

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.6309 of 2021
and W.M.P.No.6926 of 2021

1.Mr.Viresh Reddy

2.Mr.Vishal Reddy .. Petitioners
Versus

1.The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.

2.The Member Secretary,
CMDA, No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

4.The Zonal Executive Engineer,
Zone-IX, Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai 600 003. ... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 2nd respondent to consider the Application filed by the Petitioner vide Receipt No. CMDA/Reg-113C/1061/2019 dated 6.03.2019 to regularize the Petitioners premises in No. 8/20, Rutland Gate, 4th Street, Chennai 600 006 and also the Petitioners application for addition to building filed vide TEMP/ CMDA/ 0500/ 2021 dated 05.03.2021 within a time frame to be fixed by this Honourable Court and consequently forbear the Respondents from in anyway taking coercive steps like locking and sealing or demolishing any part of the petitioners premises.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel assisted by
Mr.Richardson Wilson

For RR3 and 4 : Mr.K.Rajashrinivas
Senior Counsel

For RR1 : Mr.R.Vijayakumar
Additional Government Pleader

ORDER

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

The petitioner claims to be joint owners of the land and building, comprised in Door No.8/20, Rutland Gate 4th Street, Chennai 600 006, along with two others and according to them, the superstructure bearing the said door number, came into being as early as in the year 1938, that is prior to the enactment of the Tamil Nadu Town and Country Planning Act, 1971 (in short 'TCP Act') and as such the provisions of the said Act and Rules framed thereunder, do not apply to their building in question.

2. It is the further submission of the petitioners that the parent document /Sale Deed dated 29.06.1972 would also disclose that the superstructure was having ground + first floor, which were constructed about 40 years back, prior to 1973 and the Revenue Records also reflects the existence of ground + first floor, right from the year 1938 and statutory levies also paid upon the said superstructure and in the light of the said fact, coupled with the fact that the TCP Act, is only perspective in nature, there cannot be any requirement to obtain the Planning Permission, for the building constructed prior to the year 1971. Insofar as the additional construction, which is the subject matter of Locking, Sealing and Demolition notice dated 25.02.2019, in the form of two floors, having plinth area of 412.80 sq.m is concerned, the petitioners took a stand that the building is quite old and the roof of the first floor was not strong enough to withstand the weather, especially in rainy season and therefore advice was given to put up sheets over the 1st floor roof to ensure that water does not stagnate on the roof and accordingly temporary aluminum sheets were put up in the year 2006 itself and the same has also subjected to statutory levies.

3. Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.Richardson Wilson, learned counsel appearing for the petitioners would submit that the petitioners in W.P.No.19176 of 2020, is having an axe to grind against the present petitioners for the reason that they were the residents of the said area and at some point of time, they were attempting to grab the property for the reason that they are the daughters of the petitioners grand uncle, namely, P.Varadha Reddy, who passed in the year 2017 in U.S.A, who also brother of the petitioners' grandfather P.Chengareddy and the petitioners in W.P.No.19176 of 2020 who are daughters of Mr.P.Varada Reddy, are not even care to maintain their father as they live with their mother after the divorce of their parents and Mr.Varadha

Reddy was taken care of by the petitioners herein and in the light of the said property dispute, they are going on troubling the petitioners by submitting a complaint to the Hon'ble Chief Minister grievance cell in the year 2018, followed by various Writ Petitions which culminated in filing W.P.No.19176 of 2020, wherein they have deliberately burked the track of the said strong relationship with the petitioners in the form of other disputes and therefore, the petitioners have no locus standi to file W.P.No.19176 of 2020. It is further pointed out by the learned counsel appearing for the petitioners that challenging the De-occupation Notice dated 11.02.2021, issued by the officials of Greater Chennai Corporation, a Statutory Revision / Appeal has also been filed by invoking Section 80-A of the Town and Country Planning Act, 1971, before the 1st respondent and the same is pending. Even prior to that, in respect of the Locking, Sealing and Demolition Notice dated 25.02.2019, they made a similar challenge by filing Special Revision / Appeal dated 12.03.2019 and the 1st respondent vide proceedings / communication dated 27.08.2019, granted three months time to them to obtain necessary Planning Permission for additional construction and directed the deferment of the Enforcement Notice till such time and since construction came into being, prior to March 2007, an application under Section 113C of the Town and Country Planning Act, 1971 has also been filed before the 2nd respondent on 06.03.2019 and the same is also pending consideration and without waiting for the receipt of the Special Revision / Appeal dated 26.02.2021, as well as the above said application dated 06.03.2019, filed under Section 113C of the Town and Country Planning Act, which is pending before the 2nd respondent, the 4th respondent is taking urgent steps to lock and seal the additional construction and therefore prays for appropriate orders.

4. Mr.R.Vijayakumar, learned Additional Government Pleader appears for the 1st respondent; Mr.K.Rajasrinivas, learned Senior Standing Counsel appears for the respondents 3 and 4, has drawn the attention of this Court to the Status Report filed in W.P.No.19176 of 2020, and would submit that in the light of the fact that the Special Revision as well as regularisation application is pending, the Greater Chennai Corporation is not in a position to comply with the orders passed by this Court, though earnest effort was taken to give effect with the orders of this Court and therefore, they leave to this Court to pass appropriate orders.

5. This Court has carefully considered the rival submissions and also perused the entire materials available on record.

6. A perusal and consideration of the materials placed in the form of typed set of documents would disclose the following facts.

7. The description of the property given in the registered Sale Deed dated 29.06.1973, especially Annexure 1-A would disclose that the superstructure consists of Ground floor having plinth area of 2000 sq.ft respectively and the 4th respondent has issued the notice dated 18.09.2018, calling for the approved plan for which, the reply dated 25.09.2018 has been given, wherein a stand has been taken that the superstructure was constructed in the year 1938, which was admittedly prior to coming into place of the TCP Act, 1971 and as such, the said Act has no application to the case on hand and consequently there is no requirement to obtain Planning Permission for buildings constructed prior to the year 1971 and that apart, no permanent construction of the building has also been put up and of course, such a stand has been taken in paragraph no.3 of the Affidavit filed in support of the present Writ Petition and further stand has also been taken in the affidavit filed in support of this Writ Petition that petitioners had applied for addition to building to make parts of the Ground Floor, first and Second Floors as commercial, so that we will be able to lease it out and that apart, the property has huge FSI and sufficient set backs, as the property is about 8.33 grounds but the constructed area in the Ground Floor is only 5221.83 sq.ft and in the First Floor, it is 5010.708 sq.ft and since the building is very much within the CMDA's Combined Building Regulations, 2019 and is capable of being regularized in the 2017 scheme and that apart, they have applied for addition to the building in the Second Floor, they will be put to grave hardship, in the event of lock and seal notice is being implemented.

8. It is pertinent to point out at this juncture that as per the description of the property in the Sale Deed dated 29.06.1973, there was no second floor in the form of temporary / additional construction and the Annexure 1-A to the said document would also reflect the said fact.

9. It appears that the alleged temporary construction came into being in the year 2006 and by that time, the TCP Act, 1971, came into force. As per the definition of the building under Section 2(7) of the said Act, Building includes:-

' (a) a house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall) and any other structure whether of masonry, bricks, mud, wood, metal or any other materials whatsoever;

(b) a structure on wheels or simply resting on the ground without foundations;

(c) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods; and

(d) the garden, grounds, carriages, and stable, if any, appurtenant to any building;'

that the TCP Act, 1971 have no application to the superstructure in question and at the relevant point of time, Chennai City Municipal Corporation Act, 1919, had in existence and it is relevant to extract the definition of Building under Sub Section 4 of Section 3 of the said Act:

'3(4) 'Building' includes- (a) a house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other structure whether of masonry bricks, mud, wood, metal or any other material whatsoever;

(b) a structure on wheels or simply resting on the ground without foundations; and

(c) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any articles or goods;''

and it is also relevant to extract the definition of the Building given under Sub Section 15 of Section 2 of the Tamil Nadu Combined Development and Building Rules, 2019:

'(15) Building means any structure for whatsoever purpose and of whatsoever materials constructed and every part thereof whether used as human habitation or not and includes foundation, plinth, walls, floors, roofs, chimney, plumbing and building services, fixed platforms, verandah, balcony, cornice or projection, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures. Tents, shamianahs, pandals, partaulin shelters and the like erected for temporary and ceremonial occasions shall not be considered as building;''

11. A combined reading of the said provisions would disclose that the temporary structure comes within the ambit of the definition of Building and as such, the stand taken by the petitioners in this regard prima facie appears to be unsustainable. Be that as it may, the petitioners have filed an application under Section 80-A of the TCP Act, 1971 on 06.03.2019, for regularization of the said unauthorised construction and it is relevant to extract the following portion:

'Disclaimer

Filing an application for exemption under these regulations will not in any way prevent the competent authority from taking action under any of the provisions of the Act, unless otherwise ordered so by the competent authority.

Development charges and other applicable charges normally leviable at current rates will be collected after scrutiny and ascertaining approvability.''

and that apart, under sub-section 2-A of Section 56 of the TCP Act, 1971, appropriate planning authority if prima facie

satisfied, may take action to discontinue the use of such land or building by locking 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 of occupier, as the case may be, of such land or building shall provide security for such sealed premise.

12. In the light of the same, the pendency of the appeal / special revision dated 26.02.2021, filed under Section 80-A of the TCP Act, before the 1st respondent or the application under Section 113 C of the TCP Act, dated 06.03.2019, cannot act as a bar on the part of the jurisdictional officials of the Greater Chennai Corporation to proceed further in the matter. However, this Court surprised to note that in paragraph no.3 of the Status Report, dated 09.03.2021 in W.P.No.19176 of 2020, the Corporation has taken a stand that on account of the pendency of the Review Petition in W.P.No.19176 of 2020 and that apart, the Statutory Appeal is also pending before the Government and further that application for regularization is pending before the CMDA, they are not in a position to comply with the orders passed by this Court.

13. It is rather surprising to note that the 4th respondent has taken a stand in his Status Report in the form of following statement:

'13. I further submit that subsequently on 11.02.2021 an inspection was carried on at the site in question and thereafter a De-occupation notice was about to be served on the occupant. Since, the said notice was not received, a speed post was sent on 17.02.2021. According to the inspection, it was noticed that the entire 2nd floor is an unauthorised construction. In this regard, a note was made to the Commissioner, Greater Chennai Corporation for getting concurrence and the Commissioner, Greater Chennai Corporation had concurred for lock and seal proceeding to be carried on 08.03.2021. Subsequently, a letter was addressed to local inspector on 06.03.2021 for giving sufficient police protection to execute the aforesaid lock and seal notice. In the meanwhile, a legal notice was received from Mr.Richardson Wilson, Advocate, representing one Mr.Vishal Reddy contending that challenging the De-occupation notice 11.02.2021 a statutory appeal came to be filed before the Secretary to Government, Housing and Urban Development Department and also against the orders of this Court in W.P.No.19176 of 2020 a review was filed and pending. It is also further pointed out that an application to regularization is pending before CMDA. In such circumstances, we are not in a position to comply the orders of this Court though

earnest effort was taken to give effect with the orders of this Court.'

14. It appears that the Greater Chennai Corporation has selectively resorted to these kind of stand, despite having been clothed with powers under the provisions of the TCP Act, 1971, vice versa the analog of provisions to take appropriate action in the event of construction being put up unauthorisely or in the form of deviated construction.

15. Mr.A.RL.Sundaresan, learned Senior Counsel appearing for the petitioners has drawn the attention of this Court to paragraph no.10 of the affidavit filed in support of the Writ Petition and would submit that in the light of the undertaking, there cannot be any necessity to lock and seal the premises in question. Apart from the fact that the petitioners in W.P.No.19176 of 2020 are also having an axe to grind against the petitioners herein, in the light of the personal disputes and in the light of the stand taken by the 4th respondent in paragraph no.3 of the affidavit, dated 09.03.2021, which has been extracted above, coupled with the undertaking given by the petitioners in paragraph no.10 that 'We undertake that we will not use the 2nd floor, which is the offending portion till the proper permissions have been granted by the respondents', this Court directs the 4th respondent to defer further decision till the disposal of the petition for Stay, filed by the petitioners in Special Revision / Appeal dated February 2021, acknowledged by the office of the 1st respondent dated 26.02.2021. The 1st respondent is directed to entertain the Special Revision / Appeal, if the papers are otherwise in order and give a disposal to the petition for interim orders, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the Website and till such time, the 4th respondent shall defer further decision as to the De-occupation notice dated 11.02.2021.

16. It is made clear that the observation made was for the disposal of the present Writ Petition. In the light of the stand taken by the petitioners, the official respondents concerned may dispose of the application pending before them on their own merits.

17. The Writ Petition stands disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.

2.The Member Secretary,
CMDA, No.8, Gandhi Irwin Road,
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3.The Commissioner,
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4.The Zonal Executive Engineer,
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No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai 600 003.

+3ccs to M/s.A.Rajeswari , Advocate SR.No. 16166

+1cc to Mr.M.Ganesan, Advocate SR.No. 16036

W.P.No.6309 of 2021

mg co

A.SK(16.04.2021)



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