

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM

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

W.P.No.5952 of 2022 and
W.M.P. No.6041 of 2022

S.Marikannu

... Petitioner

vs

1.Greater Chennai Corporation,
Rep. by its Executive Engineer,
Zone-13 (Adyar),
Chennai - 600 020.

2.Chennai Metropolitan Development Authority,
Rep. by the Chairman (cum) Managing Director,
No.8, Gandhi Irwin Road,
Egmore, Chennai-600 008.

3.Greater Chennai Corporation,
Rep. by its Assistant Engineer,
Division-168,
Zone-13 (Adyar),
Chennai - 600 020.

4.Greater Chennai Corporation,
Rep. by its Assistant Executive Engineer,
Unit-40(A),
Zone-13 (Adyar),
Chennai - 600 020.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records relating to the impugned notice No.Z.O.13/Div 168/001/2022 dated 04.03.2022 issued by respondents 1, 3 and 4 and quash the same.

For Petitioner : Mr.V.Prakash,
Senior Counsel for
Ms.S.Kala

For Respondents: Mr.K.Raja Shrinivas,
Standing Counsel for Corporation
for R1, 3 and 4

Mrs.C.Sumathi,
Standing Counsel
CMDA for R2

ORDER

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

Challenging the impugned notice No.Z.O.13/Div 168/001/2022 dated 04.03.2022 issued by respondents 1, 3 and 4, the petitioner has come to this Court with this Writ Petition.

2.Learned senior counsel appearing for the petitioner submitted that the petitioner had purchased Plot No.2, part in Visalakshi Nagar II Street, Ekkattuthangal, Chennai-32 under two registered Sale Deeds dated 12.04.1989 and 30.03.1990, measuring to the extent of 450 sq.ft. and 75 sq.ft. Learned senior counsel appearing for the petitioner further submitted that when the petitioner wanted to put up construction, she approached the respondents, who had informed that she does not require permission from the respondents for the Plot being 525 sq.ft. Thereafter, she applied for water and sewerage line connection on 24.06.2010, by paying requisite fee and after getting the same, the petitioner and her family members were occupied the dwelling house. Subsequently, she had been paying necessary taxes without any default. While so, one S.Sivaprakasam, who is a retired employee of CMDA filed a Writ Petition No.8408 of 2010 in the name of his son S.Gopalakrishnan seeking removal of the un-authorized and offending construction in Plot No.3. Based on the above complaint, lock and seal notice dated 08.03.2011 was issued to the petitioner. Pursuant to the same, the petitioner preferred an Appeal under Section 56(1) of the Town and Country Planning Act 1971. Thereafter, a notice dated 24.05.2011 was issued by the first respondent to discontinue the use of the building. Therefore, the petitioner filed an Application under Section 56(3) read with 49 of the Tamil Nadu Town and Country Planning Act, 1971 for preservation of the building. When the matter of exemption and ratification of the building is pending with the second respondent, the first respondent passed the impugned notice of de-occupation dated 04.03.2022 for sealing the premises of the petitioner, without any jurisdiction.

3. In this regard, learned senior counsel appearing for the petitioner, referring to a judgment dated 23.06.2015 passed by the Division Bench of this Court in W.P. No.14212 of 2015, in the case of S.Nirmala vs. The Director of Town and Country Planning and others, submitted that this Court, while considering the right of the violator, who filed Application under Section 49 of the Act seeking for retention of land or building within the notice period as per decision of P.T.Prabhakar vs. The Member Secretary, CMDA Chennai, has disposed of the above writ petition, giving a direction to the second respondent therein to dispose of the appeal and to maintain status quo till the disposal of the appeal. When the petitioner had filed an Application on 24.05.2011, almost a decade ago, till now the same has not been taken note of for disposal.

4. Learned Standing Counsel appearing for the Corporation/ respondents 1, 3 and 4, while answering the question raised by the learned Senior counsel for the petitioner as to whether the petitioner requires planning permission, since she is having a plot measuring 525 sq.ft., referring to Rule 35 of the Tamil Nadu Combined Development and Building Rules 2019, submitted that as per the above Rule 35, for the buildings not exceeding 18.30 metre in height, necessary planning permission shall be obtained from the competent authority. In this regard, it is relevant to extract Sl.No.E(i) of Rule 35 as under:

E.	Minimum set backs	Where Street alignment/new road is prescribed, it shall be from that street alignment/new road line. In the case of others, it shall be from the property boundary.			
(i)	Front set back	1.5 m	1.0 m	Abutting road width upto 9.0 m More than 9.0 m upto 18 m More than 18m upto 30.5m More than 30.5m	Front set back 1.5 m 3.0m 4.5m 6.0m

5. Therefore, the people coming from economically weaker section also would require planning permission, since they have to left 1.5 m and 1.0 m front set back, where Street alignment/new road is prescribed. Since planning permission in the present case is also required, the petitioner ought to have obtained the same as per Sl.No.E(i) of Rule 35 of the Tamil Nadu Combined Development and Building Rules 2019.

6. Learned Standing Counsel appearing for respondents 1, 3 and 4, referring to Section 56(2-A) of the Town and Country

Planning Act, submitted that if the owner or occupier, as the case may be, of land or building has not discontinued the use of such land or building as required in the notice served under sub-section (1), within the time specified therein, the appropriate planning authority, if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under Section 49 or Appeal under Section 79 or any litigation before a Court. In this regard, it is also useful to refer Section 56 (2-A) as under:

'Section 56 (2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under sub-section (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under Section 49 or Appeal under Section 79 or any litigation before a Court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.'

7. Heard both sides.

8. A perusal of the application dated 24.05.2011, annexed in the typed set of papers show that no such order appears to have been passed by the respondents till now. Secondly, learned senior counsel for the petitioner submitted that a direction be issued to the respondents to consider the application filed by the petitioner, which has been pending for about 10 years and to give early disposal, on merits and in accordance with law. Thirdly, he has also submitted that when the provision is not clear in respect of getting planning permission for the building within 525 sq.ft., the competent authority may be directed to mention clearly as to whether the petitioner requires planning permission before putting up a building.

9. A perusal of the above Sl.No.E(i) of Rule 35 of the Tamil Nadu Combined Development and Building Rules 2019, stated supra, clearly shows that the people coming from economically weaker section is permitted to construct the building leaving front set back 1.5 m and 1.0 m, where Street alignment/new road is prescribed, after getting necessary planning permission from the competent authority. In this regard, it is also necessary to extract Sections 49 and 56(3) of the Tamil Nadu Town and Country Planning Act as under:

'49)Application for permission - (1)Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under Section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.'

'56(3)Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under Section 49 for the retention of the land or any buildings or works or for the continuance of any use of the land or building to which the notice relates.'

10.A perusal of the above provision shows that any person aggrieved by any such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under Section 49 for the retention of the land or any building or work or for the continuance of any use of the land or building to which the notice relates. No doubt, the petitioner had filed an Application under Section 56(3) read with 49 of the Tamil Nadu Town and Country Planning Act, 1971 for preservation of the building. But the same is pending before the respondents for consideration till now. Since the petitioner's application dated 24.05.2011 has been pending for the past one decade before the CMDA, as a result, he is constrained to come to this Court, we do not find any justification whatsoever for not taking up such application. In this regard, it is relevant to extract paragraphs 16 and 17 of the judgment dated 23.06.2015 passed by the Division Bench of this Court in W.P. No.14212 of 2015, in the case of S.Nirmala vs. The Director of Town and Country Planning and others as under:

'16.It is to be noted that Section 49 of the Town and Country Planning Act 1973 confine to minor violations only. Moreover, for any construction without permission or in contravention of the permission granted or in violation of any such permission, notice should be issued under Section 56 of the Act, 1971, to take steps to restore the land to its condition before such development. Apart from that, the violator is entitled to file an application under Section 49 of the Act,

seeking for retention of land or building within the notice period as per decision of P.T.Prabhakar vs The Member Secretary, CMDA Chennai, reported in MANU/TN/2622/2006:2006 CTC 449 (Mad).

17.As far as the present case is concerned, it is not in dispute that after passing of refusal order by the Municipality, the petitioner had preferred an appeal before the second respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur for obtaining building permission and now, the appeal petition together with records were resubmitted and forwarded to the second respondent on 04.06.2015 to take necessary action. As such, the second respondent is to number the appeal preferred by the petitioner (of course, if the papers are in order) and to pass necessary orders and to dispose of the appeal within the statutory prescribed period. If the petitioner filed any application/petition seeking an interim relief of stay, then, the second respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur is to pass orders on the said application/petition within a period of two weeks. Till such time, the status quo as obtained today shall be maintained.'

11.A perusal of the above judgment shows that the violator is entitled to file an Application under Section 49 of the Act seeking for retention of land or building within the notice period and if the petitioner filed any application/petition seeking an interim relief of stay, then the Second respondent/Deputy Director of Town and Country Planning, Thanjavur District, Thanjavur is duty bound to pass orders on the said application/petition within a period of two weeks and till such time, the status quo as on that day shall be maintained.

12.In the light of the above, as the petitioner has taken out an Application on 24.05.2011 after putting up construction, she is entitled to get the application answered by the second respondent. Since the petitioner has admittedly constructed a building within 525 sq.ft. before the Rule 35 of the Tamil Nadu Combined Development and Building Rules 2019 came into force, she cannot be put against the said provision with retrospective consequence. Therefore, the second respondent is hereby directed to consider the case of the petitioner under Rule 35 of the Tamil Nadu Combined Development and Building Rules 2019 and Section 56(3) of the Tamil Nadu Town and Country Planning Act within a period of two months from the date of receipt of a copy of this order. Till such time, both the parties are directed to

maintain status quo as on today. With the above direction, this writ petition stands disposed of. Consequently, W.M.P. No.6041 of 2022 stands closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. Greater Chennai Corporation,
Rep. by its Executive Engineer,
Zone-13 (Adyar),
Chennai - 600 020.
2. Chennai Metropolitan Development Authority,
Rep. by the Chairman (cum) Managing Director,
No.8, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. Greater Chennai Corporation,
Rep. by its Assistant Engineer,
Division-168,
Zone-13 (Adyar),
Chennai - 600 020.
4. Greater Chennai Corporation,
Rep. by its Assistant Executive Engineer,
Unit-40(A),
Zone-13 (Adyar),
Chennai - 600 020.
5. The Deputy Director of Town and
Country Planning,
Thanjavur District,
Thanjavur.

+1cc to M/s.S.Kala, Advocate SR.No.28239

+1cc to M/s.K.Raja Shrinivas, Advocate SR.No.28504

W.P.No.5952 of 2022 and
W.M.P. No.6041 of 2022

SKM(CO)
GMV(21/07/2022)