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W.P.No.2162 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.2162 of 2023 and

WMP No.2242 and 2243 of 2023

Mukesh Kumar

Vs.

... Petitioner

1. The Government of Tamilnadu,
Rep. by its Additional Secretary(Technical),
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
2. The Commissioner, Greater Chennai Corporation,
Ripon Building, Chennai 600 003.
3. The Executive Engineer, Greater Chennai Corporation,
II Cross Street, Pulla Avenue, Shenoy Nagar,
Chennai 600 030.
4. The Assistant Executive Engineer,
Greater Chennai Corporation, Unit 21,
Zone-VIII, II Cross Street, Pulla Avenue,
Sheny Nagar, Chennai 600 030.



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5. The Assistant Engineer,
Greater Chennai Corporation, Unit 21,
Zone-VIII, II Cross Street, Pulla Avenue,
Sheny Nagar, Chennai 600 030.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the order dated 13.01.2023 passed by the first respondent bearing letter No.11067/UD-VI(2)/2022-3 and quash the same.

For Petitioner : Mrs.A.L.Gandhimathi, Senior Counsel
for L.Palanimuthu

For Respondents : Mr.E.Vijay Anand, Additional Govt.Pleader
for R1

Mr.D.B.R.Prabhu, Standing Counsel
for R2 to R3

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to quash the order dated 13.01.2023 passed by the first respondent, dismissing the appeal filed by the petitioner under Section 80-A of the Tamil Nadu and Town and Country Planning Act.



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2. The petitioner is owner of the shop measuring to an extent of 289 sq.ft. in the ground floor of Plot No.1879A, 18th Main Road, Anna Nagar West, Chennai 600 040 with an undivided share of 186 sq.ft. Originally, the property was purchased by his mother E.Latha, vide sale deed dated 06.02.1995. Subsequently, on receipt of a private complaint, stop work notice was issued on 16.03.2022 and 19.03.2022 by the respondents 4 & 5. Thereafter, following the inspection, they issued Lock and Seal and demolition notice dated 06.04.2022, wherein, the following deviations were referred.

I. Set Back

<i>S.No.</i>	<i>Details</i>	<i>As per plan</i>	<i>As per site</i>	<i>Difference</i>	<i>Unauthorized/ Deviation</i>
1	Front	4.50m	Nil	4.50m	Deviation
2	Rear	1.50m	1.70 m	Nil	
3	Side 1 (left)	4.27m	Nil	4.27m	Deviation
4	Side 2(right)	4.27m	Nil	4.27m	Deviations

II. Floor Area

<i>S.No.</i>	<i>Details</i>	<i>As per plan</i>	<i>As per site</i>	<i>Difference</i>	<i>Unauthorized/ Deviation</i>
1	Ground floor	105.32sq.m	281.10 sq.m	175.78 sq.m.	Deviation
2	First Floor	114.30 sq.m.	116.79 sq.m.	2.49 sq.m.	Deviation



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<i>S.No.</i>	<i>Details</i>	<i>As per plan</i>	<i>As per site</i>	<i>Difference</i>	<i>Unauthorized/ Deviation</i>
3	Second Floor	114.30 sq.m	116.79 sq.m	2.49 sq.m	Deviation
4	Third Floor	114.30 sq.m	116.79 sq.m	2.49 sq.m	Deviation

II. Usage of building - Floor wise

<i>S.No.</i>	<i>Details</i>	<i>As per plan</i>	<i>As per site</i>	<i>Difference</i>	<i>Unauthorized/ Deviation</i>
1	Ground floor	Commercial	Commercial		
2	First Floor	Residential	Residential		
3	Second Floor	Residential	Residential		
4	Third Floor	Residential	Residential		

Since the mother of the petitioner was passed away, the petitioner filed an appeal against the Lock and Seal and demolition notice dated 06.04.2022. Pending Appeal, the petitioner filed a Writ Petition in W.P.No.28834/2022 seeking direction to the first respondent to dispose the stay petition filed in the appeal. This Court, vide order dated 31.10.2022 has directed the first respondent to dispose the stay petition, within four weeks. Pursuant to the order of this Court, the petitioner was called for personal hearing on 27.12.2022 and 31.12.2022 and thereafter, the first respondent dismissed the Appeal on 13.01.2023. According to the petitioner, the deviations in the ground floor of the subject property are temporary in nature, put up with



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asbestos sheet to prevent the vegetables from sun light and rain. However, without considering the above aspect, the first respondent has dismissed the appeal, which is erroneous. Further, in view of the dismissal of the Appeal, the respondents 2 to 5 are threatening the petitioner to remove the asbestos sheet. Even though the other deviations in respect of first floor to third floor are all permanent in nature, the respondents are not taking any enforcement action against them. Hence this writ petition has been filed to quash the order of dismissal passed in the statutory appeal filed by the petitioner.

3. The first respondent has filed counter affidavit stating that the petitioner has preferred an appeal against the lock and seal and demolition notice. In that appeal, enquiry was conducted. During hearing, the counsel for the petitioner appeared and requested to allow the temporary structure, which is very much needed to the petitioner for his vegetable business. But, it was not considered, because the temporary structure has been put up unauthorizedly encroaching the setback spaces. The other shop owners in ground floor have removed their temporary structures put up in the set back spaces. After careful examination of the facts of the case, the revision



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petition filed by the petitioner under Section 80-A of the Tamil Nadu Town and Country Planning Act was dismissed with a direction to the petitioner to remove the said unauthorized temporary structure put up in the setback spaces.

4. The third respondent has filed Status Report stating that the petitioner has put up a temporary structure in the setback area and still he is running the vegetable business in the setback area. Apart from the petitioner, the other owners have removed the temporary structure erected in the setback area. Further, the Greater Chennai Corporation is not granting any planning permission for erection of temporary structure. Therefore, the writ petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and we have perused the materials on record.

6. According to the petitioner, he is running vegetable business in the



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ground floor, and he has put up asbestos sheet in front of the building to prevent the vegetables from sun light and rain. Further, the main contention of the petitioner is that, he has put up only temporary structure, not any permanent structure and it does not violate any building Rules and also it will not cause any nuisance or hindrance to others. Therefore, the impugned order is liable to be quashed.

7. At this juncture, while considering the aspect as to whether any exemption is granted in the Tamil Nadu Town and Country Planning Act for the temporary structure, it is relevant to extract Section 2(13) (d) of the Act, which runs as follows.

2(13). ‘development’ means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land: Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land, that is to say,-

- (a) ---
- (b) ---



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(c) ----

(d) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

But here in this case, though the petitioner has put up temporary structure, the same is not using for enjoyment of the dwelling house, whereas, it has been using for running the vegetable business, which comes under the meaning of "commercial". Apart from that, there is no provision in the Act to give permission for such construction of temporary structure. Therefore, we are of the view that the first respondent has rightly rejected the appeal filed by the petitioner against the lock and seal and demolition notice and it does not warrant any interference by this Court. As such, the writ petition is liable to be dismissed.

8. At this juncture, the learned counsel for the petitioner seeks liberty to approach the authorities concerned seeking permission for putting up structure. But, in our view, it is for the authorities concerned to consider the request of the petitioner, if there is any provision in the Act.

9. Accordingly, this writ petition is dismissed. No costs.



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Consequently, connected miscellaneous petitions are closed. The petitioner is directed to remove the temporary/ unauthorized structure put up in the ground floor, within two weeks from the date of receipt of a copy of this order, failing which, it is open to the authorities concerned to take action to remove the above said structure.

(D.K.K.J.) (P.D.B.J.)

15.06.2023

mst

To

1. The Additional Secretary(Technical),
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Housing and Urban Development Department,
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2. The Commissioner, Greater Chennai Corporation,
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3. The Executive Engineer, Greater Chennai Corporation,
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Sheny Nagar, Chennai 600 030.

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