



W.P.Nos.74, 1612, 1985, 1993 & 1997 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.74, 1612, 1985, 1993 & 1997 of 2021
and
Connected miscellaneous petitions

W.P.No.74 of 2021

R.S.Raj Mohan

...Petitioner

Vs.

1.The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Chennai -9.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai – 600 008.

3.The Commissioner,
Villivakkam Panchayat Union Office,
Ambathur, Chennai – 600 053.

4.K.Lakshmikanthan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records



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and quash the order passed by the 1st respondent in her proceedings Letter No.8781/UD-VII (1)2018-10, dated 19.11.2020 rejecting the appeal filed by the petitioner under Section 80(A) Tamil Nadu Town and Country Planning Act, 1971 for the building put up at SS Flats, No.S,2, Door No.32, Om Sakthi Street, Ayyappa Nagar, Ayapakkam, Chennai – 77, and the consequent Demolition Notice Letter No.3305/15/A3 dated 20.11.2020 issued by the 3rd respondent and consequently direct the respondents to consider the application dated 09.08.2016 filed by the petitioner for regularisation of the aforesaid construction.

For Petitioner : Mr.D.Baskar for Ms.C.Deepa Nandhini
For Respondents : Mr.Vadivelu Deenadayalan

Additional Government Pleader for R1

Mr.C.N.Vinobha

Standing Counsel for R2

Mr.K.V.Sajeev Kumar for R3

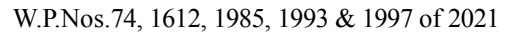
Mr.A.R.Nixon for R4

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Shaju Kuriyan
C.Balamurugan
Joseph Jayaseelan
Amul

...Petitioner in W.P.No.1612 of 2021
...Petitioner in W.P.No.1985 of 2021
...Petitioner in W.P.No.1993 of 2021
...Petitioner in W.P.No.1997 of 2021

Vs.



- Common Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Letter Note Na.Ka.3305/2015/A3 dated 19.01.2021 of the 5th respondent quash the same and consequently direct the respondents 1 to 5 to initiate appropriate proceeding under Tamil Nadu Town and Country Planning Act, 1971 after by providing opportunity of hearing petitioner.



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For Petitioner

in all WPs : Mr.T.Dharani

For Respondents

in all WPs : Mr.Vadivelu Deenadayalan

Additional Govt. Pleader for R1, R2 & R4

Mr.C.N.Vinobha

Standing Counsel for R3

Mr.K.V.Sajeev Kumar for R5

Mr.D.Baskar for Ms.C.Deepa Nandhini for R6

COMMON ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

All the above Writ Petitions challenge the order of the Government dated 19.11.2020 in and by which, the appeals filed by the petitioner in W.P.No.74 of 2021 under Section 80-A of the Tamil Nadu Town and Country Planning Act was dismissed, pointing out that the violations are very serious and they cannot be condoned.

2.The petitioner in W.P.No.74 of 2021 had obtained a planning permission for constructions of stilt Floor + two Floors with six dwelling



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units bearing Door No.32, Om Shakthi Street, Ayyappa Nagar, Ayappakkan,

Chennai - 77. He had put up a construction in violation of the approved

plan and the following violations were noted by the authorities:-

S.No	Rule	Description	Required	Provided	Extent of Violation	Percentage of Violation	Remarks
1	25(1)(F)	F.S.I	1.5	1.71m	0.21 excess	-	Setback deviation from 1 st & 2 nd floor level.
2	25(1)(i)	F.S.B	1.5m	1.07m	Less by 0.43m	28.6%	
3	25(1)	S.S.B.(N)	1.5m	0.76m	Less by 0.74m	49.3%	
4	25(1)	S.S.B.(S)	1.5m	Nil	Less by 1.50m	100%	
5		R.S.B.	1.5m	0.23m	Less by 1.27m	84.6%	
6		Parking	4 Nos. Car 6Nos.TW	4 Nos.Car 6 Nos.TW	No Violation	-	
7	Annexure XVI part 12	Coverage	70%	80%	Excess 10%	-	

3.The neighbour / 4th respondent in W.P.No.74 of 2021, informed the authorities regarding the violations. The Commissioner, Villivakkam Panchayat / 3rd respondent in W.P.No.74 of 2021 issued notices under the Town and Country Planning Act for demolition of the unapproved structure.



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The said notices were challenged by the petitioner in W.P.No.74 of 2021 under Section 80-A of the Town and Country Planning Act before the Government. The Government has rejected the appeal by the order impugned.

4.Heard the learned counsel appearing for the parties.

5.Mr.D.Baskar, learned counsel appearing for the petitioner in W.P.No.74 of 2021 would contend that the deviations being minimum, should have been regularized by the Government, exercising power under Section 80-A of the Tamil Nadu Town and Country Planning Act. Section 80-A of the Act reads as follows:-

80-A. Special Powers of Government.- (1)

Notwithstanding anything contained in section 80, the Government may, on application, call for and examine the records of the appropriate planning authority in respect of sealing of the premises under sub-section (2- A) of section 56 or under section (4) of section 57 and if, in any case, it appears to the Government that any such action or decision should be modified, annulled, reversed or remitted for



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reconsideration, they may pass orders accordingly.

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within thirty days from the date of sealing.

Provided further that such application for revision shall be disposed of by the Government within ninety days from the date of receipt of the application.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Government may pass such interim order, as they deem fit, pending the exercise of the powers under sub-section (1) in respect thereof.

No doubt, the power vested in the Government under Section 80-A is a special power and it can be exercised by the Government, if the Government is satisfied that the decision of the planning authority could be modified, annulled, reversed or remitted for reconsideration.

6.The Government, in the case on hand, has examined the nature of the deviations and has found that the deviations are major and they cannot be regularized. The possibility of bringing the building in conformity



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with the plan has also been considered by the Government and it has been concluded that since such attempt would impair the building of the 4th respondent, the Government has ruled out the possibility of bringing the existing construction in conformity with the approved plan.

7.The learned counsel appearing for the petitioners are unable to point out any procedural infirmity in the procedure adopted by the Government in disposal of the proceeding under Section 80-A. The petitioner in W.P.No.74 of 2021, who invoked the power under Section 80-A has been given an opportunity and it has been conclusively established that the violations are major and there is no site setback on one side and the rear side back less by 84.6% therefore, these violations cannot be condoned.

8.The learned counsel for the petitioners in W.P.Nos.1612, 1985, 1993 & 1997 of 2021 would contend that they had no notice in these proceedings since they have purchased the property only in the year 2019. I do not think, such a contention could be accepted. In fact, the construction commenced in 2015 and various complaints have been made by the 4th



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respondent in W.P.No.74 of 2021 namely, Lakshmikanthan to the authorities even during the years 2016-2017 and the special revision itself was filed on 12.01.2018.

9. Therefore, the petitioners in W.P.Nos.1612, 1985, 1993 & 1997 of 2021 cannot be heard to contend that they had no notice. They are infact, purchasers pending the proceedings and the doctrine of '*caveat emptor*' would apply and they cannot be heard to contend that they should be given another opportunity. We can only sympathize with them for their plight, which is largely due to the conduct of the petitioner in W.P.No.74 of 2021. These persons, who are purchasers pending appeal before the Government cannot contend that they were not afforded an opportunity. We will be justified in concluding that they are not entitled to an opportunity. If we are to direct the Government to give opportunity to all persons who have purchased the property during the pendency of the proceedings, before the Government, the process will be endless and violators will be benefited because of the delay.



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10. We are therefore, convinced that the order the Government, dismissing the Special Revision is just and reasonable and it does not call for any interference at our hands particularly, when the need of the hour is to stop violations and make citizens law abiding. Hence, these Writ Petitions are dismissed. No costs.

(R.S.M., J.) (K.B., J.)
28.09.2022

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Index:No
Internet:Yes
Speaking



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WEB COPY To:-

- 1.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George Secretariat,
Chennai – 600009.
- 2.The Additional Secretary (Technical),
Housing and urban Development Department,
Secretariat, Chennai -9.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai – 600 008.
- 4.The District Collector / Inspector of Panchayat,
Tiruvallur District, Tiruvallur.
- 5.The Commissioner,
Villivakkam Panchayat Union Office,
Ambathur, Chennai – 600 058.



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R.SUBRAMANIAN, J.
and
K.KUMARESH BABU, J.

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