

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.24103 of 2018
and WMP Nos.28091 and 28092 of 2018

1.A. Mohammed Ibrahim

2.S. Umal Bazhir

..... Petitioners

-vs-

1. The Secretary to Government,
Housing and Urban Development,
(UD VI) Department,
Fort St. George,
Chennai 600 009.

2. The Commissioners,
Directorate of Town and Country Planning,
Chengalvarayan Building,
4th & 5th Floor, 807, Anna Salail,
Chennai - 600 002.

3. The Commissioner,
Athur Municipality,
Municipality Office,
Attur 636 102.
Salem District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the first respondent to dispose the petitioner's Appeal petition dated 14.03.2018 and 04.07.2018 by applying Section 56(1)d Tamilnadu Town and Country Planning Act 1971 prior to Tamil Nadu Act 61 of 2008 in a time bound period and till then directing the respondents not to take coercive action for the 2nd and 3rd floor building at Door No.654/636, 656/637 and 652/637A Ranilpettai, Bazaar Street, Athur, Salem District.

For Petitioners : Mr.G. Masilamani
Senior Counsel
assisted by
Mr.Mohana Murali

For 1st & 2nd respondent : Mr.R. Udayakumar
AGP

For 3rd respondent : Mr.Thambusamy

ORDER
(made by The Hon'ble Chief Justice)

Heard learned counsel for the petitioners and learned Counsel for the State as well as learned counsel for the third respondent.

2. Certain action was taken and orders were passed in relation to the building plan of the property involved herein relating to set back etc., and also exemption under Section 113 of Tamil Nadu Town and Country Planning Act, 1971. According to the petitioners, an issue of limitation was involved in taking of action against the petitioners, yet, the authorities proceeded to pass orders against the petitioners on the ground that there is deviation in the plan and therefore, the action was justified.

3. Aggrieved by the orders so passed, the petitioners have availed of the statutory appeal available before the State Government for grant of exemption from the applicability on the ground of limitation that has expired, which, according to the petitioners, was not noticed by the authorities. There is, therefore, no dispute at the bar that such statutory remedy exists where the State Government can proceed to pass any appropriate order in accordance with law. The only prayer made by the petitioners is that a decision be taken by the State Government on the said proceeding pending before it that has been intimated to the petitioners vide letter dated 06.09.2018. We are extracting the said communication, which has been placed on record:

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Housing and Urban
Development Department
Secretariat, Chennai-9.

Letter No.6059/UD4(1)/2018-1, dated 06.09.2018

From
Thiru.A. Mohan Singh, B.A.,
Deputy Secretary to Government,

To
A. Mohamed Ibrahim and Tmt.M. Umal Bashar
Door Nos.654/636, 656/637 & 652/637A
Bazaar Street, Ranipettai,
Athur, Salem.

Sir,

Sub: Urban Development - Tamil Nadu Town
and Country Planning Act, 1971 -
Building comprising Ground Floor + 3
Floors at Door Nos.654 / 636, 656 / 637
& 652 / 637A Ranipettai, Bazaar Street,
Athur, Salem -Provisions relating to front
Setback and FSI- Exemption under Section
113 - Regarding.

Ref: Your appeal dated 14.03.2018,04.07.2018
and 03.09.2018.

I am directed to invite your attention to
the references cited and to inform that your
appeal submitted under Section 113 of Tamil Nadu
Town and Country Planning Act, 1971 is under
consideration of the Government.

सत्यमेव जयते
Yours faithfully,

for Deputy Secretary to Government."

4. A perusal of the said letter indicates that the
Government intimated the petitioners that the proceeding is
pending and is under consideration of the Government.

5. In view of the limited prayer made before us, and without entering into the merits of the said claim of the petitioners, we dispose of the writ petition with a direction to the first respondent to proceed to dispose of the matter on merits and in accordance with law, as expeditiously as possible, preferably within three months from the date of presentation of a certified copy of this order, if the same has not been disposed of so far. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

sr

To

1. The Secretary to Government,
Housing and Urban Development,
(UD VI) Department, Fort St. George,
Chennai 600 009.
2. The Commissioners,
Directorate of Town and Country Planning,
Chengalvarayan Building,
4th & 5th Floor, 807, Anna Salail,
Chennai - 600 002.
3. The Commissioner,
Athur Municipality,
Municipality Office,
Attur 636 102, Salem District.

+1cc to M/s.P.A.Chithramani, Advocate, SR.No.8868.

+1cc to Government Pleader, SR.No.8542.

PP (CO)

CSR: 28.02.2020

W.P.No.24103 of 2018

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