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W.P.Nos.5253, 12208 & 12211 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.5253, 12208 & 12211 of 2020

and

W.M.P.Nos.6203, 6204, 6206, 14957 & 14964 of 2020

W.P.No.5253 of 2020:

R.P.S.Mahendhiran

.. Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thazhamuthu Natrajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

2.State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Department of Housing and Urban Development, (UD-VII(1))
Fort St. George,
Chennai – 600 005.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records comprised the proceedings of the 2nd respondent bearing G.O.(3D).No.38, dated 22.01.2020 and quash the same.



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W.P.Nos.5253, 12208 & 12211 of 2020

For Petitioner : Mr.T.T.Ravichandran
for Mr.L.Sivakumar

For R1 : Mr.P.Kumaresan
Additional Advocate General VII
Assisted by
Mr.Vadivelu Deenadayalan
Additional Government Pleader

For R2 : Mr.E.Vijay Anand
Additional Government Pleader

W.P.Nos.12208 & 12211 of 2020:

Vijaya and Bhagiya Lakshmi Estates Pvt Ltd.,
No. AJ-42, Anna Nagar,
Chennai – 600 040
Rep. by its Managing Director,
S.Lakshmipathy.

.. Petitioner

Vs.

1.State of Tamil Nadu,
Department of Housing and Urban Development,
Rep. by its Principal Secretary,
Secretariat,
Fort St. George,
Chennai – 600 009.

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

3.Appeal Committee,
Department of Housing and Urban Development,
Secretariat, Fort St. George,
Chennai – 600 009
Rep. by its Secretary.

.. Respondents



Prayer in W.P.No.12208 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st Respondent in Government G.O.(3D) No.38, (Housing and Urban Development (UD-VII(1)) dated 22.01.2020, quash the same and consequently direct the 1st respondent to consider the petitioner's representation dated 12.12.2018 under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971.

Prayer in W.P.No.12211 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd Respondent in Letter No.EC/N-1/15722/2017, dated 30.07.2020 requesting the petitioner to vacate the premises in the allegedly unauthorized portions of the building at No.354, Konnur High Road, T.S.No.183, Block No.25, Ayanavaram Village, Chennai, quash the same and consequently direct the 2nd respondent not to take steps to de-occupy or demolish the said structure, pending disposal of the application under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, filed by the petitioner before the 1st respondent.



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W.P.Nos.5253, 12208 & 12211 of 2020

In W.P.Nos.12208 & 12211 of 2020:

For Petitioner : Mr.Niranjan Rajagopalan
For RR 1 & 3 : Mr.E.Vijay Anand
Additional Government Pleader
For R2 : Mr.P.Kumaresan
Additional Advocate General VII
Assisted by
Mr.Vadivelu Deenadayalan
Additional Government Pleader

COMMON ORDER

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

The petitioner in W.P.No.5253 of 2020 has come out with the said Writ Petition to quash the proceedings of the 2nd respondent bearing G.O.(3D).No.38, Housing and Urban Development (UD-VII(1)) Department, dated 22.01.2020.

2.The petitioner in W.P.No.12208 of 2020 has come out with the said Writ Petition to quash the Government G.O.(3D) No.38, (Housing and Urban Development (UD-VII(1)) dated 22.01.2020, passed by the 1st respondent and for a direction to the 1st respondent to consider the petitioner's representation dated 12.12.2018 under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971.



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3.The petitioner in W.P.No.12211 of 2020 has come out with the said Writ Petition to quash the order passed by the 2nd Respondent in Letter No.EC/N-1/15722/2017, dated 30.07.2020 requesting the petitioner to vacate the premises in the allegedly unauthorized portions of the building at No.354, Konnur High Road, T.S.No.183, Block No.25, Ayanavaram Village, Chennai and for a direction to the 2nd respondent not to take steps to de-occupy or demolish the said structure, pending disposal of the application under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, filed by the petitioner before the 1st respondent.

4.The issue involved in all the Writ Petitions are one and the same and hence, all the Writ Petitions are disposed of by this common order.

5.The parties are referred to as per their rank in W.P.No.12208 of 2020 for the sake of convenience.

6.According to petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020), the land in which the Apartment is constructed belongs to the petitioner. In Block – A & B, the builder has constructed the building deviating from the approved plan. M/s.Sayani



Complex Welfare Association gave complaint about the unauthorised construction to the 1st respondent. Based on the said complaint, the officials of the Chennai Metropolitan Development Authority inspected the properties and found various deviations and unauthorised constructions and notices were issued. The petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020) filed separate appeals before the Housing and Urban Development Department dated 12.12.2018 and 20.03.2019 respectively. The Housing and Urban Development (UD-VII(1)) Department, by the order dated 22.01.2020, rejected the said appeals. Consequent to rejection of the said appeals, the 2nd respondent issued De-occupation notice dated 30.07.2020 to the petitioner. The De-occupation notice dated 30.07.2020 was challenged in W.P.No.12211 of 2020 and the rejection order dated 22.01.2020 was challenged in W.P.Nos.5253 & 12208 of 2020.

7.The grievance of the petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020) is that the 1st respondent, based on the recommendation of the Appeal Committee, rejected their appeal. The learned counsel appearing for the petitioners submitted that the 1st respondent did not furnish a copy of the report of the Appeal Committee and in a mechanical manner, rejected their appeal. In support of his



contention, the learned counsel for the petitioners relied on the following judgments:

(i) ***1991 (2) LW 525, [R.Antony Doss & another Vs. The State of Tamil Nadu by its Secretary, Housing and Urban Development, Madras – 600 009 & another];***

(ii) ***2016 SCC Online Mad 1754, [Alarmel Valli & others Vs. The Secretary, Urban and Housing Department, Fort St. George, Chennai – 600 009 & others].***

7(a).The learned counsel appearing for the petitioners further contended that the impugned orders of the respondents 1 & 2 dated 22.01.2020 and 30.07.2020 respectively are invalid and prayed for setting aside the same.

8.Mr.E.Vijay Anand, learned Additional Government Pleader appearing for the respondents 1 & 3 submitted that the petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020) were given opportunity to appear before the Appeal Committee and after considering their contentions only, the Appeal Committee recommended rejection of appeals filed by the petitioner and one R.P.S.Mahendhiran

(who is the petitioner in W.P.No.5253 of 2020), as deviations and



unauthorised constructions cannot be regularized. The 1st respondent has not only considered the recommendation of the Appeal Committee, but also considered all the materials placed before it and rejected the appeal. The order of the Government is valid and legal and prayed for dismissal of all the Writ Petitions.

9. Heard the learned counsel appearing for the parties and perused the entire materials on record.

10. The petitioners have made various averments on merits with regard to inspection by officials of 1st respondent, issue of notice and with regard to their right for regularization. Without deciding the said contention on merits, the Writ Petitions are disposed of on the ground that the 1st respondent, relying on the recommendation of the Appeal Committee, failed to exercise his power properly. The 1st respondent is exercising his quasi judicial powers while considering and passing orders in the appeal and revision filed by the aggrieved party. The 1st respondent, while deciding the issue in the appeal or revision, must consider all the materials placed before him and by independent appreciation of the materials placed, has to pass speaking order by giving

reasons. In the present case, the issue was referred to the Appeal



Committee. The Appeal Committee after giving opportunity to the petitioners, recommended the rejection of the appeal and revision. From the impugned orders, it is seen that the 1st respondent has accepted the recommendation of the Appeal Committee and rejected the appeal and revision. As rightly pointed out by the learned counsel for the petitioners, the 1st respondent has not given any reason for accepting the recommendation of the Appeal Committee. Further, the 1st respondent has not furnished the copy of the report of the Appeal Committee and no opportunity was given to the petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020) to put forth their objections to the recommendation made by the Appeal Committee.

11.In the two judgments relied on by the learned counsel for the petitioners reported in **1991 (2) LW 525** and **2016 SCC Online Mad 1754**, it has been held that deciding the issue merely based on reason given by Appeal Committee is invalid. In the said judgments, it is held that Appeal Committee has no jurisdiction to consider the issue and give recommendation. The two judgments relied on by the learned counsel for the petitioners are squarely applicable to the facts of the present case. For the above reasons, the impugned order in W.P.Nos.5253 & 12208 of 2020



W.P.Nos.5253, 12208 & 12211 of 2020

is set aside and remanded to the 1st respondent for fresh consideration independently without being influenced by the report of the Appeal Committee.

12.In view of the order passed in W.P.Nos.5253 & 12208 of 2020, the lock and seal notice dated 30.07.2020 issued by the 2nd respondent in W.P.No.12211 of 2020 is also set aside. The matters are remitted back to 1st respondent for fresh consideration. The 1st respondent is directed to give opportunity to the petitioner and one R.P.S.Mahendhiran (who is the petitioner in W.P.No.5253 of 2020) and without being influenced by the report of the Appeal Committee, decide the matter independently, within a period of three months from the date of receipt of a copy of this order.

13.With the above observations, all the Writ Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(V.M.V., J) (V.L.N., J)
28.03.2023

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Index : Yes / No

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W.P.Nos.5253, 12208 & 12211 of 2020

V.M.VELUMANI, J.

and

V.LAKSHMINARAYANAN, J.

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To

- 1.State of Tamil Nadu,
Department of Housing and Urban Development,
Rep. by its Principal Secretary,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 3.Appeal Committee,
Department of Housing and Urban Development,
Secretariat, Fort St. George,
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Rep. by its Secretary.

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