



WEB COPY



W.P.No.123 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.08.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.123 of 2020

T.Jayamala

..Petitioner

.Vs.

1.The Commissioner

Directorate of Town and Country Planning

Chengalvarayan Building, 4th floor,

807 Anna Salai, Chennai-600 002

2.The Deputy Director

Directorate of Town and Country Planning

Salem Region

6, Sannasi Street, Subramaniam Nagar

Sooramangalam, Salem-636 005

3.The Commissioner

Attur Municipality, Municipal Office, Attur-636 102

Salem District.

4.T.Kandaswamy

..Respondents



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PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Mandamus to direct the respondents 1, 2 and 3 to take appropriate and necessary steps to demolish 664/16, 664/20, Sri Raj Krishna Residency, Kamarajar Road, Attur, Salem District, by considering the petitioner's representation dated 10.04.2019, 11.05.2019 and 13.07.2019.

For Petitioner :: Mr.S.Yogalakshmi

For respondents : : Mr.P.Gurunathan, AGP for R1 and R2

Mr.Lourdu Paul Maurya, Standing counsel for R3.

Mr.L.Palanimuthu for R4.

ORDER

This writ petition is filed seeking for a direction to the respondents 1, 2 and 3 to take appropriate and necessary steps to demolish 664/16, 664/20, Sri Raj Krishna Residency, Kamarajar Road, Attur, Salem District, by considering the petitioner's representation dated 10.04.2019, 11.05.2019 and 13.07.2019.

2. The petitioner who is stated to be the resident of Door No.20-B, Ward No.12, Housing Board Quarters, Narashingapuram Post, Attur Taluk, Salem District,



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has filed this writ petition stating that the building at Door No.664, 664/16, 664/20, Sri Raj Krishna Residency, Kamarajar Road, Attur, Salem District, owned by the 4th respondent had constructed the said building without obtaining approval from the Attur Municipality.

3. It is averred in the writ petition that the 4th respondent by violating the building rules, constructed five storeyed building. The 4th respondent is running a Government approved Liquor Bar at this building and without leaving any set back or parking space, The 4th respondent Lodge is running a Lodge and it is creating huge nuisance to the persons living in and around the said building. Therefore, the petitioner sent representations dated 10.04.2019, 11.05.2019 and 13.07.019 to Respondents 1 to 3, but till date no action has been taken against the unauthorised construction.

4. The petitioner further averred that one P.Selvarajan filed W.P.No.21639 of 2017, seeking to disconnect the electricity service connection for the said unauthorized building. This court passed the interim order on 11.09.2017 to disconnect the E.B connection. The 4th respondent filed an application to restore the electricity connection, but the same was dismissed on 07.11.2017. Against which the



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4th respondent filed Petition for Special Leave to Appeal (C).No.33863/2017 before the Supreme Court. The Hon'ble Supreme Court on 05.01.2018 taken up the matter and disposed of as under:-

“We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularization under the DTCP Building regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.”

The 4th respondent thereafter, filed Conmt.Pet(C).No.1283/2018 in SLP(C).No.33863/2017 before the Hon'ble Supreme Court. The Supreme Court by order dated 17.09.2018, disposed the said Contempt petition as under:-

“ Without going into this question, we extend the period for deciding the application made by the petitioner before the concerned authority within three months from today in terms of order dated 5th January, 2018.

Copy of this order be filed along with the earlier order dated 5th January, 2018 before the concerned authority for passing appropriate orders on the application filed by the petitioner.”



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5. The 4th respondent filed counter affidavit before this court and it is averred among other things that the application for regularization is pending before the Director of Town and Country Planning, Chennai, and by order dated 28.09.2020, the Secretary to Government has forwarded the same and till date, the regularization is pending.

6. Mr.L.Palanimuthu, learned counsel for the 4th respondent has produced a copy of the letter from the Assistant Director, Salem Town and Country Planning Office, Salem District, dated 17.07.2023 addressed to the 4th respondent, wherein, it has been stated that since the matter regarding regularization is sub judice before the Apex Court, no final decision thereon shall be taken without leave of the court and therefore, as per G.O.Ms.No.110, G.O.Ms.No.111, Housing and Urban Development Department dated 22.06.2017, they can take a decision in the application for regularization, only after final judgment pronounced by the Honourable Apex Court in the subject issue.

7. The learned counsel for the 4th respondent also relied on the judgment of this court dated **03.07.2023 in W.P.Nos.23889/2017 and 23119/2018** and prayed this court to take a similar view in this matter.



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8. The Hon'ble First Bench of this court in *W.P.Nos.23889/2017 and 23119/2018* by order dated 03.07.2023 [*V.B.R. Menon Vs 1.The Secretary to Govt. of Tamil Nadu, Housing and Urban Development Department, Fort St. George, Secretariat, Chennai-600 009 and 3 others*], while dealing with writ petitions seeking directions not to regularize the unauthorized constructions, held as under:-

“3. It is submitted by Mr.V.B.R.Menon and learned counsel for the petitioner in W.P.No.23119 of 2018 that they are challenging the same Government Orders in the present writ petitions. The present writ petitions are seeking directions not to regularize the unauthorised constructions in view of the said Government Orders.

4. If, according to the petitioners, the Government Orders are already set aside in one matter, the same would stand good unless the judgment of this Court is set aside by the Apex Court.

5. It is submitted that some of the parties have moved the Apex Court and the Apex Court is seized of the matter. Naturally, the parties would be bound by the orders that would be passed by the Apex Court.

6. In the light of the above, there is no propriety in keeping these matters pending.

7. We, accordingly, dispose of the writ petitions with an observation that if subsequently after the orders are passed by the Apex Court the petitioners have any remedy open, they are entitled to agitate



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the same afresh. In that event, all contentions are kept open. There will be no order as to costs. Consequently, W.M.P.Nos.25140, 25141 of 2017, 27002 and 27003 of 2018 are closed.”

9. In view of the fact that the matter regarding regularization is seized of by the Apex Court and in the light of G.O.Ms.Nos.110, 111, Housing and Urban Development Department dated 22.06.2017, the remedy open to the petitioner is to await the orders of the Supreme Court. The petitioner is entitled to agitate the issue afresh after the orders are passed by the Apex Court on the subject matter. Accordingly, the writ petition is disposed of. No costs.

**J.N.B.J., N.M.J.,
08.08.2023**

Index : yes/no
Internet : yes/no
nvsri/vsi

To
1.The Commissioner

Directorate of Town and Country Planning
Chengalvarayan Building, 4th floor,
807 Anna Salai
Chennai-600 002



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J.NISHA BANU, J.

&
N.MALA, J.

nvsri

2.The Deputy Director

Directorate of Town and Country Planning

Salem Region, 6, Sannasi Street, Subramaniam Nagar

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3.The Commissioner, Attur Municipality

Municipal Office, Attur-636 102

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