

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2021

CORAM

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

WP.No.7258/2021
& WMP.No.7759/2021

M/s.Iswarya Fertility Center
rep.by its Authorised Signatory
Dr.Arun Muthuvel
Silver Oak Apartments
No.211, 1st Floor
Velachery Main Road,
Selaipur, Chennai 600 073.

..Petitioner

Versus

- 1.The Secretary to Government of
Tamil Nadu, Housing & Urban
Development Department,
Fort St George, Chennai 600 009.
- 2.The Member Secretary cum Chairman
Chennai Metropolitan Development
Authority [CMDA], Thalamuthu
Natarajan Building, No.1,
Gandhi Irwin Road, Egmore, Chennai 600 008.
- 3.Silver Oak Apartments Owners Association
Silver Oak Apartments, No.211, Velachery
Main Road, Selaipur, Chennai 600 073.

- 4.Mr.C.Daniel
- 5.Mrs.Sulochana Daniel
- 6.Mrs.Gladys Rosette Daniel

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the 1st an 2nd respondents from taking any steps in proceeding with the order dated 08.03.2021 passed by the 1st respondent vide letter No.12222/UD7[2]/2020 without disposing off the review petition dated 16.03.2021 filed by the petitioner under section 81 of the Tamil Nadu Town and Country Planning Act.

For Petitioner : Mr.Ravi Kumar Paul
Senior Counsel assisted by
Mr.S.Senthil for AAV Associates
For R1 : Mr.R.Vijayakumar
Additional Government Pleader
For R2 : Mrs.P.Veena Suresh
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.Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mrs.P.Veena Suresh, learned Standing counsel accepts notice on behalf of the 2nd respondent.
- 3.Respondents 4 to 6 are the owners of the Basement Floor + Stilt Floor [part] / Ground Floor [part] + First Floor office + 2nd to 9th Floors, residential building with 80 dwelling units at Tambaram-Velachery Main Road in Old S.No.98/4B,5, TS.No.8/2, 8/2, Ward No.1, Block No.15 of Selaiyur Village. The 2nd respondent has also issued a Completion Certificate dated 04.01.2017 bearing Letter No.EC/S-I/14374/2016.
- 4.The petitioner has entered into a registered Agreement of Sale dated 23.03.2018 bearing Doc.No.2882/2018 registered on the file of the office of the Sub Registrar, Tambaram and the period of lease is six years which expires on 22.03.2024.
- 5.The learned counsel for the petitioner would submit that the petitioner, for the purpose of running Fertility Centre, had obtained all statutory clearances from the concerned statutory authorities and is carrying on the business in the premises in question, for nearly two years and odd.
- 6.The 4th respondent, on an earlier occasion, filed WP.No.1106/2019 against the Commissioner, Tambaram Municipality/2nd respondent herein and one Chandraleka, praying for issuance of a writ of mandamus, directing the 1st respondent therein to take appropriate action in pursuant to the Notice dated 31.07.2018 and during the course of hearing, it has been taken note of by this Court that the 1st respondent is prepared to withdraw the Notice dated 31.07.2018 and recording the same, has closed the writ petition.

7. It is further represented by the learned counsel for the petitioner that the 3rd respondent filed WP.No.597/2020, praying for appropriate action for demolition of the offending construction/unauthorised portion and it was disposed of on 20.01.2020 by directing the 2nd respondent therein to consider the same and take appropriate action in accordance with law and accordingly, the 2nd respondent has issued the Locking and Sealing and Demolition Notice dated 14.09.2020.
8. The petitioner as well as respondents 4 to 6 aggrieved by the said Notice, filed special revisions/appeals under Section 80-A of the Town and Country Planning Act, 1971. The said special revisions/appeals were taken on file and an opportunity of personal hearing had also been afforded to the petitioner, 3rd respondent as well as respondents 4 to 6. The 1st respondent, vide order dated 08.03.2021 after taking into consideration the materials placed, observed that in the light of the objection raised by the 3rd respondent as to certain modification/changes for accommodation of the clinic in the first floor made by the petitioner which affected the structural stability of the building, thought fit to reject both the appeals/special revisions preferred by the petitioner as well as respondents 4 to 6. The petitioner has also filed a review petition dated 15.03.2021 along with a petition for interim relief under section 81[4] of the Act before the 1st respondent and the same was received and acknowledged on 16.03.2021.
9. Mr. Ravi Kumar Paul, learned Senior counsel assisted by Mr. S. Senthil, learned counsel for the petitioner would submit that during the course of hearing, a Report dated 21.01.2021 was submitted to the 1st respondent, informing as to the non-availability of the Head of the Hospital and other persons and that they are unable to attend the personal hearing on 21.02.2021 and prayed for short accommodation in the form of adjournment and however, the said genuine request has not been considered and the appeals/revisions came to be rejected and if an opportunity would have been provided to them, they would have been in a position to draw the attention of the 1st respondent to various documents furnished and also pointed out that admittedly, no floor or FSI violation took place and even according to the 3rd respondent, the first floor is to be utilised for office space as per plan and since the petitioner is carrying out a commercial activity, it cannot be construed as a violation of the plan or permission and prays for appropriate orders.
10. Per contra, Mr. R. Vijayakumar, learned Additional Government Pleader appearing on behalf of the 1st respondent would submit that the review petition filed by the petitioner by invoking section 81 of the Town and Country Planning Act, 1971, is not

maintainable in the light of Section 81 which provides for review, in respect of any order passed under Sections 76 to 78 and 80 of the Act and prays for dismissal of this writ petition.

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

12.The fact remains that the review petition along with the petition for interim relief dated 15.03.2021 has been received and acknowledged by the office of the 1st respondent vide Endorsement dated 16.03.2021. Therefore, it is for the 1st respondent to take a call as to the maintainability of the said review petition by taking into consideration Section 81 of the Town and Country Planning Act, 1971.

13.Accordingly, this Court directs the 1st respondent to take a call as to the maintainability or otherwise of the review petition dated 15.03.2021 submitted by the petitioner which was received on 16.03.2021 and pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website and till such time, the 2nd respondent shall defer further decision as to the de-occupation of the portion of the premises in possession of the petitioner.

14.The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to Government of
Tamil Nadu, Housing & Urban
Development Department,
Fort St George, Chennai 600 009.

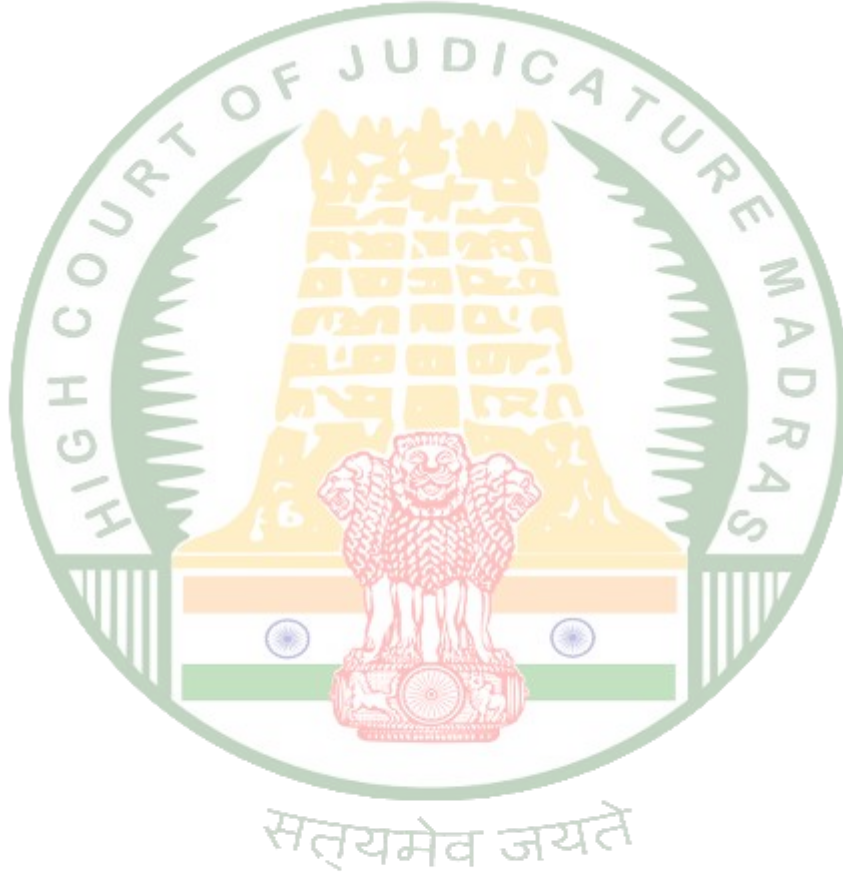
2.The Member Secretary cum Chairman
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3.Silver Oak Apartments Owners Association
Silver Oak Apartments, No.211, Velachery
Main Road, Selaiyur, Chennai 600 073.

+1 cc to M/s.AAV Partners, Advocate Sr No.17872

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18.03.2021

PMK (CO)
RG.27.04.2021 (5P/5C)



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