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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

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THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.NO.1609 OF 2020
AND
W.M.P.NO.1880 OF 2020

A.Chidambaram

... Petitioner

vs

1. The Government of Tamil Nadu,
rep. by its Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
3. The Regional Deputy Commissioner (South),
Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adayar, Chennai 600 020.
4. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
5. The Executive Engineer,
Zone-13, Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adayar, Chennai 600 020.
6. M/s.Nilgiris Franchise (P) Ltd.,
No.55/16, Annai Velankanni Church Road,
7th Avenue, Besant Nagar,
Chennai 600 090.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to Letter No.20067/UD-7(2)/2019-4, dated 10.01.2020 from the file of the first respondent and quash the same and consequently to direct the first respondent to



implement the order dated 12.11.2019 passed in Letter No.20067/UD-7(2)/2019-2 dated 12.11.2019 in respect of the property bearing at Plot No.55/17, 7th Avenue, Annai Velankanni Church Road, Besant Nagar, Chennai-600 090.

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For Petitioner : Mr.R.Sagadevan

For Respondents : Mr.K.Karthik Jaganath,
Government Advocate for R1

Mrs.Karthika Ashok,
Standing Counsel for R2, 3 and 5

Mrs.P.Veena Suresh,
Standing Counsel for CMDA for R4

Mr.Rajnish Pathiyil for R6

ORDER

[Order of this Court was delivered by T.RAJA, J.]

The petitioner has come to this Court, challenging the Letter No.20067/UD-7(2)/2019-4 dated 10.01.2020 issued by the Government of Tamil Nadu, the first respondent herein and seeking a direction to the first respondent to implement the order dated 12.11.2019 passed in Letter No.20067/UD-7(2)/2019-2 dated 12.11.2019 in respect of the property, situated at Plot No.55/17, 7th Avenue, Annai Velankanni Church Road, Besant Nagar, Chennai - 600 090.

2.Learned counsel appearing for the petitioner submitted that the petitioner, claiming to be the absolute owner of the property, situated at Plot No.55/17, Annai Velankanni Church Road, 7th Avenue, Besant Nagar, Chennai 600 090, had purchased the said property from one P.Gopal, vide Sale Deed document No.1038/2006 dated 14.02.2006, registered at Sub Registrar Office, Saidapet Joint-I, Chennai South. However, M/s.Nilgiris Franchise (P) Ltd., the sixth respondent herein has been inducted as a tenant in the vacant land of the said property by the previous landlord with the condition that the sixth respondent can construct a temporary shed at the said property. Subsequently, based on an oral understanding, the previous landlord himself agreed to construct a temporary shed and applied for planning permission to the first respondent on 27.05.2002 for construction of the temporary shed at the said property. It is the claim of the petitioner that before the



first respondent had granted permission, the previous landlord constructed and completed the temporary shed, but subsequently, the first respondent had rejected the planning permission application on 28.08.2002 stating that the construction did not comply with the CMDA rules. Subsequently, the sixth respondent continued further construction, without getting permission from the previous landlord and without any planning permission from the competent authority. Therefore, the previous landlord himself had given a complaint to the first respondent about the un-authorised construction made by the sixth respondent. Subsequently, the petitioner purchased the property on 14.02.2006. In spite of insistence made by the petitioner, the sixth respondent refused to demolish the illegal construction of temporary shed and has been continuing his business operation in the same building, which was constructed without proper planning permission. For the said reasons, the petitioner had given a complaint to respondents 1 and 5 to take action on the illegal construction. However, the first respondent, by letter dated 26.03.2018, directed respondents 2 and 5 to take necessary action against the illegal construction and the fifth respondent inspected the said construction and issued notice on 03.05.2018 to the petitioner calling for the production of approved plan within three days from the date of receipt of the notice. Learned counsel for the petitioner further submitted that the petitioner, by reply dated 09.05.2018 stated that the said construction was un-authorisedly constructed by the previous landlord in his premises and subsequently constructed by the sixth respondent on his own. Thereafter, the fifth respondent issued lock and seal notice dated 07.12.2018 and de-occupation notice dated 28.01.2019 to the sixth respondent, who had filed an Appeal/Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act 1971 against the lock and seal notice issued by the fifth respondent. However, the first respondent, while hearing the appeal, giving an opportunity of personal hearing to the petitioner and the sixth respondent, by order dated 16.04.2019, granted one month time to the sixth respondent to make an alternative arrangement and empowered the fifth respondent to continue with the enforcement action from the date of issue of order. Pursuant to the order dated 16.04.2019 passed by the first respondent, the fifth respondent has locked and sealed the premises on 04.07.2019, but, has not taken action for demolishing the same. Therefore, the petitioner submitted an Application dated 25.09.2019 before the first respondent requesting to grant permission for demolition of the un-authorised temporary shed. While so, the first respondent issued a letter to the petitioner calling for personal hearing vide letter dated 03.12.2019. Though the petitioner had given a detailed representation to the first respondent to reject the letter dated 28.11.2019 submitted by the sixth respondent as



devoid of merits and to direct the fifth respondent to proceed with the earlier order dated 12.11.2019 passed by the first respondent, the official respondents had not come forward to do so. While so, the petitioner had received the impugned order, which is not legally permissible. Therefore, unless the same is quashed, the petitioner would be put to face irreparable loss.

3.Learned counsel appearing for the sixth respondent submitted that the arguments made by the learned counsel for the petitioner that when the petitioner had initiated Rent Control Proceedings against the sixth respondent and the same is also pending, the impugned order passed by the first respondent, is far from acceptance. Adding further learned counsel for the sixth respondent submitted that when it is an admitted case of the petitioner that the sixth respondent had put up a superstructure in the place in question with the approval of the previous landlord and that RCOP Proceedings also came to an end, no prejudice would be caused to the petitioner.

4.Learned Government Advocate appearing for the first respondent submitted that when Appeal/Revision was filed under Section 80-A of the above Act by the landlord, a direction was given to de-seal the property. Therefore, it is not known on what basis the present order can be passed taking a contra stand.

5.We do not find any merit in the submission made by the learned counsel for the sixth respondent. After executing a lease agreement between the previous landlord and the sixth respondent, the sixth respondent became a tenant under the previous landlord. Subsequently, the lease agreement has not been renewed and therefore, the same came to an end. Therefore, the argument made by the learned counsel for the sixth respondent that he is a lawful tenant is far from acceptance. When the sixth respondent had already filed an Appeal/Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act against the lock and seal notice issued by the fifth respondent and the same was also rejected by the first respondent, it is not known as to why the impugned order has been passed. Since the lease of the sixth respondent ceased to exist, the first respondent, taking the role of Mediator, giving a finding that there is a dispute prevailing between the owner and the tenant and thereby granting 3 months time to sort out the issues and then to desal the premises is uncalled for. Therefore, finding no reason or justification in the impugned order, we are inclined to quash the same. Accordingly, the impugned order is quashed and the writ petition stands allowed. Since we find no iota of evidence to entertain the approach adopted by the sixth respondent, we are constrained to impose costs of Rs.10,000/- to the sixth respondent. Accordingly, the



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sixth respondent is directed to pay costs of Rs.10,000/- to the petitioner. Consequently, W.M.P. No.1880 of 2020 stands closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Secretary (Technical),
The Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai 600 009.
2. The Commissioner,
Greater Chennai Corporation,
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Copy To

The Nilgiris Franchise (P) Ltd.,
No.55/16, Annai Velankanni Church Road,
7th Avenue, Besant Nagar,
Chennai 600 090.

+1cc to M/s.P.Veena Suresh, Standing Counsel, S.R.No.26452

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.26554

+2ccs to M/s.R.Sagadevan, Advocate, S.R.No.26598

+1cc to M/s.Rajnish Pathiyil, Advocate, S.R.No.26732

+1cc to the Government Pleader, S.R.No.26782

W.P.No.1609 of 2020 and

W.M.P.No.1880 of 2020

SKM(CO)

RLP(08/07/2022)