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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE R.VIJAYAKUMAR

W.P. No. 23706 of 2021

Mubarak Ali

...Petitioner

Vs.

1. The Municipal Commissioner,
Mettupalayam Municipal Office,
Housing Unit,
Mettupalayam 641 301.
2. The Deputy Director Town and Country
Planning Corporation Shopping
Complex - 2nd Floor,
Dr.Nanjappa Road,
Coimbatore - 641 018.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondent No.1 to dispose of petitioner's representation dated 27.07.2021 for regularisation of the building.

For Petitioner ::Mr.B.M. Subash

For Respondents::Mr.B. Anand,
Standing Counsel for R1
Mr.K.Tipu Sultan
Govt. Advocate for R2

O R D E R

(Order of the Court was made by S. Vaidyanathan,J.)

The petitioner has come forward with the present writ petition seeking issue of a Writ of Mandamus directing respondent No.1 to dispose of petitioner's representation dated 27.07.2021 for regularisation of the building.



2.The petitioner had purchased a property from one Senthilkumar in the year 2019, situated at Survey Number 164 Chikkadasampalayam Village, Mettupalayam Taluk and the petitioner's property is situated at Door No. 147 B8-A/H8A, Ward C, Block No.27, TS No. 50, Plot No. 33-D6, Kovai Main Road. According to the petitioner, alleging that the said building has not been constructed in accordance with the sanctioned plan, a writ petition in W.P. No. 13752 of 2018 was filed before this Court seeking a direction to the official respondents to take appropriate action for demolition and removal of the unauthorised and illegal construction put up by respondents 6 to 8 therein, wherein the 7th respondent is the person from whom the petitioner had purchased the property. The said writ petition was disposed of by order dated 01.07.2021 after impleading the petitioner as the 10th respondent and the operative portion of the order reads as follows:

"11. Considering the fact that the appeal filed by respondent Nos. 9 and 10 is pending before the Eleventh Respondent, this Court directs the Eleventh Respondent to dispose of the appeal filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, within a period of twelve weeks from the date of receipt of a copy of this order, after hearing the petitioner. Apart from the Appeal filed, it is always open to Private Respondent Nos. 9 and 10 to file an Application for regularization available under the Act."

Thereafter, the petitioner had submitted an application for regularisation and made a representation on 27.07.2021 to process his application for regularisation before the 1st respondent. However, no action was taken. Hence, the present writ petition with the aforesaid prayer.

3.Heard both sides.

4.Admittedly, an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 is pending. When the matter is taken up for hearing today, the learned Standing Counsel for the 1st respondent as well as the learned Government Counsel for the 2nd respondent drew the attention of this Court to the fact that not even an averment has been made in the affidavit about the pendency of the appeal filed under Section 80-A of the said Act. When this was pointed out, the learned counsel for the writ petitioner would submit that the writ petitioner will demolish the building and construct it in accordance with the plan and bring it in accordance with the plan.



5. In the light of the above submission made by the learned counsel for the writ petitioner, the 1st respondent is expected to dispose of the petitioner's representation dated 27.07.2021 within a period of three months from the date of receipt of a copy of this order. Till such time, if electricity and water connections have not been effected, the same need not be given till the building is brought or constructed in accordance with the plan. If the said connections had been given, the lock and seal shall be removed to enable the petitioner to bring the construction in accordance with the plan and in the event of failure to do the same, within a period of three months from the date of receipt of a copy of this order, electricity and water connections extended to the building shall be disconnected, in the light of the judgment of the Honourable Apex Court dated 05.01.2018, passed in Special Leave to Appeal (C) No. 33863 of 2017 which has been subsequently followed by a Division Bench of this Court, in P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and Others [W.P.No. 21639 of 2017] decided on 13.02.2018 wherein the relevant portions read thus:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017



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passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

Thus, in the said order dated 05.01.2018, the Supreme Court directed that the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme, 2017, is pending, to decide the matter in accordance with law within two months.

4. In this case, it is seen that there is no proper set-back left by the fourth respondent while constructing the building. There is also no proper ventilation as required under Rule 14(2) of the Tamil Nadu District Municipalities Building Rules, 1972. The fourth respondent has combined both the buildings as single unit without the permission from the Attur Municipality.

5. It is not in dispute that the building has been constructed by the fourth respondent in violation of the plan. The Supreme Court has repeatedly held that the building has got to be constructed without any violation of the plan. In view of the same, we are of the view that the violated portion(s) will have to be demolished, as it is not in accordance with the sanctioned plan."

6. This Court deprecates the conduct of the writ petitioner in not making the petitioners in W.P. No. 13752 of 2018 as parties to the present writ petition. It is made clear that when the appeal under Section 80-A of the Act and the representation of the petitioner are disposed of, the petitioners in W.P. No. 13752 of 2018 shall also be heard. The Authority is expected to act and decide the issue within three months after hearing the parties. In case of non-passing of orders, any person can file contempt and Court will punish the Authority, if the said non-compliance is wilful and deliberate. This Court has already



warned the Authorities and also called for details vide its order dated 16.10.2018 in W.P. No. 27499 of 2018 and the relevant paragraph is extracted below:

"(k) The 1st Respondent/Secretary to the Government of Tamil Nadu, Housing and Urban Development Department and the 5th Respondent/Commissioner, Corporation of Chennai, Chennai are directed to furnish the following particulars to this Court on or before 18.12.2018:

(i) Number of appeals pending before the authorities;

(ii) Number of cases, wherein directions have been issued by this Court."

The writ petition is disposed of with the above directions. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

nv
To

1. The Municipal Commissioner,
Mettupalayam Municipal Office,
Housing Unit,
Mettupalayam 641 301.
2. The Deputy Director Town and Country
Planning Corporation Shopping
Complex - 2nd Floor,
Dr.Nanjappa Road,
Coimbatore - 641 018.

W.P. No. 23706 of 2021

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