

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 12890 of 2021

1.A.Muffadal
S/o.Aziz Bhai

2.Azee,
S/o.Husainibhai

3.Yusuf H. Unjhwala
S/o.Husainibhai

4.Tasneem Y. Unjhwala
W/o.Yusuf

5.Mohammed Sasta
S/o.Nuruddinbhai

6.Nishrin Sasta
W/o.Mohammedi

7.Khuzema Sasta
S/o.Nuruddinbhai

8.Fatema Sasta
W/o.Khuzema

9.Saifuddin Lokhandwala सत्यमेव जयते
S/o.Yakub

10.Hassan Lokhandwala
S/o.Yakub

11.Murtuza Lokhandwala
S/o.Yakub

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep., by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent to forthwith remove the lock and seal affixed on 16.8.2019 in the petitioners' property situated at Old No.129, New No.267, Linghi Chetty Street, Chennai-600 001, for a period of 6 months so far as to enable the petitioners to rectify and restore the said premises in conformity with the sanctioned plan and the order of the 1st respondent dated 31.10.2018 on the basis of the petitioners' representation dated 20.2.2021 addressed to the 2nd respondent.

For Petitioners : Mr.L.Chandrakumar

For R1 : Mrs.R.Anitha,
State Government Counsel

For R2 : Mr.Karthik Rajan

ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The Petitioners are joint owners of the property bearing old No.129 new No.267, Linghi Chetty Street, Chennai - 600 001. Since the building was constructed more than 35 years ago, the old super structure was demolished and a new commercial cum residential building was constructed, after getting sanctioned plan from the Chennai Corporation, vide planning permit in PPA No. D5/5667/2014 dated 29.10.2014. After the construction, the Petitioners duly occupied the same and the property has been duly assessed for tax viz., the property tax, water and sewage tax and the same was also paid by the Petitioners. The necessary Electricity Bill charges was also paid by the Petitioners.

2. It is stated that during the course of construction a slight deviation has been made, contrary to the approved plan. Therefore, lock and seal and demolition notice was issued to the Petitioners on 01.09.2016. Against the said notice, the Petitioners preferred an Appeal under Section 80-A of the Town and Country Planning Act, 1971 (hereinafter referred to as 'the Act' for short) before the First Respondent. The said Appeal was dismissed on 31.03.2017. Subsequent to the dismissal order passed by the First Respondent, the building was locked and sealed by the Second Respondent. Against the said dismissal order passed by the First Respondent, the petitioner preferred a Review Petition under Section 81(4) of

the Act and the Review Petition was also dismissed on 21.07.2017. Thereafter, the Petitioners made a representation to the First Respondent on 31.05.2018 seeking to de-seal the premises and the same was considered and rejected on 31.08.2018 by the First Respondent.

3. The Petitioners were willing to rectify the deviation in the ground floor portion and convert it as car parking area and remove the fourth floor portion as mentioned in the lock and seal notice and in the order passed by the Government dated 31.10.2018, wherein the Government granted three months time to rectify the deviation and also ordered desealing of the building during that period, so as to satisfy the Development Regulations 2019. Since the Petitioner could not carry out the deviation work within the stipulated time, the Respondent re-sealed the premises on 16.08.2019 and therefore, the Petitioner has come before this Court to de-seal the premises for period of six months to rectify and restore the said premises in conformity with the sanctioned plan.

4. Heard Mr. L.Chandrakumar, Learned Counsel for the Petitioners, Mrs.R.Anitha, Learned State Government Counsel appearing for the First Respondent and Mr. Karthik Rajan, Learned Counsel appearing for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

5. It is pertinent to note that the Government itself has granted three months time by order dated 31.10.2018 and paragraph 6 of that order is extracted as follows:-

"6. In the above context, the Government direct the Greater Chennai Corporation /Chennai Metropolitan Development Authority to de-seal the building for a period of three months, during which the appellant must remove the top floor, and after ensuring the demolition of top floor (4th Floor part), further time may be considered to rectify Ground Floor as Stilt Floor and then Front set back."

6. In similar circumstances, this Court in W.P. No. 10544 of 2021 by an order dated 29.04.2021 extended the time for carrying out the rectification works till 31.07.2021.

7. This Court is aware of the pandemic situation and non-availability of the workers. Therefore, interest of justice requires the time to be extended till 31.08.2021 to rectify the deviation as mentioned in the lock and seal notice. Therefore, the Second Respondent is directed to de-seal the

premises, within a period of two days, so that the Petitioner could make the construction in conformity with the approved plan. In case, if the deviation work is not completed on or before 31.08.2021, the Second Respondent is directed to re-seal the permises immediately, thereafter.

8. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Maya

To

- 1.The Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.2, Gandhi Irwin Road,
Egmore, Chennai-600 008.

+1cc to Mr.L.Chandrakumar, Advocate SR.No.28714

+1cc to Government Pleader SR.No.29020

W.P. No. 12890 of 2021

GPL (CO)
GMY (05/07/2021)

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