



W.P(MD)No.24.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.24354 of 2022

Syed Abdul Karim

..Petitioner

Vs

1.The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai -9.

2. Appeal Committee,
Housing and Urban Development Department,
Secretariat,
Chennai -9.

3. The Director,
Director of Town and Country Planning,
Chennai -2.

4. The Member Secretary,
Local Planning Authority,
Tirunelveli -5.

..Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent to dispose of the appeal filed by the petitioner's father Late T.E.S.Neina Mohammed under section 79 of the Tamil Nadu Town and Country Planning Act, 1971 after giving an opportunity of hearing to the legal representatives of the deceased.

For Petitioner

:Mr.R.Gandhi

For R1 to R4

:Mr.D.Sadiq Raja

Additional Government Pleader

ORDER

The Petitioner has filed this Writ Petition seeking a direction to the second respondent dispose of the appeal filed by the petitioner's father Late T.E.S.Neina Mohammed under section 79 of the Tamil Nadu Town and Country Planning Act, 1971 after giving an opportunity of hearing to the legal representatives of the deceased.

2.Heard Mr.R.Gandhi, learned Counsel appearing for the petitioner, Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents.

3.The learned counsel appearing for the petitioner would submit that a commercial property comprised in old Town Survey No.3, Block No.25C, Town Survey No.4(p)- New Survey No.BL, Block No.50-Survey No.4/1D, 4/1E & 4/2 Shop No.A, B,



C and Plot No.211 situated in Tirunelveli Town was originally owned by his father Late T.E.S.Neina Mohammed and relative Fathimuthu. His father after obtaining building plan permission from the fourth respondent, constructed retail shops in above premises. While so, the third respondent issued notice under Tamil Nadu Town and Country Planning Act, 1971 alleging that the building was constructed deviating the planning permission given by the third respondent. Subsequently, the third respondent passed an order sealing the building in view of deviation alleged in the building.

4. He would further submit that challenging the same, his father Late. T.E.S.Neina Mohammed along with the relative Fathimuthu filed an appeal before the second respondent on 26.04.2019 under Section 79 of Tamil Nadu Town and Country Planning Act, 1971 seeking approval for building constructed therein. In the said appeal, on 19.10.2020 the Appeal Committee passed an Interim Order and the appeal is pending as on today. When his father was alive, that on 23.07.2019 our relative Fathimuthu has executed an exchange deed in favour of his father exchanging her right over the property. The same was registered before the Sub-Registrar, Palayamkottai. Further, that on 19.12.2021 his father died due to illness leaving behind his mother Mahamudal, his brother Syed Nawas, sister Fathimuthu Vaseela and himself as legal heirs. As on today, himself and his brother Syed Nawas are entitled to the property subject matter of the appeal. Subsequent to the death of his father T.E.S.Neina Mohammed, on



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07.02.2022 himself as well as his brother Syed Nawas gave a petition before the second respondent in person requesting them to issue notice in respect of appeal filed by his Late father T.E.S.Neina Mohammed and to implead himself and his brother Syed Nawas as appellants. While so, on 10.10.2022 they have received a communication from the first respondent to his deceased father with a direction to appear before the Appellate Committee Meeting scheduled to be held on 13.10.2022 along with their engineer. They submitted the death certificate to their father as well as the legal heir certificate for further reference. The second respondent ought to have permitted them to bring the legal representatives of deceased T.E.S.Neina Mohammed. Since, no action has been taken, on 16.10.2022 himself and his brother sent a detailed representation to the respondents, however, no action has been taken till date. Hence, the petitioner has approached this Court by way of filing the present Writ Petition for the relief stated supra.

5.The learned Additional Government Pleader appearing for the respondent submits that appropriate direction may be given to the respondents to consider the petitioner's appeal in accordance with law, within a time frame.

6. Considering the limited scope of the prayer sought for by the petitioner, without going into the merits of the matter, this Court directs the second respondent to



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consider the appeal filed by the petitioner's father Late T.E.S.Neina Mohammed under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 and pass orders on merits and in accordance with law, within a period of four (4) months from the date of receipt of a copy of this order, after giving an opportunity of hearing to the legal representatives of the deceased.

7. With the above direction, the writ petition stands disposed of. No costs.

Index : Yes/No
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V.BHAVANI SUBBAROYAN, J.

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