

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.2721/2021

1.S.Sampath

2.Mrs.K.Saradha

3.S.Sumathi

... Petitioners

Versus

1.The Additional Secretary,
[Technical], Room No.10,
Housing & Urban Development
Department, Secretariat,
Chennai 600 009.

2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.The Commissioner
Greater Chennai Corporation
Ripon Building, Chennai 600 009.

4.A.V.Subha

5.Mrs.Ratna Sekari

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to pass orders in proceedings No.8661/UD-VI [1]/2017 dated 11.01.2019.

For Petitioners:	M/s.G.S.Deepa
For R1	: Mr.S.Kamalesh Kannan
	Government Advocate
For R2	: Mr.P.S.Ganesh
	Standing counsel
For R3	: Mr.K.Raja Shrinivas
	Standing Counsel

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) The petitioners claim to the owners of three Apartments in first floor of the premises, viz., Shree Venkateswara Apartments, No.1, Varadharaja Mudhali Street, T.Nagar, Chennai-17. According to the petitioners, the 4th respondent was the original owner of the property and the 5th respondent had purchased the alleged unauthorised construction in the form of second floor. The petitioners claim to have taken three Apartments in the first floor and according to them, the owner-cum-developer constructed 2nd and 3rd floors without planning approval in the form of unauthorised development. The 2nd respondent has brought to the knowledge of the concerned officials of the Greater Corporation of Chennai about the same as well as to the Chennai Metropolitan Development Authority [CMDA] and thereafter, the 3rd respondent made a spot inspection and issued a notice dated 08.09.2016 alleging violation in the form of unauthorised construction.
- (3) The 1st petitioner filed WP.No.20728/2017 praying for demolition of the unauthorised construction and the 4th respondent had filed WP.No.4014/2018 challenging the said action wherein he has admitted about the unauthorised construction and both the writ petitions were disposed of by a common order dated 23.04.2018, by granting liberty to the persons/violators to avail the remedy u/s.80-A of the Town and Country Planning Act, 1971 and accordingly, both the petitioners as well as the 5th respondent have filed their respective special revisions/appeals.
- (4) The learned counsel for the petitioners would submit that though the special revisions/appeals have been preferred by the petitioners as early as in the year 2019, the same have not been given disposal and therefore, the unauthorised construction put up by the private respondents is still in existence and prays for early disposal of the appeals/special revisions.
- (5) The learned Government Advocate appearing for the 1st respondent would submit that the regularisation application filed by the u/s.113C of the Town and Country Planning Act, 1971, also said to be pending and the appeals/special revisions preferred by the private respondents and the petitioners, would be given disposal within the stipulated time frame.

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

(7) In the considered opinion of the Court, pendency of the regularisation of the application if any filed under section 113C of the Town and Country Planning Act, 1971, is nothing to do with the disposal of the special revisions/appeals preferred under Section 80-A of the Town and Country Planning Act, 1971. It is also to be noted at this juncture that even in the Regularisation Application filed u/s.113C of the Act, there is a Disclaimer Clause, which stipulates pendency of the proceedings, will not prevent the authority from proceeding further and it is also relevant to extract Section 56[2-A] of the Town and Country Planning Act, 1971:-

56. Power to require removal of Unauthorised Development-

.....

"(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under subsection (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by looking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under section 49 or appeal under section 79 or any litigation before a court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises."

(8) This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioners in this writ petition, directs the 1st respondent to accord priority and dispose of the special revisions/appeals filed by the petitioners as well as the 5th respondent and dispose of the same in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioners as well as the 5th respondent.

(9) The writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Secretary,
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- 3.The Commissioner
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Ripon Building, Chennai 600 009.

+lcc to Mr.K.Sakthivel, Advocate Sr.17010
+lcc to the Government Pleader Sr.17379

WP.No.2721/2021

pch[col]
srg 08/04/2021