

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2018

CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.27767 of 2018 and
WMP No.32275 of 2018

P.Peer Yaseef

...Petitioner

-VS-

- 1.The Secretary to the Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
St George Fort, Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai - 600 003.
- 3.The Executive Engineer
Corporation of Chennai
Zone -5, Zonal Office, Chennai.
- 4.Principal Secretary
The Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to forthwith remove the lock and seal (de-seal the premises) in respect of the premises at No.30, Pedariyarkoil Street, Broadway, Chennai - 600 001 falls within Zone-5 of Corporation of Chennai and desist from taking any further action pending disposal of the application dated 11.09.2018 filed by the petitioner under G.O.Ms.No.110 Housing and Urban Development Department dated 22.06.2017 issued by the 1st respondent pending before the 4th respondent.

For Petitioner : Mr.Silambanan
Senior Counsel for
Mr.M.Anandaraaj

For Respondents : Ms.Thangavadhana Balakrishnan
Addl.Govt.Pleader for R1
Mr.A.Nagaraj for R2 and R3
Mr.S.Thiruvengadam for R4

O R D E R

[Order of the Court was delivered by K.K.SASIDHARAN,J.]

The Corporation of Chennai initiated enforcement action against the building constructed by the petitioner in deviation of the approved plan. The building was sealed pursuant to the order dated 3 February 2017. The petitioner filed a statutory appeal before the first respondent. The appeal was disposed of by order dated 30 August 2018 directing the Greater Chennai Corporation to consider and dispose of the application submitted by the petitioner for planning permission. It was further indicated in the said order that in case there was no application pending or the application was not received within a period of one month, further enforcement action could be taken by the Corporation.

2. The petitioner thereafter submitted an application for regularisation before the Corporation of Chennai. The application was not considered by the Corporation. The petitioner therefore submitted an application for regularisation before the Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA"). Since further action was not taken, the petitioner filed this writ petition for a direction to the local body to remove the lock and seal pending disposal of the application for regularisation.

3. The learned Standing Counsel for the CMDA contended that the application for regularisation was submitted in accordance with the Scheme in G.O.Ms.Nos.110 and 111 Housing and Urban Development Department dated 22 June 2017. According to the learned Standing Counsel, the Government Orders regarding regularisation was challenged before this Court in W.P.No.23889 of 2017. The Division Bench, by order dated 11 September 2017 passed an interim order directing the CMDA to entertain and process the application. However, the CMDA was restrained from taking a final decision in the matter without the leave of the Court.

4. The learned Standing Counsel for the CMDA by placing reliance on the order dated 27 September 2017 in W.P.No.25818 of 2017 submitted that in view of the observation made by the Division Bench that in case set back violations are regularised by the authorities, action should be taken against them and they should be posted in a non-sensitive post, the officials are not in a position to take up the application for regularisation even if such applications are legally maintainable.

5. The Government of Tamil Nadu introduced Section 113 A through the Tamil Nadu Town and Country Planning (Amendment)

Act, whereby and where under, the Government was empowered to exempt any land or building developed immediately before the date of commencement of the amendment act, from all or any of the provisions of the Act or Rules or Regulations made thereunder, by collecting regularisation fee at such rate not exceeding Rs.2,000/- per square metre. The constitutional validity of the said provision was upheld by the Hon'ble Supreme Court in Consumer Action Group v. State of TamilNadu [2000 (7) SCC 425]. The said provision was further amended by Tamil Nadu Act 31 of 2000, whereby all buildings constructed on or before 31 August 2000 were made eligible to be considered for regularisation. The cut-off date was re-fixed periodically.

6. The validity of the amendments made to the Tamil Nadu Town and Country Planning (Amendment) Act were challenged before this Court in Consumer Action Group, Rep. by its Trustee v. State of Tamil Nadu. The writ petitions were disposed of by the First Bench by order dated 23 August 2006. [Consumer Action Group, Rep. by its Trustee v. State of Tamil Nadu, 2006 (4) CTC 483].

7. The Division Bench in Consumer Action Group (cited supra) declared the amendments made to the Town and Country Planning Act, 1971 by Amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules 1999 as ultra vires. The First Bench was pleased to quash the orders granting regularisation of buildings constructed after 28 February 1999.

8. The First Bench in Consumer Action Group (cited supra) after issuing string of directions permitted the Chief Planner to decide the application for exemption pertaining to constructions made prior to 28 February 1999 and dispose of all such applications within a period of three months in order to make them eligible for protection under the 1999 Scheme. The Division Bench was pleased to permit the builders to produce documentary evidence like electricity service connection, water connection, registration of sale deed etc., to prove the construction before the cut-off date. In short, the builder must produce documentary evidence for the construction of the building prior to the cut off date viz., 28 February 1999. In case, the CMDA or the Corporation initiated enforcement action for unauthorised construction before 28 February 1999 such notices and orders are also valid piece of evidence to show that the building was constructed prior to 28 February 1999 making them eligible for the 1999 Regularisation Scheme, which was approved by the Division Bench in Consumer Action Group.

9. The observation made by the Division Bench in the order dated 27 September 2017 in W.P.No.25818 of 2017 with regard to the action to be taken by the officials and more particularly in

Paragraph 11 of the said order is confined to the illegal action taken by the officials. Since the Division Bench in Consumer Action Group (cited supra) permitted the authorities to decide the application for exemption pertaining to constructions made prior to 28 February 1999, there is no bar for considering the applications for regularisation, in case, there is evidence to show that building was put up before the said cut-off date. The observation in W.P.No.25818 of 2017 therefore would not deprive the statutory authorities from taking action in accordance with the legally approved Scheme or the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and the Rules and Regulations made thereunder, in relation to the constructions made before the cut-off date viz., 28 February, 1999.

10. The petitioner submitted application for regularisation in accordance with the Government order in G.O.Ms.No.110 Housing and Urban Development Department, dated 22 June 2017. The said Government Order is the subject matter of a writ petition before this Court in W.P.No.23889 of 2017. The CMDA would not therefore be in a position to pass orders in the application submitted by the petitioner. Since the Division Bench was pleased to permit the authorities to entertain and process the application, there would not be any difficulty to the CMDA to process the application submitted by the petitioner. However, the CMDA must await the decision in W.P.No.25818 of 2017 for passing final orders in the matter. The CMDA is therefore directed to process the application submitted by the petitioner to decide as to whether it was in accordance with the Regularisation Scheme. However, final orders shall not be passed till a decision is taken by this Court in W.P.No.25818 of 2017. We make it clear that the direction to keep the matter pending without passing final orders in the Regularisation Application would confine only to the construction made after the cut-off date prescribed in Consumer Action Group viz., 28 February, 1999 and not in relation to the building put up earlier. We are constrained to make this observation in view of the submission made by the learned Standing Counsel for CMDA that large number of applications are kept pending which are in relation to the construction made before 28 February, 1999, as the officials are afraid of taking a decision in the matter on account of the observation made in W.P.No.25818 of 2017.

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

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary to the Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
St George Fort, Secretariat,
Chennai - 600 009.

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

3.The Executive Engineer
Corporation of Chennai
Zone -5, Zonal Office, Chennai.

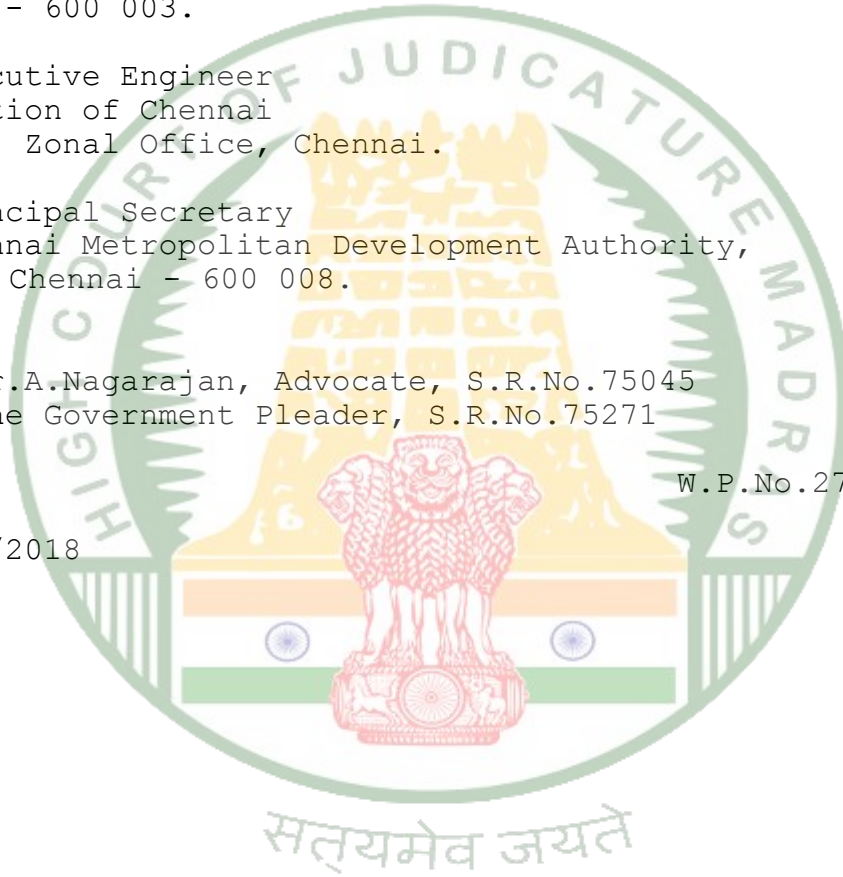
4.The Principal Secretary
The Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

+lcc to Mr.A.Nagarajan, Advocate, S.R.No.75045

+lcc to the Government Pleader, S.R.No.75271

W.P.No.27767 of 2018

rrs 05/12/2018



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