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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2022

CORAM

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

W.P.No.11336 of 2022 and
W.M.P. Nos.10871, 10873 and 10874 of 2022

1.Viresh Reddy

2.Vishal Reddy

... Petitioners

vs

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

2.The Member - Secretary,
CMDA, No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.Corporation of Chennai,
represented by its Commissioner,
Ripon Building,
Chennai - 600 003.

4.The Zonal Executive Engineer,
Zone-IX, Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai - 600 003.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the third respondent to de-seal the 2nd floor of the petitioner's premises situated at No.8/20, Rutland Gate 4th Street, Chennai - 600 006 and consequently forbear the respondents from in anyway taking coercive steps like demolishing any part of the petitioner's premises while the application filed by the petitioner's vide Receipt No.CMDA/Reg-113C/2538/2022 dated 26.03.2022 to regularise the petitioner's premises is pending before the second respondent.



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For Petitioners: Mr.P.Wilson,
Senior Counsel for
M/s.P.Wilson Associates

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

Mrs.P.Veena Suresh,
Standing Counsel for CMDA/R2

Mr.K.Raja Shrinivas,
Standing Counsel for Corporation
for R3 and 4

ORDER

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

The petitioners have come to this Court with this writ petition seeking a direction to the third respondent to de-seal the 2nd floor of their premises, situated at No.8/20, Rutland Gate 4th Street, Chennai - 600 006 and forbearing the respondents from in anyway taking coercive steps like demolishing in any part of their premises, while their application vide Receipt No.CMDA/Reg-113C/2538/2022 dated 26.03.2022 seeking regularisation of their premises is pending before the second respondent.

2.Learned senior counsel appearing for the petitioners submitted that petitioners are joint owners of the property, comprised in Door No.8/20, Rutland Gate, 4th Street, Chennai-600 006 along with two others and the said subject property was initially purchased by Yerabulu Subburama Reddy, P.Padmavathy and Adapala Srideviamma on 29.06.1973 from one R.Gaja Gowri Devi. Learned senior counsel appearing for the petitioners further submitted that since the building in question was constructed in the year 1938, prior to the enactment of Tamil Nadu Town and Country Planning Act, 1971, the provisions of the Act do not apply to the building in question. Since the building is quite old and the roof of the first floor was not strong enough to withstand in the weather, especially in the rainy season, the petitioners were advised to put up sheets over the first floor roof. Therefore, they had erected tin and aluminium sheets over the first floor in the year 2006 itself and the structures put up in the second floor are only semi-permanent. Learned senior counsel further submitted that there is a civil dispute pending among the legal heirs, before the competent Civil Court. While so, when one Smitha Aarons and Shruthi Reddy filed W.P. No.32981 of 2018 before this Court to take action on the notice issued by the third respondent on 10.09.2018, by adding the petitioners' father as the fourth respondent, the



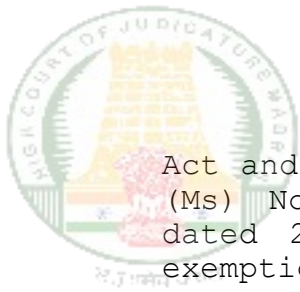
third respondent issued a notice dated 18.09.2018, for which, the petitioners herein given a reply on 25.09.2018. Thereafter, the fourth respondent, after conducting an inspection of the site on 18.09.2018 and making an observation that the ground floor and first floor in the petition premises were old building and the semi permanent structure put up in the second floor was un-authorized, issued a lock and seal notice on 25.02.2019. Therefore, this Court, by order dated 10.04.2019, disposed of the petition, holding that the authorities are taking action against the un-authorized construction put up by the fourth respondent. As against the lock and seal notice, the petitioners filed Statutory Appeal/Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 before the Government on 14.03.2019 and by Letter dated 27.08.2019, the appellate authority had passed an order, granting three months time to the petitioners to obtain necessary planning permission for additional construction.

3.Learned senior counsel for the petitioners further submitted that when it is the admitted case that only to preserve the old building, temporary shed has been put up in the second floor to avoid the leakage in the first floor, the petitioners, being aggrieved by the lock and seal notice, are entitled to move Applications under Sections 49 read with 56(3) and 113-C of the above Act seeking regularisation of the building, which cannot be kept pending. Therefore, a direction may be given to the respondents to de-seal the property to enable the petitioners to carry out the rectifications to restore the building to its planning permission.

4.Mr.K.Karthik Jaganathan, learned Government Advocate appearing for R1 and Mr.K.Raja Shrinivas, learned Standing Counsel appearing for R3 and R4 submitted that admittedly, the petitioners filed an Appeal/Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act before the first respondent and the same was dismissed granting three months time to the petitioners to obtain necessary planning permission. Since they have not utilised the three months' time, the lock and seal notice was issued on 26.03.2022. Thereafter, the petitioners have moved Applications under Sections 113-C and also 49 read with Section 56(3) of the Act.

5.Heard both sides.

6.Now, the Hon'ble First Bench has ceased of the matter under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 in W.P. Nos.1664 and 16785 to 16787 of 2013 vide judgment dated 10.02.2014, directing the State Government to frame appropriate guidelines and rules for proper and effective implementation of Section 113-C of the Town and Country Planning



Act and following the same, the Government have also issued G.O. (Ms) No.110 Housing and Urban Development (UD4(3)) Department dated 22.06.2017 for assessment and collection of amount for exemption of buildings, 2017.

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7. Admittedly, the applications filed by the petitioners under Sections 49 read with 56(3) and 113(C) are pending for consideration before the respondents. In this regard, it is 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.'

8. 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 of the Act 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. As the petitioners have taken out Applications under Sections 113-C and 49 read with Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971 for preservation of the building, they are entitled to get the applications to be answered by the respondents. When the applications filed by the petitioners are pending, the same shall be disposed of by the respondents within a time frame. Therefore, the fourth respondent shall de-seal the property within a period of one week from the date of receipt of a copy of this order and the second respondent shall consider the Applications filed under Sections 113-C and 49 read with 56(3) of the Act, on merits and in accordance with law, within a period of eight weeks thereafter. 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. Nos.10871, 10873 and 10874 of 2022 stand closed. No costs.

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-s/d-
Assistant Registrar(CS-VIII)

\\ True Copy \\

Sub-Assistant Registrar

vga

To

1.The Secretary to Government,
Housing and Urban Development Department,
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4.The Zonal Executive Engineer,
Zone-IX, Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai - 600 003.

+1cc to Mr.P.Wilson Associates, Advocate SR.No.30405
+1cc to Mr.P.Veena Suresh, Advocate SR.No.30164
+1cc to Mr.K.Raja Srinivas, Advocate SR.No.30398
+1cc to Government Pleader SR.No.31003

W.P.No.11336 of 2022 and W.M.P.
Nos.10871, 10873 and 10874 of 2022

JPL(CO)
GN(26/05/2022)