



W.P.No.34578 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.34578 of 2022
and
W.M.P.No.34017 of 2022

Ramachandren

.. Petitioner

Vs.

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

2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st Respondent herein to grant exemption to residential apartment at door No:132, Sachidanatham Street, Kosapet, Chennai – 600 012 by considering the Petitioner's application dated 10.01.2022 under Section 113-C of Tamil Nadu Town and Country Planning Act.

For Petitioner : Mr.V.Raghavachari
for Mr.M.Naraayanaswamy



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For R1 : Mr.A.Selvendran
Special Government Pleader

For R2 : Mr.D.B.R.Prabhu
Standing Counsel

For R3 : Mr.C.N.Vinobha
Standing Counsel

ORDER

(Order of the Court was delivered by V.M.VELUMANI, J.)

The present writ petition is filed for a direction to the 1st Respondent herein to grant exemption to residential apartment at door No:132, Sachidanatham Street, Kosapet, Chennai – 600 012 by considering the Petitioner's application dated 10.01.2022 under Section 113-C of Tamil Nadu Town and Country Planning Act.

2. Mr.A.Selvendran, learned Special Government Pleader takes notice for the 1st respondent, Mr.D.B.R.Prabhu, learned Standing Counsel takes notice for the 2nd respondent and Mr.C.N.Vinobha, learned Standing Counsel takes notice for the 3rd respondent.

3. By consent of both the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the 1st respondents, learned Standing Counsel appearing for the 2nd respondent



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and learned Standing Counsel appearing for the 3rd respondent, this Writ Petition is taken up for final disposal at the admission stage itself.

4. Heard the learned counsel appearing for the petitioner, Mr.A.Selvendran, learned Special Government Pleader appearing for the 1st respondent, Mr.D.B.R.Prabhu, learned Standing Counsel appearing for the 2nd respondent as well as Mr.C.N.Vinobha, learned Standing Counsel appearing for the 3rd respondent and perused the entire materials on record.

5. The petitioner is one of the owners of residential apartments situated at No.132, Sachidanatham Street, Kosapet, Chennai. The petitioner and others purchased the flats from the builder and they were residing in the apartments. The petitioner and other residents of the apartments received a de-occupation notice from Corporation of Chennai alleging that there are deviation and unauthorised construction in the apartments which are contrary to the approved plan. Thereafter, they made an application under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 to the 1st respondent requesting for exemption of building and remitted the fees for the entire construction.



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Since no order has been passed by the 1st respondent, the petitioner and others filed W.P.No.407 of 2022. In the said writ petition, builder gave an undertaking that he will provide alternate accommodation to the petitioners therein/occupants so as to enable them to demolish the unauthorised construction and rectify the deviation. Aggrieved by the same, the petitioner and others have filed S.L.P.(Appeal)No.15637 of 2022 before the Hon'ble Apex Court. Subsequently, the said SLP was dismissed as withdrawn with liberty to the petitioner and others to approach this Court for extension of time. Thereafter, the petitioner and others filed W.M.P.No.25038 of 2022 before this Court for extension of time upto April, 2023. In the meanwhile, the petitioner alone filed an application under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 for granting exemption. While pending the said application, the respondents 2 and 3 are taking coercive steps. Hence, the petitioner has come out with the present writ petition for a direction to first respondent to grant exemption.

6. According to the learned counsel for the petitioner, the deviation and additional construction put up by the builder are condonable and no prejudice will be caused to the general public. There is no encroachment



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in the construction of the apartments. The learned counsel appearing for the petitioner further submitted that the petitioner and others borrowed money from the bank and purchased the property. The petitioner has given application under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 for granting exemption. The said application is pending with the 1st respondent from 10.01.2022.

7. The learned Special Government Pleader appearing for the 1st respondent submitted that in view of stay granted in W.P.No.23889 of 2017, the 1st respondent will conduct enquiry on the application submitted by the petitioner and necessary orders will be passed after disposal of W.P.No.23889 of 2017.

8. Even though on a earlier occasion, the petitioner filed writ petition restraining the respondent from initiating coercive action of locking and sealing the petitioner's premises, considering the fact that the application of the petitioner filed under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 was presented much earlier before filing the writ petition and the said application is pending with the 1st respondent from 10.01.2022 and in the interest of justice, the 1st



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respondent is directed to dispose of the application dated 10.01.2022 made by the petitioner as expeditiously as possible depending upon the disposal of the writ petition in W.P.No.23889 of 2017. Till such time, the respondents 2 and 3 are restrained from taking any coercive steps against the petitioner.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

(V.M.V., J) (R.H., J)
23.12.2022

Index : Yes / No
Internet : Yes / No
dm



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To

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