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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM :

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

W.P.No.13332 of 2021
and
W.M.P.Nos.14159 & 14160 of 2021

1.Saranya,
W/o Mr.Nithin

2.Pushpalatha
W/o.Mr.A.Kalkiraju

Both are at
No.40/71-A, 4th Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

... Petitioners

Vs

1.The Corporation of Chennai,
Rep. by its Commissioner,
Rippon Building, Chennai 600 003.

2.The Executive Engineer,
Zone XIII, Corporation of Chennai,
Dr.Muthurlakshmi Salai,
Adyar, Chennai 600 020.

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

... Respondents

PRAYER : Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus forbearing the 1st and 2nd Respondents or anybody on their behalf from initiating any coercive action of locking and sealing and demolition with regard to the building put up at No.40/71-A, 4th Main Road, Gandhi Nagar, Adyar, Chennai 600 020 pending determination of the Review Petition submitted by the Petitioner under Section 81



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and 81-(4) of the Tamil Nadu Town and Country Planning Act dated 20.04.2021 with the 3rd Respondent.

For Petitioners : Mr.C.Manishankar,
Senior Counsel
for K.Krishnamoorthy

For Respondents : Mr.K.Raja Srinivas
Standing counsel (for R1 & R2)

Mr.P.Balathandayutham
State Government Counsel (for R3)

O R D E R

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

The Petitioners have come before this Court challenging the order passed in the Appeal dated 12.04.2021 by which the 3rd Respondent rejected the Appeal filed by the Petitioner, challenging the lock and seal notice, under Section 80-A of the Tamil Nadu Town and Country Planning Act on the ground that the Petitioners were not effectively given an opportunity, inspite of request made by the Petitioner.

2.Heard Mr.C.Manishankar, learned Senior Counsel for Mr.K.Krishnamoorthy, learned counsel appearing on behalf of the Petitioners, Mr.K.Raja Srinivas, learned Counsel appearing on behalf of Respondents 1 & 2 and Mr.P.Balathandayutham, learned Counsel appearing on behalf of the 3rd Respondent.

3.The Petitioners are the owners of the property bearing No.40/71A, 4th Main Road, Gandhi Nagar, Adyar, Chennai 600 020 and has obtained the planning permission and made construction in the year 2013 itself. After the building was occupied, the officials issued lock and seal notice 23.04.2018, under Section 56 of the Tamil Nadu Town and Country Planning Act. Against the said notice, the Petitioners preferred an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act and thereafter, filed W.P.No.12979 of 2018, which was disposed on 30.05.2018, with a direction to the 3rd Respondent to dispose of the Appeal, within a period of three months and to maintain a status quo till such time.

4.After rectifying the deviation, particularly in the ground floor as well as with regard to the other areas as per the prevailing Rules, the Petitioners again applied for regularization by submitting the revised plan to Corporation



through online on 12.06.2019. However, de-occupation notice was issued by the 2nd Respondent on 03.02.2020, under Section 56 of the Act. Meanwhile the amended Tamil Nadu Combined Building Development Rules came into force. Availing the benefit under the amended Rules, the Appeal has been filed under Section 80-A of the Act before the 1st Respondent on 10.02.2020. The said Appeal was also directed to be disposed by this Court in W.P.No.3535 of 2020 on 13.02.2020.

5.At the instance of the Petitioners, the enquiry was fixed on 10.02.2021 and 16.03.2021 through video conferencing. However due to health ground and lack of zoom meeting link particulars, the Petitioners could not attend the enquiry on those days, resulting in passing of the impugned order. The said order is being challenged before this Court.

6.It is a third round of litigation with regard to the alleged unauthorized construction made by the Petitioners. The Petitioners could not get the Zoom Meeting link for the enquiry on 10.02.2021 and due to their illness she could not attend the hearing on 16.03.2021 before the 1st Respondent. Therefore, the Petitioners seek an opportunity. It has been stated by the 3rd Respondent that the Petitioners have put up ground floor + three floors and using it as a restaurant, against the approval of stilt + two floors for bakery which is in deviation/violation to the approved plan. Eventhough opportunity was given to the Petitioners to carry out the rectification, it is a fact that the Petitioners have already given revised plan as per the newly amended Tamil Nadu Combined Building Development Rules, 2019.

7.Taking into consideration that the Petitioners has already filed Appeal under the new Rules, an opportunity is required to be given to him and since the Petitionershas sufficient cause for not attending the hearing on 10.12.2021 and 16.03.2021, an opportunity is must. If the opportunity is not given, the Petitioners' right to possess and enjoy the property, under Article 300A of the Constitution of India would be violated.

8.In view of the above said position, the impugned order is set aside as the Petitioners could not put forth their case before the 1st Respondent. In view of the setting aside of the impugned order, the 3rd Respondent is directed to give an opportunity of hearing to the Petitioners, within a period of twelve weeks from the date of receipt of a copy of this order and dispose of the Appeal on merit, as per law. Till such time, the other Respondents, especially, the 2nd Respondent shall not take any action and await for the orders in the Appeal to be disposed of by the 3rd Respondent.



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9. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

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

2. The Executive Engineer,
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Dr. Muthurlakshmi Salai,
Adyar, Chennai 600 020.

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

+1cc to Mr. K. Raja Shrinivas, Senior Standing Counsel for Chennai Corporation, S.R.No.29978

+2ccs to Mr. K. Krishnamoorthy, Advocate, S.R.No.29809, 29586

+1cc to the Government Pleader, High Court, Madras, S.R.No.30275

W.P.No.13332 of 2021

CA (CO)
SU (23/08/2021)