

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.33757, 33760 and 33761 of 2019
and W.M.P.Nos.34245, 34247 & 34248 of 2019

Lakshmana Perumal Petitioner
[in W.P.No.33757/2019]

Raja Gopal Petitioner
[in W.P.No.33760/2019]

Ramaraj Petitioner
[in W.P.No.33761/2019]

Vs.

1.The Principal Secretary,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai.

2.The Commissioner,
Chennai Corporation,
Rippon Building,
Poonamallee High Road,
Chennai - 600 003.

3.The Executive Engineer - Zone - 5,
Chennai Corporation,
No.61, Basin Bridge Road,
Royapuram, Chennai - 600 021.

4.The Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Ansari Estate, Egmore,
Chennai - 600 008.

..... Respondents
[in all W.Ps.]

Common Prayer: Writ Petitions filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
calling for the records on the file of the third respondent

pertaining to "De-occupation notice" under letter Nos.05/03974/2019, 05/03973/2019 and 05/03972/2019 dated 22.11.2019 respectively and quash the same as illegal, arbitrary, unsustainable.

For Petitioner : Mr.AR.M.Arunachalam
[in all W.Ps.]

For Respondent No.1 : Mr.K.S.Suresh
[in all W.Ps.] Government Advocate

For Respondent No.2 & 3 : Dr.C.Ravichandran
[in all W.Ps.] Standing Counsel for Corporation

For Respondent No.4 : Mr.S.Thiruvengadam
[in all W.Ps.] Standing Counsel for C.M.D.A.

COMMON ORDER

(Order of this Court was made by R.SUBBIAH, J.)

The petitioners have come up with these present Writ Petitions for a Certiorari, calling for the records on the file of the third respondent pertaining to "De-occupation Notice" under letter Nos.05/03974/2019, 05/03973/2019 and 05/03972/2019 dated 22.11.2019 respectively and quash the same as illegal, arbitrary, unsustainable.

2. The case of the petitioners is that, petitioners' father purchased a property admeasuring 1998 sq.ft. at Door No.Old No.18/2A, New No.12/1, Appaiyar Lane, Royapuram, Chennai and the same was registered on 21.09.1983 under Sale Deed Document No.1628 of 1983. Thereafter, building was constructed by the petitioners pursuant to the permission granted by the second respondent. Further, petitioners were tendering the property tax and water tax to the respective Departments. While so, the third respondent issued a Lock and Seal and Demolition Notice dated 23.04.2019 under Section 57 read with Section 85 of the Town and Country Planning Act, 1971, calling upon the petitioners to stop the construction and called them to demolish and restore the original position of the land for not having produced the approved building plan. Hence, petitioners preferred an appeal/application under Section 49 of the Act dated 30.05.2019, before the first respondent, challenging the Lock and Seal and Demolition Notice, informing them that petitioners intended to prefer the application for

regularisation. In the mean while, the third respondent issued a De-occupation Notice dated 22.11.2019, calling upon the petitioners to discontinue the occupation of premises within 15 days for the purpose of locking and sealing on account of unauthorised construction. Feeling aggrieved, the petitioners have come up with these Writ Petitions.

3. Though, so many contentions have been raised by the learned counsel appearing for the petitioners, now the crux of the submission is that pursuant to G.O.Ms.No.110, dated 22.06.2017, petitioners had already submitted the application for regularisation and the same is pending before the fourth respondent. When such a situation, now the De-occupation Notice dated 22.11.2019 had been issued by the third respondent. In this regard, the learned counsel relying upon the judgment of this Court in J.AYESHA BEGAM vs. MEMBER SECRETARY, TIRUCHIRAPPALLI LOCAL PLANNING AUTHORITY reported in 2018 (1) CWC 146 submitted that, when a regularisation application is pending, no action can be taken by the respondents. Thus, he prayed to stay the operation of the impugned orders.

4. The learned counsel appearing for respondents 2 and 3 submitted that, as against the De-occupation Notice, petitioners are having the appellate remedy under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, these Writ Petitions are not maintainable.

5. In view of the submission made by the learned counsel on either side, this Court is constrained to direct the petitioners to file a Special Revision Petition under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, along with the application for stay within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent is directed to consider the application for stay, preferably within a period of two weeks thereafter. Till such time, the respondents shall maintain status quo.

6. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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4.The Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Ansari Estate, Egmore,
Chennai - 600 008.

+3 cc to M/s.Ar.M.Arunachalam, Advocate Sr.Nos. 10556 to 10558

+3 cc to M/s.C.Ravichandran, Advocate Sr.Nos.10487,10488 & 10490

AKM/09.12.19/4P-11C /

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