

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.1483 of 2019 and

W.M.P.No.1652 of 2019

K.Sunderrajan

.. Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority (CMDA)
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.

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

3.The Executive Engineer,
Zone-X (Kodambakkam),
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to forbear the respondents from taking any coercive action in furtherance of the de-occupation notice No.Z.O.X.C.No.00173/2018 dated 29.12.2018 issued by the 3rd respondent under Sections 56 & 57 r/w 85 of the Town and Country Planning Act 1971 pending final determination of the Retention Application submitted by the petitioner on 11.01.2019 under Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.P.Thiagarajan

For Respondents: Mr.V.C.Selvasekaran,
Standing Counsel (R2 & R3)
Mr.S.Thiruvengadam (R1)

O R D E R

(Order of the Court made by the Hon'ble Chief Justice
and M.Duraiswamy, J.)

The petitioner has filed the above Writ Petition to issue a Writ of mandamus to forbear the respondents from taking any coercive action in furtherance of the de-occupation notice dated 29.12.2018 issued by the 3rd respondent under Sections 56 & 57 r/w 85 of the Tamil Nadu Town and Country Planning Act, 1971 pending final determination of the Retention Application submitted by the petitioner on 11.01.2019 under Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971.

2.The learned counsel appearing for the petitioner submitted that the remedy open to the petitioner is only to file a Writ Petition and not an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act.

2.1.The learned counsel relied upon a judgment reported in 2016 SCC Online Mad 33117 [P.Mohanraj Vs. 1.State of Tamil Nadu, rep by its Secretary, Housing and Urban Development Department, Fort St. George, Chennai - 9 and 4 others] wherein the Division Bench of this Court held that to seek a revised plan, the petitioner would have to approach the Planning Authority in terms of Section 56(3) read with Section 49 of the Tamil Nadu Town and Country Planning Act.

3.However, in the judgment reported in 2015 (6) CTC 107 [Lalith Kumar C.Soni Vs. The Government of Tamil Nadu rep by its Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai - 9 and 3 others], the Division Bench of this Court held that a Special Revision Petition under Section 80-A of the Act is maintainable before the Government against the decision taken by the appropriate Planning Authority in respect of locking and sealing the premises under sub-section (2-A) of Section 56 or under sub-section (4) of Section 57, even before resorting to the act of locking and sealing. In short, sealing the premises is not a condition precedent for filing Special Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act.

4.The judgment relied upon by the learned counsel for the petitioner relates to revised plan whereas the issued involved in the present Writ Petition relates to de-occupation notice issued under Sections 56 & 57 read with Section 85 of the Act.

5.In these circumstances, the ratio laid down by the Division Bench of this Court in 2015 (6) CTC 107 (cited supra) applies to the present case.

6.Following the ratio laid down in the above referred judgment, we are of the considered view that the remedy open to the petitioner is to file a Special Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act and not a Writ Petition before this Court.

7.In such view of the matter, the Writ Petition is disposed of giving liberty to the petitioner to challenge the notice dated 29.12.2018 issued under Sections 56 & 57 read with Section 85 of the Act. No costs.

va

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Member Secretary,
Chennai Metropolitan Development Authority (CMDA)
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.
- 2.The Commissioner of Corporation,
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+1cc to Mr.S.Thiruvengadam, Advocate,SR.No.11004

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Kak(18/03/2019)