

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.NO.2508 OF 2022
AND
W.M.P.NO.2650 OF 2022

J.Manoj Padmanaban

... Petitioner

.Vs.

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Secretariat,
Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3. Sai Siva Kumar

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the first respondent vide his proceedings in Letter No.10438/UD-VII (1/2021-4), dated 10.01.2022 and quash the same as illegal and arbitrary.

For Petitioner : Mr.Adinarayana Rao

For Respondents

For R1 : Mr.K.V.Sajeev Kumar
Special Government Pleader

For R2 : Mrs.C.Sumathy
Standing Counsel

For R3 : Mr.Moheet L. Rathore

ORDER

(The Order of the Court was made by T.RAJA, J)

This Writ Petition is directed against the impugned order dated 10.01.2022 passed by the first respondent, in and by which, the petitioner herein was directed to restore the building as per the approved plan by removing the temporary structure put up by him.

2. It is the case of the petitioner that his mother purchased a flat in the fifth floor of Phoenix Mall at Velachery, Chennai and a temporary steel roof was put up covering 500 sq.ft. out of 1750 sq.ft. in the open terrace. The objector/third respondent herein made a complaint before the second respondent stating that the temporary structure put up by the petitioner creates lot of unhygiene and health hazard to his family and their neighbours. Based on the said complaint, the second respondent issued a lock and seal notice dated 18.06.2021 to restore the building as per the approved plan, as against which, the petitioner preferred an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. The first respondent, without considering his explanation, passed the impugned order dated 10.01.2022, observing that the temporary structure put up by the petitioner is in deviation to the approved plan and it has to be removed by restoring the same as per the approved plan, within a month time.

3. Learned counsel appearing for the petitioner submitted that the petitioner's mother purchased the said flat with open space and subsequently, settled the same in favour of the petitioner. In view of the fact that pigeon and other birds smeared the entire open space and also the sharp materials and other things used for construction fell on the open area/balcony, which is being used by children and other family members, the temporary structure was erected as a safety measure. But the third respondent, who is residing vertically above his flat in the sixth floor, due to personal vengeance made the ill-motivated complaint. The second respondent, without considering the above facts, accepting the objections raised by the third respondent issued lock & seal notice and demolition notice and subsequently, the impugned order has been passed by the first respondent.

4. Learned counsel appearing for the petitioner further submitted that the petitioner's mother entered into an agreement for sale in the year 2012 and the possession was handed over in the year 2014. The petitioner has not made any deviation and the temporary structure has been in existence from 2014, more particularly, even prior to the third respondent's purchase of his flat in the sixth floor. Moreover, the vendor of the third respondent also had no issues with the temporary structure. The petitioner gave a detailed explanation on 19.02.2021 mentioning the above facts. However, the second respondent completely neglected his explanation and passed the Locking & Sealing and Demolition Notice, dated 18.06.2021. Subsequently, he filed an appeal before the first respondent. The first respondent also, without considering the practical difficulties and the reasons given by the petitioner, passed the impugned order. Challenging the same, the present petition has been filed.

5. Learned counsel for the petitioner further submitted that apart from the petitioner, there are about 7 other flat owners in the fifth floor, who have raised identical similar structure in the open space, but no action has been taken against them and the petitioner has been singled out.

6. Learned counsel appearing for the third respondent submitted that the illegal structure put up by the petitioner causes significant health issues to the third respondent including pulmonology issues and unimaginable stress, resulting in mental agony. Further, the illegal structure is in gross violation of the fire safety norms provided for the commercial-residential building. Hence, he sought to dismiss this petition.

7. In reply, learned counsel for the petitioner submitted that the Flat owners' Association has now covered the entire building with a net in order to prevent the pigeon and other birds from entering the building. Further, the said structure is periodically cleaned by him. Hence, the allegation of the third respondent is not sustainable. Therefore, the impugned order passed without considering the petitioner's explanation, is liable to be set aside.

8. At this juncture, learned Special Government Pleader appearing for the first respondent submitted that the petitioner has put up a temporary structure covering 500 sq.ft. without obtaining any planning permission from the second respondent, which is in violation of the Tamil Nadu Town and Country Planning Act. The contention made by the petitioner that he has put up the superstructure only after getting prior permission from the office of the Residential Association, is not acceptable as they are not the competent authority. Hence, the illegal superstructure put up by the petitioner may be removed.

9. Learned Special Government Pleader further submitted that the contention made by the petitioner that he has been singled out, is also not justified. Since the petitioner's neighbour, who is residing on the sixth floor, made a complaint only against the petitioner, the second respondent is bound to entertain the same. While answering the said complaint against the petitioner, on the basis of the settled legal position, the Official respondents came to the conclusion that 500 sq.ft. temporary structure put up by the petitioner without obtaining permission from the respondents, cannot be taken as a valid construction.

10. Heard the learned counsels appearing on either side and perused the materials available on record.

11. Considering the submissions made on either side and on a perusal of records, it is seen that the petitioner resides in the fifth floor of the apartment and it has an open space to an extent of 1750 sq.ft. Out of which, the petitioner has put up temporary structure around 500 sq.ft. without obtaining planning permission. Even though it is contended by the learned counsel for the petitioner that it is only a temporary construction, as it was put up without any permission from the competent authority, the same has to be construed as illegal construction. This Court agrees with the submissions made by the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the third respondent. We are unable to find any infirmity in the impugned order. Hence, this petition fails and the same is dismissed. The petitioner shall restore the open space as per the original plan, within a period of eight weeks. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Secretariat,
Chennai.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to the Government Pleader, S.R.No.34235

W.P.NO.2508 OF 2022

SKM(CO)
PBS/25/07/2022