

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.30960/2019 & WMP.No.31052/2019

Mrs.Padma

Versus

.. Petitioner

- 1.The Secretary to Government
Housing and Urban Development
Department,
Fort St George,
Chennai 600 009.
- 2.The Commissioner
Corporation of Greater Chennai
Rippon Building,
Chennai 600 003.
- 3.The Regional Deputy Commissioner
[North], Corporation of Chennai
Basin Bridge Road, Chennai.
- 4.The Executive Engineer
Zone No.111, Corporation of Chennai
No.1 Thattankulam Road,
Madhavaram,
Chennai 600 060.

5.Mrs.M.Valarmathi

6.Mr.M.Mahendran

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 4th respondent notice dated 09.03.2018 in Notice No.Dn.26/U-7/2/2018 and quash the same and to direct the respondents 1 to 4 to remove the lock and seal of petitioner flat that is Flat No.S3, of an extent of 1200 square feet of built up area together with 489 square feet of Undivided share of land at Plot No.6A and 6B, Secretariat Colony, Main Road, Lakshmipuram, Chennai 600 099.

For Petitioner : Mr.S.Bala Subramaniam
For R1 : Mr.R.Udhayakumar, AGP
For RR2 to 4 : Mr.Dr.C.Ravichandran

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader appears on behalf of the 1st respondent ; Dr.C.Ravichandran, learned Standing counsel appears on behalf of respondents 2 to 4 and Mr.T.M.Naveen, learned counsel appears for the intervenors/proposed respondents.
- (2) The petitioner had purchased Flat No.53, admeasuring to an extent of 1200 sq.ft., of built up area together with 489 sq.ft., of undivided share at Plot No.6A and 6B, Secretariat Colony Main Road, Lakshmipuram, Chennai-99, through a registered Sale Deed dated 09.07.2014 bearing Doc.No.3905/2014 registered on the file of the office of the Sub Registrar, Madhavaram, from respondents 5 and 6 for a valuable consideration and due to family reasons, the petitioner could not occupy the said flat immediately after the purchase. According to the petitioner, the entire building in which the flat purchased by the petitioner forms part, was constructed in terms of the planning permission approved by the 2nd respondent in PPA.No.626/2011 and Building Permit No.712/2011 dated 27.10.2011. The petitioner became aware of the impugned notice dated 09.03.2018 of the 4th respondent pasted in the wall of her premises in and by which, action is sought to be initiated by invoking the provisions of Section 56[2] Sub-Clause [iii] and [2A] of the Tamil Nadu Country Planning Act, 1971, [in short 'the Act'] and challenging the legality of the said notice, the petitioner came forward to file the present writ petition.
- (3) The learned counsel for the petitioner has fairly brought to the notice of this Court as to the order passed by the 1st respondent in G.O.[3D] No.74, dated 02.03.2016, filed by Mr.M.Murugesan and others who were the builder and the land owners under section 80-A of the Act and the dismissal of the same and would submit that admittedly, at the time of hearing the said special revision/appeal, the petitioner was not made known about the said proceedings and even otherwise, since she is having an effective alternate remedy under Section 80-A of the Act, she may be permitted to work out her remedy accordingly.
- (4) It is the further submission of the learned counsel for the petitioner on instructions, that the petitioner is also willing to carry out necessary alterations to be tuned with the above cited planning permission / building permit and she may be permitted to do so.

- (5) Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the 1st respondent would submit that though the petitioner claims to have preferred an appeal/special revision, no acknowledgment to that effect is available and further pointed out that from the contents of G.O.[3D] No.74 dated 02.03.2016, it could be seen that there are deviations at all levels and the building in question has to be necessarily locked and sealed so that it can be brought within the ambit of the Planning permission / building permit.
- (6) Mr.T.M.Naveen, learned counsel whose representations had been acted upon and which resulted in passing of G.O.[3D] No.74 dated 02.03.2016, would submit that the Open Space Reserve for the benefit of the entire flat owners, have been converted and constructions in the form of flats have come into place and one of the flats was purchased by the petitioner and the 1st respondent had taken into consideration all relevant aspects while dealing with the appeal petition filed by the land owners and developer and rejected the same vide the above Government Order dated 02.03.2016.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.
- (8) The petitioner prayed for quashment of the impugned notice and in the considered opinion of the Court, the same is not maintainable for the reason that the petitioner is having an effective alternate remedy under Section 80-A of the Act with a provision for interim order under Section 80-A[3] of the said Act.
- (9) This Court, taking into consideration of the fact that the flat in question is yet to be occupied by the petitioner and as on date, it is under lock and seal, permits the petitioner to avail the appeal/special revision under the above said provisions, by submitting an appeal petition, enclosing all relevant and authenticated documents and also indicate as to the technical feasibility of carrying out the alterations in tune with the Planning Permission / Building Permit within a period of three weeks from the date of receipt of a copy of this order to the 1st respondent, who upon receipt of the same, shall entertain the same if the papers are otherwise in order and put [1] Mr.K.Janakiraman, S/o.Kabir Doss, S-1, Plot Nos.6A and 6B, Secretariat Colony Main Road, Lakshmipuram, Kolathur, Chennai 600 099 and [2] Mr.N.Rajan Babu, S/o.P.Neelakandan, G-1, Plot Nos.6A and 6B, Secretariat Colony Main Road, Lakshmipuram, Kolathur, Chennai 600 099, on notice and thereafter, dispose of the special revision/appeal of the petitioner on merits and in accordance with law as expeditiously as possible and till such time, the premises / flat in question, shall be kept under lock and seal and depending upon the result of the special revision / appeal, further proceedings have to be taken by respondents 3 and 4.

(10)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

AP

To

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Housing and Urban Development
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+1cc to Mr.S.Bala Subramaniam, Advocate, S.R.No. 93587
+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No. 93691
+1cc to the Government Pleader, S.R.No. 93779

WP.No.30960/2019

KJ(CO)
GN(11/12/2019)