



W.P.No. 2355 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08.08.2023
PRONOUNCED ON	22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.2355 of 2023
and W.M.P.No.2420 of 2023

M.Udaya

... Petitioner

Vs.

1.The Principal Secretary to Government
Housing and Urban Development Department,
Fort St. George, Chennai - 600 019.

2.The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.P.Dhanasekaran

4. V.Jayaniranjana

5.S.B.Arun Kumar

6.B.Bharath Kumar

... Respondents

(R3 to R6 impleaded vide order dt. 08.08.2023)



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made in W.M.P.No.16941/2023 in W.P.No.2355/2023
by JNBJ, NMJ).

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to locking-sealing and demolition notice dated 08.11.2022 with Ref.No.EC/S-I/16074/2022 issued by the 2nd respondent U/s 56(1) of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and quash the same.

For Petitioner	:	Mr.K.P.Sanjeevkumar for Mr.P.Shiva
For Respondents	:	Mr.E.Vijay Anand for R1 Additional Government Pleader Mr.R.Sivakumar for R2 Mr.P.Subbareddy for R3 to R6 (Impleaded party)

ORDER

(Order of the Court was made by J.Nisha Banu,J.)

This Writ Petition has been filed praying to quash the locking-sealing and demolition notice dated 08.11.2022 issued by the 2nd respondent-Chennai Metropolitan Development Authority.

2.The impugned Notice dated 08.11.2022 is Lock and Seal and Demolition Notice issued by the 2nd respondent to all the occupants of the subject property and to the builder, stating to secure compliance with the



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Planning permission issued by the CMDA, by demolish/altering the building or works and usage to be retained as per approved plan within a period of 30 days from the date of receipt of the notice. The Notice further called upon the flat owners to restore the building in accordance with the approved plan within 30 days from the date of receipt of the notice, failing which, action will be taken under Sub section (2-A) of Section 56 of the Town and Country Planning Act, to lock and seal the subject premises.

3. The petitioner averred in the writ petition that he is one of the residents of the subject property situated at Ground Floor in Flat No.G1 and she was in continuous possession of the property since 2007 and the construction was of the year 2004-05. The subject flat G1 was allotted to the land owner by the builder. The petitioner purchased the said G1 flat from the land owner in the year 2009.

4. A representation dated 30.07.2013 was submitted by one T.Ragunath before the 2nd respondent alleging unauthorised construction in the subject property. Subsequently, he filed W.P.No.8397 of 2014



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seeking direction to the 2nd respondent to consider the said representation.

5. This Court, vide order dated 07.12.2016 directed the 2nd respondent to cause an inspection of the building in question including the portions of the petitioner within a period of 15 days from the date of receipt of a copy of this order and if any violations are found, to act in accordance with law. The 2nd respondent conducted inspection on 23.11.2022 and issued the impugned locking-sealing and demolition dated 08.11.2022.

6. Learned counsel appearing for the petitioner submitted that demolition action cannot be pursued on any of the flat owners unless a notice issued within a period of 3 years of completion. The petitioner had also filed application under Section 113(c) of the Tamil Nadu and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) on 21.06.2020 before the 2nd respondent and the same is pending for consideration.



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7. The learned counsel for impleaded respondents who are the occupiers of the flats filed affidavit and typed set of papers stating that the unauthorised consutrection and occupants therein are using the entire ground floor as commercial area and apart from that Terrace area has been occupied and they are not able to use the Terrace area. The unauthorized illegal construction and occupants are occupying the parking area and using for commercial purpose and it causes irreperable damage and hardship to the legal owners of the flat.

8. It is further submitted that inspite of the order of this court directing CMDA to take action and the impugned lock and seal notice issued on 08.12.2022, the authorities are postponing the enforcement action. The subsequent notice dated 16.02.2023 of CMDA would state that in response to the issuance of Locking & Sealing and Demolition Notice, owner of Ground floor flat Tmt.M.Udaya had submitted application through online for regularization of the flat under New Regularization Scheme, 2017 as per Section 113-C of TNC&O Act, 1971, dated 21.06.2020 and further action will be taken in due course. The impleaded respondents also would submit that they submitted



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representations to CMDA seeking to take action against the unauthorised dwelling units.

9. The petitioner's contention is that he is entitled for regularisation of the building under Section 113-C. The petitioner counsel relied upon the order of this Court dated 27.07.2023 passed in W.P.No.9725 of 2017, wherein, the Honourable First Bench observed *that, "if subsequently after the orders are passed by the Apex court and the petitioners have any remedy open, they are entitled to agitate the same afresh. In that event, all contentions are kept open."*

10. Heard both sides and perused the entire typed set of papers filed by both sides.

11. The petitioner who sought for regularization under Section 113-C is in possession of the said G1 flat since 2007 as seen in the affidavit and purchased the same through sale deed dated 02.04.2009. The impugned notice would make it clear that the Planning permission issued on 07.07.2003 is for Stilt floor+3 floors. However, construction



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carried out is found to be in deviation to the approved plan and the unauthorised portions are used for commercial purpose. In our considered view, the unauthroised construction as against the planning approval cannot be allowed. The construction in the stilt floor(Part) converted as ground floor and 4th floor(Part) is totally an unauthorised construction and the same has been clearly pointed out in the impugned notice. Therefore, the petitioner who purchased his flat in the unauthorised portion, is in brazen violation of the procedures established under law. As per the other flat owners viz., impleaded respondents, the builder and the land owner in collusion put up unauthorised construction in the Ground + terrace Floor, and used for commercial purpose.

12. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, the wrong doers under the guise of regularization of illegal and unauthorized construction, sought to regularise the illegal act. Such actions will cause irreparable harm and damage to the other flat owners



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who purchased their flat in accordance with the planning permission. The act of building or constructing beyond the sanctioned and approved plan will cause greater loss to those flat owners who purchased the same on the premise that it was constructed as per the sanctioned plan. If a structure is an illegal structure, it cannot be permitted to continue.

13. In the light of the above discussion, this court is not inclined to grant any relief to the petitioner herein. Accordingly, the Writ Petition fails and the same is dismissed. The 2nd respondent-CMDA is directed to take enforcement action as against the unauthorised portions put up in the subject property. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
msv/nvsri

(J.N.B,J.) (N.M., J.)
22.12.2023



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nvsri

Order in

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