

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.16209 of 2020
and
W.M.P.No.20238 of 2020

A.A.Syed Sultan Alarif ...Petitioner

.Vs.

1. The Secretary to Government,
Housing and Urban Development Department,
St. George Fort,
Secretariat, Chennai - 600 009.
2. The Regional Deputy Commissioner,
Greater Chennai Corporation,
O/o. Regional Deputy Commissioner (South),
No.115, Muthulakshmi Salai, Adayar,
Chennai - 600 022.
3. The Executive Engineer,
Zone-XIII, Greater Chennai Corporation,
No.115, Muthulakshmi Salai, Adayar,
Chennai - 600 022.
4. The Assistant Executive Engineer,
Unit-39, Zone-XIII, Greater Chennai Corporation,
No.115, Muthulakshmi Salai, Adayar,
Chennai - 600 022.
5. M/s.Hindustan Petroleum Corporation Ltd.,
Retail Division, Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 2 to 4 from taking any coercive action of locking and sealing of the Petroleum retail outlet at No. 119, Lattice Bridge Road, Adayar, Chennai-22, pending the Special Revision dated 06.11.2020 under section 80-A of Tamil

Nadu Town and Country Planning Act, 1971, before the 1st respondent.

For Petitioner: Mr.V.C.Selvasekaran
For R2 to R4 : Mr.M.Ganesan
Standing Counsel
For R5 : Mr.Saleem Abdul

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner claims to be the absolute owner of the land at No.119, Dr.Muthulakshmi Road (Lattice Bridge Road), Thiruvannamiyur, Chennai-600 041, measuring an extent of 3862 sq.ft. out of the larger extent of 7390 sq.ft. The petitioner, through a Deed of Lease, dated 18.03.2020, leased out the said property in favour of the 5th respondent for a period of 20 years for the purpose of running a retail outlet for selling petroleum products and other allied products. The petitioner would state that the said property is also assessed to statutory levies by the Greater Chennai Corporation. By virtue of the said Lease Deed, the 5th respondent had appointed M/s.Lakshmi Agencies as a dealer, after obtaining necessary statutory clearance/licence. It is further averred by the petitioner that Mr.O.Unnikrishnan, a self-styled social worker, is alleged to have lodged a complaint on 05.09.2020, stating among other things that the said petroleum retail outlet is running by putting up a structure without obtaining any planning permission and acting upon the same, inspection was caused, followed by notice dated 10.09.2020, calling for approved plan under Sections 56(1) and 57 r/w. Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, and the petitioner was called upon to produce the approved plan within 15 days from the date of receipt of the notice. In response to the same, the dealer appointed by the 5th respondent has given a reply, dated 15.09.2020, and the petitioner also points out that the 5th respondent has also submitted an application, dated 22.09.2020, seeking for planning permission and during the pendency of the same, the notice dated 10.09.2020 came to be issued, followed by Locking and Sealing Notice dated 26.9.2020 and De-Occupation Notice dated 29.10.2020.

2.Mr.V.C.Selvasekaran, learned counsel for the petitioner, would submit that the said notice has been issued without due and proper application of mind and challenging the legality of the same, the petitioner has also filed a Special Revision/Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent, also with a prayer for interim relief, and also points out that the respondents also seek a portion of the land for expansion of the road and it is also unsustainable, for the reason that, without

recourse to due process of law, the portion of the land owned by the petitioner cannot be taken up, and prays for appropriate relief.

3.The learned counsel appearing for the 5th respondent, apart from adopting the arguments of the learned counsel for the petitioner, would submit that, now the petroleum outlet is being run by putting up a small temporary structure, and also pointed out that, for the full-fledged running of the retail outlet, underground tank is also to be put up, for which, no necessary facilities are available to submit application through online and further pointed out that, in the light of the pendency of the Special Revision/Appeal filed by the petitioner before the 1st respondent, the Corporation officials may defer further proceedings.

4.The fact remains that the petitioner, challenging the De-Occupation Notice dated 29.10.2020, has invoked the statutory remedy available under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, and pending disposal of the same, also prays for interim relief, and it was sent by Registered Post to the 1st respondent on 06.11.2020. The apprehension expressed by the learned counsel for the petitioner is that, it may take some time for the 1st respondent to entertain the said Special Revision/Appeal and thereafter, to consider the prayer for interim relief, and in the event of the De-Occupation Notice dated 29.10.2020 being put into effect, nothing would remain for adjudication even in the said matter and therefore, prays for interim direction, atleast till the disposal of the application for stay by the 1st respondent.

5.Per contra, Mr.M.Ganesan, learned Standing Counsel appearing for the Greater Chennai Corporation, would submit that, due process of law has been followed while issuing the notice, and in the absence of any planning permission, it is not open to the petitioner as well as the 5th respondent to put up any unauthorised structure and would further submit that, in the event of the petitioner succeeding in the Special Revision/Appeal, status quo would be restored.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.The fact remains that, challenging the De-Occupation Notice dated 29.10.2020, Special Revision/Appeal has been filed on 05.11.2020 on the file of the 1st respondent, along with prayer for interim relief. This Court, taking into consideration the above fact and the circumstances of the case, without going into the merits of the case as projected by the petitioner either in the Special Revision/Appeal or in the present writ

petition, directs the 1st respondent to entertain the Special Revision/Appeal, if the papers are otherwise in order, and take up the prayer for interim relief at the first instance and give a disposal in accordance with law within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till such time, the respondents 2 to 4 shall defer further action in terms of the De-Occupation Notice dated 29.10.2020. It is also open to the 1st respondent to accord priority to give disposal to the main appeal/Revision itself.

This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

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Housing and Urban Development Department,
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+1cc to Mr.V.C.Selvasekaran, Advocate, SR.No.36856

W.P.No.16209 of 2020

rr ii (09/12/2020)