioner's building/ property is an unauthorised one.

8. In the instant case, pending Petitioner's representation for 'Regularisation' of the building, she had preferred an Appeal before the 1st Respondent and the same is admittedly

pending as on date. As per Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, the State Government has special powers and though the said powers in Law are a Revisional one, it cannot be called as an Appeal powers in stricto sense of the term. Sub-section (3) of Section 80-A of the Act, 1971 enjoins the Government to pass an interim order provided the concerned person has preferred an Appeal seeking necessary interim relief.

9. In this connection, it may not be out of place for this Court to make a significant mention that Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 deals with Application for Permission before the Appropriate Authority seeking to carryout any development on any land or building and the grant or refusal of the said permission by the concerned 'Planning Authority'. Apart from that, the G.O.(Ms)No.652, R.D. & L.A., dated 08.04.1975 pertains to the Rules framed as regards the 'Application for Planning Permission' under the Act, 1971.

10. At this stage, this Court aptly points out the decision in Madras Race Club represented by Mr. Aruna, Officer-In-Charge [Legal], Chennai V. Chennai Metropolitan Development Authority, represented by its Member Secretary, Chennai and Others reported in (2006) 4 M.L.J. 1 at special page 2 wherein it is observed and held as follows:

"A person proceeding with unauthorised constructions, in total violation of the Rules is not entitled to invoke exemption under Section 49 of the Tamil Nadu Town and Country Planning Act, which could be granted only in slight deviations. If the Construction is illegal it has to be demolished."

11. Besides the above, in the decision Chennai Metropolitan Development Authority, represented by its Member Secretary, Chennai V. Abdur Rehman, Hotel Nest International, Chennai and another reported in (2002) 2 M.L.J. 431 at special page 434 wherein at paragraph Nos.11 & 12, it is held as under:

"11. However, if an application is made for permission under Section 49 as per Sub-Section(3), then the notice shall not have any effect pending determination of the application as per Sub-section(4). Section 80 of the Act provides for a revision by the Director on application, to call for and examine the records of any officer subordinate to him. The said provision is also available to the Government to call for and examine the records of the Director. Sub-Section(3) empowers the Director or the

Government to suspend the execution of the decision or order pending disposal of the revision.

12. The Tamil Nadu Town and Country Planning Act, 1971 provides for the planned and orderly development and use of urban land, and in order to achieve the said object, it has provided for a scheme and machinery for the control of development and use of the land. Section 49 begins with a prohibition as to the carrying out of development of any land except as otherwise provided for, and only after making an application in writing to the appropriate planning authority for permission. The duration of permission is provided for under Section 50. The removal comes only on the failure as per the Act. Section 56 empowers to remove the unauthorised development. As against the refusal to grant permission under Section 49, an appeal is provided for under Section 79 of the Act. A revision is provided for against the proceedings taken under Section 80 of the Act. The remedies are available against any decision and the proceedings under the Act. The provisions give sufficient safeguards and opportunity to the concerned either to explain, comply or move a revision. Section 56(1) itself provides for one month's time to take such steps. The person aggrieved has a choice to apply for permission and get the matter postponed till the final determination or file a revision against such a decision."

12.No wonder, the notice specified in Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 is not an empty ritualistic formality. Indeed, a decision is to be arrived at when the conditions under Sub-Section [1] of Section 56 if satisfied, a notice is preceded by the determination that the contents of Sections 49, 50, 54 and 56 are satisfied for the violation. Undoubtedly, a notice enjoined in Section 56 of the Act, 1971 is a decision under Section 56(2-A) of the Act allows the planning authority to Seal and Lock the premises, in case owner or occupier failed to comply with the notice issued earlier under Section 56(1) of the Act.

13.It is to be remembered that the Planning Authority is empowered to press into service Section 56(2-A) of the Act irrespective of the pendency of the Application under Section 49 or Appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, or any litigation pending before the Court of Law. Apart from that, though Section 80-A of the Act speaks of Special powers of the Government, it is strictly not an 'Appeal', but, it is only a Revisional power to examine the records of the planning authority and to take a decision either to modify, annual reverse or remit the matter for reconsideration.

14.It cannot be gainsaid that for involving the special powers of the Government under Section 80-A of the Act, a valid order passed under Sub-Section [2-A] of Section 56 or Sub-Section [4] of Section 57 is a mandatory one, as per decision in M/s. Sankranthi Hotels Private Limited V. The Government of Tamil Nadu, & Others reported in (2013) 5 Law Weekly 864. Moreover, Sub-Section 3 of Section 80-A of the Act gives power to the Government to pass an interim orders. As such, the Government is empowered to stay the decision as regards Locking and Sealing pending Revision. In short, sealing of the premises is not a condition precedent for filing Special Revision Petition as per Section 80-A of the Act, 1971.

15.Be that as it may, in view of the fact that the Petitioner's Appeal is admittedly pending on the file of the 1st Respondent and in as much as the Petitioner has not projected any Interlocutory Application seeking interim relief as per Section 80-A(3) of the Act, this Court, in the interest of Justice, directs the 1st Respondent to take up the Appeal preferred by the Petitioner and in case, if the Petitioner files an 'Interlocutory Application' seeking interim relief that also can be heard and disposed of along with the Appeal, by providing adequate opportunity of hearing to the Petitioner, after adhering to the Principles of Natural Justice. In any event, the 1st Respondent is directed to pass a reasoned speaking order on merits within a period of six weeks from the date of receipt of copy of this order. It is open to the Petitioner to raise all factual and legal pleas before the 1st Respondent, who shall advert/deal with the same at the time of passing the final orders in the Appeal in question.

16.With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai - 600 009.
- 2.The Commissioner,
Greater Corporation of Chennai
Rippon Building, Chennai - 600 003.
- 3.The Executive Engineer,
Zone-6, Greater Corporation of Chennai,
No.5, Anderson Road, Ayanavaram,
Chennai - 600 023.
- 4.The Assistant Engineer,
Division - 77, Zone - 6,
Greater Corporation of Chennai
No.19, Choolai High Road,
Choolai, Chennai 600 007.
- 5.The Government Advocate,
High Court, Madras.

+1cc to Mr.R.Arunmozhi, Advocate, S.R.No.62470

+1cc to Mr.R.Ramesh, Advocate, S.R.No.62508

+1cc to the Government Pleader, S.R.No.62992

W.P.No.23352 of 2018

PPA(CO)
GSP(12/10/2018)