

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

CORAM

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

W.P.No.14594 of 2022 and W.M.P. Nos.13791 & 13793 of 2022

1.Suresh Kumar
2.Sangeetha Patel ... Petitioners

vs

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

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.

3.The Executive Engineer,
Zone-03, Greater Chennai Corporation,
No.1, Thattankulam Salai,
Bazar Road, Madhavaram,
Chennai - 600 060.

4.The Assistant Executive Engineer,
Zone-03, Greater Chennai Corporation,
No.1, Thattankulam Salai,
Bazar Road, Madhavaram,
Chennai - 600 060.

5.The Assistant Engineer,
Division - 025,
Greater Chennai Corporation,
No.1, Thattankulam Salai,
Bazar Road, Madhavaram,
Chennai - 600 060.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to grant the petitioners three months time for rectifying the building and to submit a revised plan in terms of the order

passed by the first respondent in Letter No.5464/UD-VI (1)/2021-4 dated 28.01.2022 by considering the petitioners' representation dated 01.04.2022.

For Petitioners : Mr.R.Jayaprakash

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

Mr.K.Raja Shrinivas,
Standing Counsel
Chennai Corporation
for R2 to 5

ORDER

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

The petitioners herein have come to this Court with this petition for issuance of a writ of Mandamus under Article 226 of the Constitution of India seeking a direction to the respondents to grant them three months time for rectifying the building and to submit a revised plan in terms of the order passed by the first respondent in Letter No.5464/UD-VI (1)/2021-4 dated 28.01.2022 by considering their representation dated 01.04.2022.

2.Learned counsel appearing for the petitioners submitted that the petitioners, after purchasing the subject property covered in S.Nos.2/1A and 3/3A, situated at No.56, Ambedkar Street, Kathirvedu Village, Puzhal Post, Ambattur Taluk, Thiruvallur District by virtue of the Sale Deed dated 28.01.2004 registered under Doc.No.865 of 2004 from one Sri Venkatesa Mills Ltd., are in peaceful possession and enjoyment of the same and they have also obtained project approval from Puzhal Panchayath Union vide Letter dated 18.10.2011 and completed construction in the year 2013. While so, the fourth respondent had issued stop work notice dated 01.12.2020 under Sections 56 and 57 of the Town and Country Planning Act, 1971 in respect of the above property to stop the construction work stating that the construction made by the petitioners is in deviation and un-authorized. Thereafter, the fourth respondent had also issued a Lock and Seal and Demolition Notice under Section 57 read with 85 of the above Act vide letter dated 16.02.2021 to restore the building in compliance with approved plan within 30 days from the date of receipt of the notice since the ongoing construction in the said property is being carried out in deviation to the approved plan. Challenging the said Lock and Seal and Demolition Notice, the petitioners had preferred an Appeal/Revision under Section 80-A of the above Act and they had also sent a representation dated 25.03.2021 to respondents 3 and 5 intimating the appeal filed before the first respondent. But the

fourth respondent, without considering the appeal, which is pending, again issued a notice for de-occupation vide letter dated 11.06.2021. Therefore, the petitioners have filed a writ petition in W.P. No.13258 of 2021 seeking for a direction to the first respondent to dispose of the Appeal and this Court, by order dated 24.06.2021, directed the first respondent to dispose of the Appeal within a period of 16 weeks and also directed the respondents therein not to take any coercive steps till the disposal of the Appeal. Pursuant to the above order, the first respondent had given an opportunity of personal hearing to the petitioners by letter dated 28.01.2022 and directed the petitioners to rectify the building as per approved plan and to submit a revised planning permission to the Corporation within 2 months' time as per Tamil Nadu Combined Development and Building Rules, 2019. Thereafter, though the petitioners started the work, they could not complete the same within the time stipulated by the first respondent. Therefore, the petitioners given a representation dated 01.04.2022 to the first respondent seeking to extend the time by three months. As there was no response, the petitioners are before this Court.

3.Learned counsel for the petitioners further submitted that in view of Covid-19 pandemic situation, the petitioners were not able to complete the work within the time frame fixed by the first respondent. Therefore, if the petitioners are given three months' time to carry out rectification of the defects pointed out by the respondents, no prejudice would be caused to anyone.

4.Learned Special Government Pleader appearing for the first respondent submitted that the petitioners have started rectification work.

5.Learned Standing Counsel appearing for Chennai Corporation/R2 to 5, on instructions, submitted that no such sign of rectification shown by the petitioners.

6.Heard the parties.

7.Learned counsel for the petitioners sought for extension of three months' time stating the reason that in view of Covid-19 pandemic situation, the petitioners were not able to proceed with the rectification of the deviated portion of the existing building.

8.In this regard, the Hon'ble Apex Court, taking suo motu cognizance of the situation arising out of COVID-19 pandemic and in exercise of powers conferred under Article 142 read with Article 141 of the Constitution of India, in a Suo Motu Writ Petition (Civil) No.3 of 2020 dated 23.03.2020, ordered that a period of limitation in all such proceedings irrespective of the

limitation prescribed under the General Law or Special Laws whether condonable or not shall stand extended with effect from 15.03.2020 till further orders to be passed by the Hon'ble Apex Court. The relevant portion of the said order passed by the Hon'ble Apex Court is extracted below:-

'1.This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

2.To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.'

9.Again on 10.01.2022, the Hon'ble Apex Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Sua Motu Writ Petition (C) No.3 of 2020, taking into consideration the arguments advanced by learned counsel and the impact of the

surge of the virus on public health and adversities faced by litigants in the prevailing conditions, has given the following directions:

'I.The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II.Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III.In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.'

10.As we are bound by the above orders passed by the Hon'ble

Apex Court, condoning the delay occurred during the Covid-19 pandemic period, bearing in mind that the delay occurred in the present case is during the said pandemic time, we are inclined to grant three months' time to the petitioners to rectify the defects pointed out by the respondents. Accordingly, the respondent concerned is hereby permitted to de-seal the property within a period of one week from the date of receipt of a copy of this order. Thereafter, the petitioners are granted three months' time from the date of de-sealing the property, to carry out the rectification.

11.It is made clear that if the petitioners fail to rectify the defects pointed out by the respondents, respondent concerned is at liberty to take action against the petitioners, in accordance with law. With the above direction and observation, this writ petition stands disposed of. No costs. Consequently, connected W.M.Ps are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner,
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+1 cc to Government Pleader Sr.NO. 35108

+1 cc to Mr.R.Jayaprakash, Advocate Sr.NO. 33989
W.P.No.14594 of 2022 and W.M.P. Nos.13791 & 13793 of 2022
pl(CO)
A.SK(22/07/2022)