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W.P.No.23414 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2022

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.23414 of 2022 and W.M.P. No.22371 of 2022

J.Sridhar

... Petitioner

VS

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai 600 008.
- 2.The Additional Secretary
(Technical) to Government,
Housing and Urban Development Department,
Fort St. George,
Secretariat,
Chennai – 600 009.
- 3.The Commissioner,
Greater Chennai Corporation,
Chennai – 600 003.
- 4.Executive Engineer (Zone -VII),
Corporation of Chennai,
Ambattur, Chennai.
- 5.Assistant Executive Engineer/Zone 7,
Corporation of Chennai,
Ambattur, Chennai.
- 6.Assistant Engineer/DN-83 Unit 18,
Zone VII,
Corporation of Chennai,
Chennai.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned letter No.605/UD-VI(1)/2022-23 dated 26.05.2022 under Sections 56 and 57 read with Section 85 of the Town and Country Planning Act and issued by the second respondent herein and quash the same and consequently direct the first respondent to consider and dispose of the application given to it in Receipt No.CMDA/Reg.113C/2299/2021 dated 23.07.2021.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mrs.C.N.Vinobha for R1

Mr.K.V.Sajeev Kumar,
Special Government Pleader
for R2

Mr.D.B.R.Prabhu,
Standing Counsel
for R3 to 6

ORDER

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

This writ petition has been filed by the petitioner, challenging the correctness of the impugned letter No.605/UD-VI(1)/2022-23 dated 26.05.2022, addressed by the Additional Secretary (Technical) to Government, Housing and Urban Development Department, Chennai, the second respondent herein under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act and seeking a direction to the Member Secretary, Chennai Metropolitan Development Authority, Chennai, the first respondent herein to



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consider and dispose of the application Receipt
No.CMDA/Reg.113C/2299/2021 dated 23.07.2021.

2.Learned counsel appearing for the petitioner submitted that the property bearing Door No.12/A Gandhi Nagar, Srinivasapuram, Korattur, Chennai was purchased by the petitioner's father Late Shri Jaganathan Iyyangar from one Mrs.Rajalakshmi for a valuable sale consideration under a registered Sale Deed dated 03.04.1991 and during his life time, he had settled his property to the petitioner and his brother J.Venkatesan. Subsequent to the purchase, the petitioner's father constructed a house and the said property was assessed to tax by the Commissioner of Ambattur Municipality and from the date of construction till the demise of the petitioner's father i.e. on 23.12.2015, his father was in possession and enjoyment of the said property and thereafter, the petitioner and his brother are residing in the said property and subsequently, the Ambattur Municipality has been merged with the Corporation of Chennai. When the land in question was sold to the petitioner's father, the vendor had let out a common passage on the front side for use by the owners of the five plots and through the said common passage, the owners of the five plots were having their ingress and egress to their respective houses and during the month of February 2018, out of the five plots, the



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owner of one plot bearing Plot No.13, Gandhi Nagar, one P.Velmurugan, who has got a ground floor, while constructing the first floor, extended the same to the common passage encroaching around 2.5 feet over the passage. Therefore, the petitioner and Mrs.D.Rajalakshmi, owner of another plot lodged a complaint on 22.02.2018 with the Zonal Officer, Ambattur Municipality Authorities. Pursuant to the same, the fifth respondent issued a Stop Work Notice dated 26.02.2018 under Sections 56 and 57 of the above Act. In spite of the said notice, the above Velmurugan had been continuing to encroach the said common passage without removing the same. Therefore, the petitioner addressed a letter dated 03.05.2019 to the Zonal Officer. Thereafter, the fourth respondent issued a lock and seal and demolition notice dated 10.05.2019 to Velmurugan. In this regard, the petitioner has given representations on 13.06.2019, 29.12.2020 and 29.01.2021 to the third respondent. Learned counsel for the petitioner further submitted that pursuant to the notice dated 02.01.2020 issued to Velmurugan by the fourth respondent, an Appeal was preferred by him after a lapse of one year on 17.02.2021 to the second respondent, who had dismissed the appeal and issued a letter dated 12.04.2021 giving three months time for rectification of the defects and for obtaining necessary planning permission as per Tamil Nadu Combined Development Building Rules 2019. Learned counsel



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for the petitioner further submitted that on 08.09.2021 the petitioner sent a representation to respondents 3 to 6 to lock and seal the premises of his neighbour P.Velmurugan since the period of three months given to him for rectification of the defects had lapsed. As there was no action based upon his representation, the petitioner preferred a Writ Petition in W.P. No.21612 of 2021 directing respondents 3 to 6 by demolishing the house of Velmurugan and the same was disposed of by the Division Bench of this Court by directing the sixth respondent to restore the electricity service connection. While so, the petitioner received a notice dated 10.07.2021 from respondents 5 and 6 addressed to his father under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, in which it has been stated that the petitioner's property was inspected, on the complaint made by Velumurguan to the Zonal Officer, Zone 7 and during inspection, it was found that the approved plan has not been exhibited or produced at the premises and the petitioner was called upon to produce a copy of the approved plan in original and a photocopy for verification making it clear that if the approved plan is not available or the building is in deviation to the approved plan, the un-authorised portion/deviated construction should be immediately removed. Since the notice dated 10.07.2021 has been issued for locking and sealing, the petitioner filed an Appeal/Special Revision under Section 80-A of



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the Tamil Nadu Town and Country Planning Act before the first respondent for granting building plan approval for the above building.

Since the second respondent has issued notice dated 26.05.2022 under Sections 56 and 57 and 85 of the above Act, the petitioner is before this Court challenging the same. Learned counsel for the petitioner submitted that the building in question was constructed after obtaining planning permission in the year 1992, but, due to passage of time, the copy of the planning permission has been misplaced and it is very difficult to trace out the same. Therefore, aggrieved by the impugned order, the petitioner has filed an Application under Section 113-C of the Act.

3.At this stage, learned Special Government Pleader appearing for the second respondent submitted that as per Rule 3 of the Tamil Nadu Combined Development Rules 2019, the petitioner has to take out an application for obtaining fresh planning permission.

4.We are unable to find any merit therein. In this regard, it is relevant to extract Section 56(3) of the Tamil Nadu Town and Country Planning Act and Rule 3 of the Tamil Nadu Combined Development Rules 2019.

'56.Power to require removal or un-authorised development-



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(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.'

'Rule 3.Applicability of these Rule-(1)Except hereinafter or otherwise provided, these Rules shall apply to all development and construction including-

(i)all developments, redevelopments, erection or re-erection, design, construction or reconstruction and additions and alterations to a building;

(ii)part construction where the whole or part of a building is demolished or altered or reconstructed, except where otherwise specifically stipulated, these Rules shall apply only to the extent of the work involved;

(iii)change of use or occupancy where use of a building is changed, except where otherwise specifically stipulated, these Rules shall apply to all parts of the building affected by the change;

(iv)reconstruction where the reconstruction in whole or part of a building which has ceased to exist due to fire, natural collapse or demolition having been declared unsafe or which is likely to be demolished by or under an order of the Authority as the case may be and for which the necessary certificate has been given by the Authority shall be allowed subject to these Rules.

(2)Nothing in these Rules shall require the removal, alteration or abandonment or prevent continuance of the



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lawfully established use or occupancy of any existing approved building.'

5.A perusal of Section 56(3) of the Tamil Nadu Town and Country Planning Act would show that 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, whereas Rule 3 of the Tamil Nadu Combined Development Rules 2019 shall apply to all development and construction including all developments, redevelopments, erection or re-erection, design, construction or reconstruction and additions and alterations to a building; part construction, where the whole or part of a building is demolished or altered or reconstructed, except where otherwise specifically stipulated, these Rules shall apply only to the extent of the work involved; change of use or occupancy where use of a building is changed, except where otherwise specifically stipulated, these Rules shall apply to all parts of the building affected by the change; reconstruction where the reconstruction in whole or part of a building which has ceased to exist due to fire, natural collapse or demolition having been declared unsafe or which is likely to be demolished by or under an order of the Authority as the case may be and for which the



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necessary certificate has been given by the Authority shall be allowed subject to these Rules.

6.Although Section 56(3) of the Tamil Nadu Town and Country Planning Act came into effect before the provision of Rule 3 of the Tamil Nadu Combined Development Rules 2019 and the same is applicable to the present case, we are inclined to give a direction to the petitioner to approach the respondent concerned under Section 56(3) of the Tamil Nadu Town and Country Planning Act read with Rule 3 of the Tamil Nadu Combined Development Rules 2019, Therefore, we grant two weeks time to the petitioner under Section 56(3) of the Tamil Nadu Town and Country Planning Act read with Rule 3 of the Tamil Nadu Combined Development Rules 2019 to take out an application for retention of building. On receipt of such application, the third respondent is directed to consider and pass appropriate orders, on merits and in accordance with law within a period of six weeks thereafter. If the petitioner fails to do so, it is open to the third respondent to proceed further in the manner known to law. Till such time, status quo as on today to be maintained by both the parties. With the above direction and observation, this writ petition



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**T.RAJA,J.
and
P.D.AUDIKESAVALU,J.**

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stands disposed of. Consequently, connected W.M.P. stands closed. No
costs.

[T.R.,J.] [P.D.A.,J.]
05.09.2022

vga
Index: Yes/No

To

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(Technical) to Government,
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