

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.29583 of 2019
and WMP.No.29458 of 2019

K.Eassa

.. Petitioner

Vs

1. The State
Rep by its Secretary Housing & Urban Development
Fort St.George
Chennai.
2. The Member Secretary
CMDA
Thalamuthu Natarajan Building
Egmore, Chennai - 600 008.
3. The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai - 600 003.
4. The Executive Engineer - Zone X
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai - 600 024.
5. The Assistant Executive Engineer - Unit 31
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai - 600 024.
6. The Assistant Engineer - Division 134
Corporation of Chennai
117, NSK Salai
Kodambakkam, Chennai - 600 024.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
calling for the notice dated 19.09.2019, bearing

No.10/000135/2019, issued by fourth to sixth respondents, together with all related records and quash the same.

For Petitioner : Mr.S.Hameed Ismail

For Respondents : Mr.V.Jayaprakash Narayan
Special Government Pleader for R1

Mr.P.S.Ganesh for R2

Mr.V.C.Selvasekaran for R3 to R6

JUDGMENT

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

The petitioner and his brothers claimed to have purchased the property bearing New No.75, Old No.45-A, Arcot Road, Kodambakkam, Chennai - 600 024, through a registered sale deed bearing Document No.1490/2007, dated 13.04.2007. The petitioners and his brothers having found that the premises after purchase were in dilapidated condition, started erecting construction by engaging the services of a contractor.

2. The learned counsel appearing for the petitioner would submit that the petitioner is now running a sweet stall, under the name and style "Manna Sweets" in Arcot Road and the alleged offending construction, in the form of superstructure, is being used to house the employees/workers. It is further pointed out by the learned counsel appearing for the petitioner that on an earlier occasion, the petitioner has been issued with a notice calling for approved plan by the fifth respondent, for which, he has prayed for sometime to submit the same, but without giving him adequate and sufficient opportunity, the impugned Locking, Sealing and Demolition Notice dated 19.09.2019, came to be issued.

3. The learned counsel appearing for the petitioner would now contend that in the light of the fact that the petitioner is carrying out his business in the said premises and since workers are being housed there and in the light of the ensuing Deepavali festival, some interim protection may be given and further pointed out that as against the impugned notice issued by the respondents 4 to 6, the petitioner has also preferred a Statutory Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 [TCP Act] and till the disposal of the said revision, he prays for some accommodation.

4. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader accepts notice on behalf of the first respondent,

Mr.P.S.Ganesh, learned counsel accepts notice on behalf of the second respondent and Mr.V.C.Selvasekaran, learned counsel accepts notice on behalf of the respondents 3 to 6.

5. It is relevant to extract the tabular column given in the impugned notice dated 19.09.2019 :

" The premises consisting Ground, First and Second floor has been examined on 16.09.2019 and found the following unauthorized constructed area in the said premises.

S.No.	Description	Unauthorised Area
1	Length of the Building : Width of the Building : Height of the Building : Buildup Area in Floorwise : Ground / Stilt floor : First Floor : Second Floor : Total Area :	14.30 m 9.75 m 10.50 m 139.43 sq.m (RCC) 139.43 sq.m (RCC) 139.43 sq.m (RCC) 418.29 sa.m (RCC)

It prima facie appears that the entire superstructure has been constructed without obtaining any planning approval and now the petitioner made an attempt to get the post facto approval. The petitioner is also having an effective, alternative and efficacious remedy under Section 80-A of the TCP Act and a provision for interim order is also available under Section 80A (3) of the said Act.

6. It is also the submission of the learned counsel appearing for the petitioner that he has already filed a special revision before the first respondent-Appellate Authority. However, in the typed set of documents, a copy of the appeal memorandum said to have been filed before the Appellate Authority is not made available.

7. In the light of the above facts and circumstances, this Court is unable to come to the aid of the petitioner. It is always open to the petitioner to work out the statutory remedy available under Section 80A(3) of the TCP Act, before the first respondent / Appellate Authority.

8. The writ petition is dismissed, subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

ds Sub Assistant Registrar
To

1. The Secretary
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- +1 cc to M/s.S.P.Arthi, Advocate, S.R.No.87408
+1 cc to M/s.P.S.Ganesh, Advocate, S.R.No.87242
+1 cc to the Government Pleader, S.R.No.87498

W.P.No.29583 of 2019

RSK(CO)
SSM(31/10/2019)