

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.14567 of 2018

J.Amala Hepzibah

...Petitioner

Vs.

1.State rep. by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai-600 009.

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

3.The Executive Engineer,
Greater Chennai Corporation,
Zone-V, Kannappar Thidal,
Chennai-600 003.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, by forbearing the respondents 2 and 3 the Executive Engineer, Greater Chennai Corporation Zone-V, Kannappar Thidal, Chennai-600 003 and the Commissioner, Corporation of Chennai, Rippon Building, Park Town, Chennai-600 003, or their Men or Agents or any body authorised by them from interfering with the peaceful possession and enjoyment of the house property situated at No.110/87,

Avadanam Pappier Road, Choolai, Chennai-600 112 pending disposal of the appeal pending before the Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai-600 009 in C.N.No.6650 of 2018 or till the exhaustion of the channels of appeal.

For Petitioner : Mr.M.R.Gokul Krishnan
For Respondents : Mr.A.N.Thambidurai, Spl GP
for R1 to R4

ORDER

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

By consent, the writ petition is taken up final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice for the 1st respondents and Mr.Sountharajan, learned Standing Counsel accepts notice for respondents 2 and 3.

2. The petitioner claims to be the owner of the premises bearing Old No.87, New No.110, Avadanam Papier Road, Choolai, Chennai-600 112 comprised in O.S.No.2004 part, R.S.NO.1865/2 admeasuring to an extent of 1870 Sq.ft (Souther Portion) out of 3094 Sq.ft, Block No.29, Purasawalkam Village and Pruasawalkam, Perambalur Taluk. She applied for planning permission and she was accorded permission vide Planning permit No. PPA/WDCNO5/05381/2016 and Building permit No.BA/WDCNO5/02635/2017 dated 08.05.2017 to put up construction consisting of Ground and First Floor, however, the respondent has issued

lock and seal notice dated 03.10.2017 pointing out the following deviations:

Planning parameters	As per plan	As on site	Deviation/unauthorised
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Ground Floor

Front set back	1.50 m	1.10 m	0.40 m
Rear set back	1.01 m	0.65 m	0.36 m
Side set back 1	1.00 m	Nil	1.00 m
Side set back 2	1.01 m	Nil & 0.85 m	1.00 m & 0.015 m
Stilt floor area (parking and open)	60.66 sq.m	52.65 sq.m	8.01 sq.m
Ground floor area	60.91 sq.m	84.23 sq.m	23.32 sq.m

First Floor

Front set back	1.50 m	Nil	1.50 m
Rear set back 1	1.01 m	0.65 m	0.36 m
Side set back 2	1.00 m	Nil	1.00 m

Planning parameters	As per plan	As on site	Deviation/unauthorised
Side set back 2	1.01 m	Nil & 0.85 m	1.01 m & 0.15 m
Floor area	121.57 sq.m	152.28 sq.m	30.71 sq.m.

Second Floor

Front Set back	1.50 m	Nil	1.50 m
Rear set back	1.01 m	0.65 m	0.36 m
Side set back 1	1.00 m	Nil	1.00 m
Side set back 2	1.01 m	Nil & 0.85 m	1.01 m & 0.15 m
Floor area	69.90 sq.m	152.28 sq.m.	82.38 sq.m

and calling upon the petitioner to secure the compliance report with the sanctioned plan within 30 days from the date of receipt of that notice and failing which, it was notified that action will be initiated under the relevant provisions of the Town and Country Planning Act, 1971. Challenging the legality of the said notice, he filed an appeal / special revision under Section 80-A of the Town and Country Planning Act, 1971 in C.N.No.6650 of 2018 along with petition for stay and it is said to be pending.

3. The learned counsel appearing for the petitioner would submit that despite entertainment of the appeal / Special Revision along petition for stay, further action is taken to demolish the superstructure and therefore prays for appropriate orders.

4. Per Contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondents would submit that even as per his own admission of the petitioner as per Ground No.D of the appeal / Special Revision, she has deviated from the sanctioned plan and therefore, action has been taken strictly in accordance with law.

5. Mr.Sountharajan, learned Standing Counsel appearing for

respondents 2 and 3 would submit that appeal filed by the petitioner would be given disposal in accordance with law.

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

7. This Court taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in the affidavit filed in support of this writ petition or in the appeal / special revision filed by her before the 1st respondent, directs the 1st respondent or the delegated authorities to entertain the appeal / Special Revision itself, if the papers are otherwise in order, within a period of ten weeks from the date of receipt of copy of this order or take up the petition for stay at first instance and give a disposal in accordance with law within a period of four weeks from the date of receipt of copy of this order and communicate the decision taken to the petitioner . It is also made clear that till such time, the respondents 2 and 3 shall defer further action in terms of the notice dated 03.10.2017 and till the disposal of the appeal / special revision, the petitioner shall not create any third party right in respect of the site and superstructure in question.

M.SATHYANARAYANAN, J.

AND
G.K.ILANTHIRAIYAN,J.
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8. With the above direction, the writ petition stands disposed of. No costs.

{M.S.N.J} {G.K.I.J}
 18.06.2018

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Index : No
 Internet: Yes
 Speaking Order

To

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