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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KABALI KUMARESH BABU

W.P.NO.11642 OF 2022 AND W.M.P. NO.11112 OF 2022

Shanawaz Khan

.. Petitioner

-vs-

1. The Secretary to the Government,
Housing and Urban Development,
Fort St. George,
Chennai - 600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Senior Planning Officer,
Enforcement Cell,
CMDA North Divison, Zone-7,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 2nd respondent relating to the impugned de-occupation notice issued in letter No.EC/N-II/13099/2017 dated 05.01.2022 and quash the same and further direct the respondents 2 and 3 not to take any further action till the revision filed by the petitioner dated 29.11.2021 is disposed by the 1st respondent.

For Petitioner :: Mr.N.G.R.Prasad for
Mr.R.Rajaram



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

Mr.R.Sivakumar,
Standing Counsel for
CMDA/R2 & R3

ORDER

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

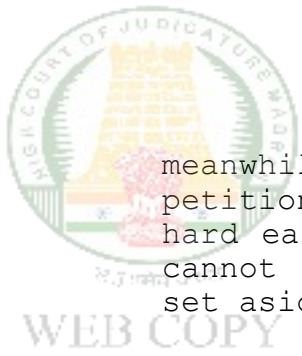
This writ petition has been filed by the petitioner challenging the impugned de-occupation notice dated 05.01.2022 issued pursuant to the locking and sealing and demolition notice dated 03.11.2021 issued by the Chennai Metropolitan Development Authority (for short, "the CMDA"), the second respondent herein, to quash the same with a consequential direction to respondents 2 & 3 not to take any further action till the revision filed by the petitioner dated 29.11.2021 is disposed of by the first respondent.

2.Mr.N.G.R.Prasad, learned counsel appearing for the petitioner submitted that when the Life Insurance Corporation of India (for short, "the LIC") advertised in the newspaper in the year 1993 inviting applicants for the purchase of single, double and three bedroom flats at Jeevan Bhima Nagar, Anna Nagar West Extension, Chennai, the petitioner purchased the respective flat. Thereafter, when he started occupying the flat, he was shocked to find out that there were no basic civil and social amenities provided in the entire complex. After finding out the defective and sub-standard construction, which are full of deficiencies in more than one way, he had given representation to rectify the defects. The Jeevan Bhima Nagar Flat Owners Welfare Association also approached the LIC urging them to rectify the defects on a war footing so as to safeguard the lives and properties of the residents. Unfortunately, there was no response and they disowned their liability altogether. Therefore, the Welfare Association approached the National Consumer Disputes Redressal Commission, New Delhi by filing a petition under Section 21 of the Consumer Protection Act seeking a direction to the LIC to rectify all the defects in the construction and also to strengthen the beams and columns wherever deep and long cracks were visibly found. Considering the case of the Association, the National Consumer Disputes Redressal Commission took up the Original Petition No.155 of 1996 and during the course of trial, by order dated 8.11.2002, appointed a Professor from the Civil Engineering Department, IIT, Madras to inspect the colony and submit a report and the Commissioner, after inspecting the entire colony and all the 800



flats, submitted his report in April, 2005 to the National Consumer Disputes Redressal Commission, New Delhi. Thereafter, on the request of the LIC, the National Consumer Disputes Redressal Commission again appointed one Mr. Subramanian, the then Registrar of the State Consumer Disputes Redressal Commission, Chennai as a Commissioner to inspect all the flats and submit a report, vide order dated 17.02.2006. Accordingly, the Commissioner submitted his report certifying that there were cracks more visible in the staircases, portico and all the RCC pillars ranging from earth to terrace and the connecting cross beams were full of cracks explicitly visible. But the LIC did not carry out any repair. Therefore, the Association again went back to the National Consumer Disputes Redressal Commission, New Delhi on the inaction shown by the LIC for carrying out the work of strengthening the buildings. Finally, the National Consumer Disputes Redressal Commission, vide order dated 10.01.2007, asked the Joint Registrar of the National Consumer Disputes Redressal Commission to visit the colony and submit a report. Again, when the report dated 09.02.2007 was submitted to the National Consumer Disputes Redressal Commission, a direction was issued to the LIC on 02.01.2013 to carry out the work of strengthening the buildings and also imposed costs of Rs.5 lakhs. But the LIC failed to rectify the defects.

3. Continuing his arguments, learned counsel for the petitioner also submitted that finding no positive response, the Association also lodged a criminal complaint on 14.07.2007 before the V3, J.J. Nagar Police Station. In the meanwhile, the second respondent-CMDA issued the locking and sealing and demolition notice dated 03.11.2021 under Section 56(2)(iii) and (2A) of the Town and Country Planning Act, 1971 requiring discontinuation of the usage of the deviated/un-authorised building and also to restore the construction in compliance with the planning permission granted under Section 49 of the Act. Challenging the same, Appeal/Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act has been filed before the first respondent and the same is pending. When the petitioner/resident of Jeevan Bhima Nagar is belonging to the middle class and he has also purchased the flat by spending his hard earned money, which is found to be with all defects, if he is forced to vacate the premises, he would be put to face irreparable loss. Therefore, he was advised to come to this Court. Concluding his arguments, learned counsel appearing for the petitioner submitted that the petitioner was misled by the promoter/LIC, as though he had constructed the building as per the standards prescribed by law without leaving any room for raising any complaint whatsoever. When the petitioner is innocent and bona fide purchaser of the flat, the impugned action initiated by the CMDA is unjustified. Therefore, he had filed appeal/revision before the first respondent. In the



meanwhile, if the building in question occupied by the petitioner, belonging to middle class and purchased with the hard earned money is demolished, the loss to be suffered by him cannot be assessed, hence, the impugned notice is liable to be set aside.

4. Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the first respondent, relying upon the status report, emphatically submitted that when it is the admitted case of the petitioner that challenging the locking and sealing and demolition notice dated 03.11.2021, the petitioner had filed appeal/revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, as per the well settled legal position, the petitioner cannot maintain two proceedings, one before the appellate authority under Section 80-A of the Act and the other before this Court invoking Article 226 of the Constitution of India. Continuing his arguments, he submitted that the invocation of the writ jurisdiction under Article 226 is normally denied, on the premise that if the petitioner is having an effective and alternative statutory remedy, the writ petition should be dismissed directing him to approach the appellate authority for suitable relief. Again drawing our notice to paragraph-4 of the status report, Mr.Sajeev Kumar stated that there are 214 violators, out of them, 180 appellants including the present petitioner, have filed the revision petitions under Section 80-A of the Act for the subject buildings in question. When the petitioner had filed individual appeal before the statutory appellate authority, the appellate authority is bound to dispose of the appeal, on merits and as per law, after receipt of the report from the CMDA. Therefore, the petitioner cannot approach this Court when his appeal/revision under Section 80-A of the Act is pending before the appellate authority for disposal, on merits and in accordance with law.

5.Mr.R.Sivakumar, learned Standing Counsel appearing for respondents 2 & 3 submitted that after filing the appeals under Section 80-A of the Act, 120 members of the Association have also responded to the CMDA by giving detailed representations and the same also have been forwarded to the appellate authority where the appeals are pending. Learned counsel also informed this Court that the individual applications filed under Section 113-C of the Tamil Nadu Town and Country Planning Act will also be dealt with by the second respondent in the manner known to law, after the outcome of the appeal filed under Section 80-A of the Act, expeditiously.

6. Since the status report dated 9th April, 2022 filed by the Additional Secretary to Government (Technical), Housing and Urban Development Department, Chennai shows that the petitioner had already approached the appellate authority, the first



respondent herein by filing statutory appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act and the learned Special Government Pleader appearing for the first respondent also informed this Court that his appeal, after receipt of the report from the CMDA, will be disposed of, on merits and as per law, in the light of the averments made in paragraph-8 of the status report that at present around 2444 revision petitions have been filed and in several cases, appeals are being disposed of in compliance of the time bound orders that are being passed by this Court, we hereby direct the first respondent, namely, the Secretary to Government, Housing and Urban Development Department to consider the appeal filed by the petitioner, on merits and dispose of the same in accordance with law expeditiously. Since the petitioner had also moved stay application and the authority has not taken up the stay application, we also direct respondents 2 & 3 and the petitioner to maintain status quo, till the appeal/revision is disposed of by the first respondent, on merits and as per law expeditiously. We also place on record the submission made by the learned Standing Counsel appearing for respondents 2 and 3 that the individual applications filed under Section 113-C of the Tamil Nadu Town and Country Planning Act will also be dealt with by the second respondent in the manner known to law, after the outcome of the appeal/revision filed under Section 80-A, expeditiously.

7. With the above direction and observation, the writ petition is disposed of accordingly. Consequently, W.M.P.No.11112 of 2022 is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Secretary to Government
Housing and Urban Development Department
Fort St.George
Chennai



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

3. The Senior Planning Officer
Enforcement Cell
CMDA North Division, Zone-7
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008

+1cc to the Government Pleader, S.R.No.33006

W.P.No.11642 of 2022 and W.M.P. No.11112 of 2022

PMK(CO)
PM/24/06/2022