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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.17378 of 2021

K.M.Balagopalan

... Petitioner

vs

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

2.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai 600 003.

3.The Executive Engineer,
Zone -VIII, Pulla Avenue,
Corporation of Chennai,
Shenoy Nagar,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents to de-seal the premises bearing Door No.335/2, (New No.168/2) Galaxy Apartments, II Avenue, Anna Nagar, Chennai-600 040 for residential usage based on the petitioner's representation dated 23.10.2020.

For Petitioner : Mr.T.Nixon

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

Mr.K.Raja Shrinivas,
Standing Counsel for Corporation
for R2 & R3



ORDER

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

The petitioner has come to this Court with this writ petition seeking a direction to the respondents to de-seal the premises bearing Door No.335/2, (New No.168/2) Galaxy Apartments, II Avenue, Anna Nagar, Chennai - 600 040 for residential usage, based on his representation dated 23.10.2020.

2.Learned counsel appearing for the petitioner submitted that the petitioner, who is a Widower, aged 92 years, has resided in the apartment, bearing Door No.335/2, Galaxy Apartments, II Avenue, Anna Nagar, Chennai - 600 040, during the lifetime of his wife, after purchasing the same, developed by the Tamil Nadu Housing Board, for a valuable consideration by a Deed of Sale. Thereafter, the petitioner, who is one of the flat owners of the above Galaxy Apartments, had carried out certain additional constructions with intimation to the Tamil Nadu Housing Board along with other owners of the apartments. While so, during the year 2010, the apartment meant for residential use, was rented for running a Furniture Showroom due to its commercial viability. However, some of the residents of the apartment had preferred a complaint to the CMDA. On the basis of the said complaint, the Chennai Corporation had taken enforcement action under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act 1971 as against the persons, who had made additional constructions in the common area. Thereafter, the petitioner's commercial premises were locked and sealed along with other commercial premises on 08.08.2015. Aggrieved by the same, the petitioner preferred a Special Revision/Appeal under Section 80-A of the above Act to the first respondent, which came to be rejected. Subsequently, the premises were locked and sealed. Therefore, the petitioner made a detailed representation dated 23.10.2020 to the respondents requesting them to consider de-sealing of the premises. Learned counsel for the petitioner further submitted that since the petitioner, being a senior citizen, is now residing in the rental house by paying a huge portion of his pension towards rent and finding it difficult to lead his life and put to severe financial crisis, he is before this Court.

3.In support of his contention, learned counsel appearing for the petitioner, referring to Section 113-C of the Tamil Nadu Town and Country Planning Act, submitted that the Government, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, has granted exemption in respect of development of certain buildings as per Section 113-C



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of the above Act, which reads as under:

'113-C.Exemption in respect of development of certain buildings: Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, by order, exempt any building or class of buildings developed on or before the 1st day of July 2007, from all or any of the provisions of this Act or any Rule or Regulation made thereunder, subject to the guidelines made in this behalf, by collecting such amount, not exceeding three times of the guideline value of the land, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the planning area.'

4.Learned counsel for the petitioner further submitted that when in a similar circumstance, one K.R.Ramaswamy alias Traffic Ramaswamy vs. The Chief Secretary and 6 others moved W.P. Nos.1664, 16785 to 16787 of 2013 seeking appropriate order before the Hon'ble First Bench of this Court, this Court, by judgment dated 10.02.2014, directed 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.

5.Learned counsel for the petitioner further submitted that the petitioner has also filed an Undertaking Affidavit dated 17.04.2022 stating that he would not rent the premises for commercial purpose, without obtaining necessary planning permission and would use the premises only for residential purpose. Therefore, recording the Undertaking Affidavit filed by the petitioner, this petition may be closed.

6.Opposing the above prayer, learned Special Government Pleader appearing for the first respondent, by filing a counter affidavit dated 03.12.2021, submitted that once the petitioner has lost his case before the first respondent in the Special Revision/Appeal filed under Section 80-A of the Tamil Nadu Town and Country Planning Act and he has also constructed the building, deviating from the original planning permission, by making additional construction, he would go back to the residential use.

7.In reply, learned counsel for the petitioner submitted that the petitioner, being the senior citizen, living alone in a



rental house. If he is permitted to use the place in question by de-sealing the property, as per Section 113-C of the Act, within a months' time, he would move an application before the concerned authority seeking appropriate order.

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8.Learned Standing Counsel appearing for respondents 2 and 3 submitted that if the petitioner comes forward to use the premises only for residential purpose, realising his mistake in making the deviated construction without planning permission, he may be permitted to move a proper application under Section 113-C of the above Act, by giving sufficient time to approach the CMDA and if he is not able to get an order under Section 113-C, liberty may be given to the Corporation to take appropriate action against him.

9.Heard both sides.

10.Since the Hon'ble First Bench has already 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, we are inclined to accept the affidavit of undertaking dated 17.04.2022 filed by the petitioner, which reads as under:

'5.I state that I am a widower leading my life with the support of the caretakers solely depending upon the pension drawn by me. Further I am now residing in rented house by paying a huge portion of my pension towards rent and finding it difficult to lead my life and put to severe financial crisis. Hence under such circumstances I being the owner of the apartment now under lock and seal by Chennai Corporation is ideal without fetching any income.

6.I state that in the event if the respondent Corporation is inclined to remove the lock and seal I hereby undertakes that I will not rent the premises for commercial purposes without necessary planning permission and use the same for residential purpose alone and the same may be recorded by this Court. Further in the event if it comes to the notice of the Corporation on a later date that I have violated my undertaking they may be at liberty to take appropriate coercive action of lock and sealing of the premises without any further action.'



11. In the light of the above affidavit of undertaking filed by the petitioner, we hereby direct the petitioner to use the premises only for residential purpose and not for commercial purpose, after obtaining necessary planning permission from the competent authority. If the petitioner breaches the undertaking given by him, by renting out the premises for commercial purpose, it is left open to the respondents to take appropriate action against him. With the above direction and observation, this writ petition stands disposed of. No costs.

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,
Fort St. George,
Secretariat,
Chennai - 600 009.

2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai 600 003.

3. The Executive Engineer,
Zone -VIII, Pulla Avenue,
Corporation of Chennai,
Shenoy Nagar, Chennai.

+1cc to Mr.K.Raja Shrinivas, Advocate SR.No.28503

+1cc to Special Government Pleader SR.No.28640

W.P.No.17378 of 2021

RP(CO)
GMY(27/05/2022)