

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WP.No.6348 OF 2020 & WMP.No.7484 OF 2020

[Video Conferencing]

1.A.Muthumalai

2.M.Mahalakshmi

.. Petitioners

Versus

1. Government of Tamil Nadu
rep.by its Secretary to Government
Housing & Urban Development
Department, Secretariat
Chennai 600009.

2. Chennai Metropolitan Development Authority
rep.by its Member Secretary,
No.1, Gandhi Irwin Road
Egmore, Chennai 600008.

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in their letter No.17062/UD-VII[2]/2019/2 dated 10.02.2020 relating to orders passed on the petitioner's special revision application dated 16.08.2019 u/s.80A of the Town and Country Planning Act, relating to Locking and Sealing action of the 2nd respondent of the petitioner's building at Plot No.1/30, East Coast Road, Kottivakkam, Chennai 600 041, and quash the same and direct the 2nd respondent to de-seal the aforesaid premises viz., ,1/30 and 1/29, East Coast Road, Kottivakkam, Chennai 600 041 which was relcked and sealed on 27.06.2019 and regularise the subject building in due compliance of the 1st respondent's order in Letter No.3841/UDVI[2]/2014-6 dated 11.04.2016 in accordance with law.

For Petitioners: Mr.D.S.Rajasekaran

For R1 : Mr.R.Vijayakumar
Additional Government Pleader

For R2 : Mr.Karthik Rajan

ORDER

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

The 1st petitioner claims to be the absolute owner of the property bearing Door No.1/30, East Coast Road [ER], Kottivakkam, Chennai-41 and the 2nd petitioner, who is his wife, is the owner of the property bearing Door No.1/29, ECR, Kottivakkam, Chennai-41. The petitioners claimed to have purchased the said property and put up constructions in the year 1981 and only in the year 1995, they had applied for the Planning Approval to Chitlapakkam Panchayat and it came to be rejected for the reason that it is an unapproved layout.

2 The petitioners would submit that the 1st petitioner was advised to avail the Regularisation scheme u/s.113-A of the Town and Country Planning Act, 1971 [in short 'TCP Act'] and he and his wife/2nd petitioner herein, had jointly applied for the regularisation of the constructions put up by them in the above cited Door Numbers to the 2nd respondent through Kottivakkam Panchayat on 27.05.1999 and it is still pending consideration on the file of the 2nd respondent. The petitioners claims to have raised the height of the parapet wall of the first floor of the premises in Door No.1/30, ECR, Kottivakkam, Chennai-41, in the year 2013, and having noticed the same, the officials of the 2nd respondent has issued the Stop Work Notice on 20.11.2013 and accordingly, the petitioners had stopped the construction of the parapet wall and also brought to the knowledge of the 2nd respondent about the pendency of the application filed u/s.113-A of the TCP Act. However, the officials of the 2nd respondent proceeded further and locked and sealed the premises bearing Door No.1/30, leaving the other building in Door No.1/29, which is owned by the 2nd petitioner/his wife and which also stands on the similar footing, without taking any action. The 1st petitioner, aggrieved by the act of locking and sealing, preferred the statutory appeal/revision before the 1st respondent on 27.02.2014 and after considering the materials placed and hearing the petitioner therein, an order came to be passed on 11.04.2016, in and by which, the 2nd respondent was directed to de-seal the premises bearing Door No.1/30, ECR, Kottivakkam, Chennai-41 and directed the 2nd respondent to process the Regularisation Application said to be pending and file a report on the action taken.

3 The grievance now expressed by the 1st petitioner is that pendency of the Regularisation Application in respect of Door No.1/30, ECR, Kottivakkam, Chennai-41, the premises owned by his wife, viz., the 2nd petitioner herein, bearing Door No.1/29, ECR, Kottivakkam, Chennai-41 has been locked and sealed and it was also brought to the knowledge of the concerned officials in the form of representation dated 16.07.2019. The 2nd petitioner, aggrieved by the said act, preferred a statutory appeal/revision by invoking the provisions of Section 80-A of the TCP Act, and upon hearing the same, the 1st respondent has passed the order dated 10.02.2020 with the following directions:-

'5. On consideration of the submissions made by the appellant, the Government hereby grant permission to de-seal the building for a period of three months' to obtain necessary Planning Permission with the following conditions:-

- i. Appellant must obtain demolition approved plan from Local Body for showing the rectification proposed to make the construction comply with earlier approved plan or current rules in force.
- ii. The Local Body to approve the demolition plan within 10 days from the date of application.
- iii. Chennai Metropolitan Development Authority must de-seal the building after approval of demolition plan for a period of three months.
- iv. The appellant must carry out the rectification, as per approved demolition plan and to submit Planning Permission Application as per site condition.
- v. The building shall not be used for any purpose other than rectification.
- vi. After demolition, fresh approval must be obtained.
- vii. The enforcement notice is stayed for a period of three months given for rectifications and to obtain Planning Permission as per Tamil Nadu Combined Development and Building Rules, 2019. If rectification is done and once the Planning Permission is obtained, the notice will become infructuous.
- viii. Any violation in the conditions will result in re-sealing, without any further notice.'

and challenging the legality of the same, the present writ petition is filed.

4 The primordial submission made by the learned counsel for the petitioners is that in the light of the benevolence available in the form of Section 113-A of the TCP Act, for regularisation of the unauthorised construction, which came into being prior to the year 1999, the acts of the respondents in locking and sealing of both the premises are not at all in order and prays for interference.

5 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 1st respondent has drawn the attention of this Court to the counter affidavit dated 27.07.2020 and would submit that no application under Building Regularisation, by invoking Section 113-A has been filed and it is also not available on the file and admittedly, a wholly unauthorised construction in the form of Ground and Two Floors of commercial building being put up and the absence of any documents to prove the existence of buildings on 28.02.1999, some benevolence has been shown in favour of the petitioners through the impugned order and it cannot be faulted with.

6 The 2nd respondent has also filed counter affidavit dated 07.08.2020, wherein it has been stated among other things that the superstructures put up at Door Nos.1/29 and 1/30, have been amalgamated into a single building and it is an unauthorised one for the reason that the same came into being without any planning permission and in this regard, instructions were given to furnish the planning permission obtained for the entire building vide letter dated 30.07.2019 for which no response is forth coming from the petitioners. A further stand has also been taken that the petitioners did not furnish any hard copy as to the alleged regularisation application filed under Section 113A of the TCP Act along with supporting documents and prays for dismissal of the writ petition.

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

8 A perusal of the impugned order would disclose that as per the Report of the 2nd respondent dated 20.12.2013, the site on which the superstructures have come in place in Door Nos.1/29 and 1/30, falls under the Coastal Regulation Zone and Aquifer Recharge Area and that apart, the petitioners were bold enough to make an attempt to put up a wholly unauthorised construction in the form of Ground + additional Floors.

9 The Hon'ble Supreme Court of India as well as this Court, in very many decisions, had frowned upon the illegal acts of the concerned persons in putting up unauthorised constructions.

10 In Friends Colony Development Committee Vs. State of Orissa and others reported in 2004 [8] SCC 733 the issue relating to the unauthorised construction and regularisation of the same by levying compounding fees, came up for consideration and it is relevant to extract the same:-

The material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

In the present case, the builder added an additional fifth floor on the building which was totally unauthorised. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one.

Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. The power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals

or general welfare and ecological considerations."

11 In Consumer Action Group rep.by its Trustee Vs. State of Tamil Nadu rep. by its Secretary to Government, Law Department, Secretariat, Chennai-9 and others reported in 2006 [4] CTC 483 [DB], it is held that water and electricity connection should be contingent on completion certificate. Sl.No.(ix) of the direction reads thus:-

"(ix)To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

30 The Development Control Rules prohibit use of building without obtaining completion certificate. The direction to provide electricity, water and sewerage connection without insisting Completion Certificate from CMDA would amount to permission to put the building to use which is prohibited by statute. The Electricity, Water and Sewerage Boards are not bound to entertain application for such amenities without submitting the Completion Certificate issued by CMDA.

31 The authorities exercising statutory functions under various enactments must assist CMDA to implement the Development Control Rules. If such authorities entertain request and provide electricity, water and sewerage connection, it would help the builder to bypass the mandatory requirement of the Statute, requiring completion certificate to occupy the building. We therefore hold that the Chennai Metro Water Supply and Sewerage Board and Tamil Nadu Electricity Board, have no authority to issue electricity, water and sewerage connection

without producing of the Completion Certificate from CMDA. We are therefore of the view that the builders have no right to approach the Court for mandamus to provide electricity, water and Sewerage connections, without insisting Completion Certificate from CMDA."

12 In Santhi Sports Club Vs Union of India, reported in 2009 [15] SCC 704 : AIR 2010 SC 433, the Hon'ble Apex Court observed that the Executive must take stringent action to curtail the menace of illegal construction and in paragraph 75 observed as follows:-

"75 Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

13 In yet another decision reported in 2010 [2] SCC 27 : AIR 2010 SC 1030 [Priyanka Estates International Private Limited V. State of Assam], the Hon'ble Apex Court, once again sounded a note of caution by taking into consideration large scale

unauthorised construction and in paragraphs 55 and 56, has observed as follows:-

"55 It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the Builder.

56 Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is against the interest of society at large, but, no heed to it has been given by the builders. Rules, regulations and bye-laws are made by Corporation or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent."

14 The Hon'ble Apex Court, in the latest decision reported in 2019 [14] SCALE 378 [Municipal Corporation of Greater Mumbai and Others V. Sunbeam High Tech Developers Private Limited], dealt with the issue as to whether if a Municipal Corporation demolishes structure in exercise of powers vested in it but in violation of procedure prescribed, can a High Court direct the

owner/occupier of building to reconstruct the demolished structure and answered the issue as follows:-

'16. We make it clear that we do not approve the action of the Municipal Corporation or its officials in demolishing the structures without following the procedure prescribed by law, but the relief which has to be given must be in accordance with law and not violative of the law. If a structure is an illegal structure, even though it has been demolished illegally, such a structure should not be permitted to come up again. If the Municipal Corporation violates the procedure while demolishing the building but the structure is totally illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of law. However, we again reiterate that the illegal structure cannot be permitted to be re-erected.

17. Assuming that the structure is not illegal then also the Court will first have to come to a finding that the structure was constructed legally. It must come to a clear-cut finding as to the dimensions of the structure, what area it was covering and which part of the plot it was covering. In those cases the High Court, once it comes to the conclusion that the structure which has been demolished was not an illegal structure, may be justified in permitting reconstruction of the structure, but while doing so the Court must clearly indicate the structure it has permitted to be constructed; what will be the length of the structure; what will be its width; what will be its height; which side will the doors and windows face; how many number of storeys are permitted etc. We feel that in most cases the writ court may be unable to answer all these questions. Therefore, it would be prudent to permit the structure to be built in accordance with the existing by-laws. Directions can be issued to the authorities to issue requisite permission for construction of a legal structure within a time bound period of about 60 days. This may vary from case to case depending upon the nature of the structure and the area where it is being built.

18. Blanket orders permitting re-erection will lead to unplanned and haphazard construction. This will cause problems to the general public. Even if the rights of private individuals have been violated in as much as sufficient notice for demolition was not given, in such cases structures erected in violation of the laws cannot be permitted to be re-erected. We must also remember that in all these cases, the High Court has not found that the structures were legal. It has passed the orders only on the ground that the demolition was carried out without due notice. As already indicated above, compensation for demolished structure or even the cost of the new structure to be raised, if any, can be imposed upon the municipal authorities which should be recovered from the erring officials, but in no eventuality should an unplanned structure be permitted to be raised.

.....
21. There is no difficulty to find a solution to this problem if the State is inclined to do so. Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.'

15 A careful scrutiny and consideration of the materials would disclose that the site said to have been owned by the petitioners falls under the Coastal Regulation Zone and also Aquifer Recharge Area and that apart, the petitioners, in a brazen violation of the procedures established under law, started putting up a wholly unauthorised construction in the form of Ground + additional Floors, which is likely to be used for commercial exploitation.

16 The 1st respondent, in the impugned order, has taken note of the same and granted some concession in the form of

certain direction in paragraph No.5. In the considered opinion of the Court, the scope of judicial review in respect of the powers exercised by the statutory authorities, is very limited and having tested the order in the light of the well settled legal proposition, finds no error or infirmity in the impugned order.

17. In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
Government of Tamil Nadu
Housing & Urban Development
Department, Secretariat
Chennai 600009.
2. The Member Secretary,
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600008.

+1cc to Mr.D.S.Rajasekaran, Advocate, S.R.No.108

+1cc to the Government Pleader, S.R.No.162

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AJS (CO)
CS/11/02/2021

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