



W.P.No. 5872 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

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

**W.P.No. 5872 of 2020
and W.M.P.Nos. 6883 & 6884 of 2020**

Gulzar Basha

... Petitioner

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Fort George, Chennai 600009
2. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai 600003
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalaimuthu Natarajan Maligai,
No. 11, Gandhi Irwin Road, Chennai 600008
4. The Regional Deputy Commissioner (South),
Enforcement Cell,
Adyar, Chennai 600020
5. The Executive Engineer,
Zone 13, Corporation of Chennai,
Adyar, Chennai 600020.

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Respondents

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the de-occupation notice bearing reference No. 5634 dated 03.07.2018 issued by the 5th Respondent herein under Section 56 - Sub Section 2(A) and 57 read with Section 85 of Town and Country Planning Act, 1971 in relation to Shop No. 5 situated at Guru Complex, Plot No. B-9/ A2, 2nd Main Road, Thiruvalluvar Nagar, Thiruvannamiyur Extension, Thiruvannamiyur, Chennai 600041 and quash the same and further direct the 1st Respondent to process the Petitioner's Application dated 21.08.2018 made under Section 113-C of Town and Country Planning Act, 1971.

For Petitioner	: Mrs. Anu Ganesan
For Respondents	: Mr.T.Sampathkumar for R1&R4 Government Advocate Mr. D.B.R. Prabhu for R2&R3 Standing Counsel

ORDER

(Order of the Court was made by J.NISHA BANU, J.,)

This Writ Petition has been filed to call for the records of the de-occupation notice bearing reference No. 5634 dated 03.07.2018 issued by the 5th Respondent herein under Section 56 - Sub Section 2(A) and 57 read with Section 85 of Town and Country Planning Act, 1971 in relation to Shop No. 5 situated at Guru Complex, Plot No. B-9/ A2, 2nd Main Road, Thiruvalluvar Nagar, Thiruvannamiyur Extension, Thiruvannamiyur, Chennai 600041 and further for a direction to the 1st Respondent to process the petitioners application dated 21.08.2018 made under Section 113-C of Town and Country Planning Act, 1971.



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2. It is averred in the writ petition that the petitioner is running a Chicken shop with license and also paying property taxes to the subject property without any default. While so, the respondent-Corporation issued a Notice No. 5634/2014 dated 25.08.2014 calling for the approved plan of his shop.

3. Immediately, the petitioner submitted the copy of the approved plan bearing PPA No.1409/1999 dated 14.09.1999 in respect of his shop. However, after expiry of two(2) years, without any prior communication, the respondent/Corporation issued lock and seal and de-occupation notice bearing reference no. 5634/2015 dated 06.01.2016 to entire complex, stating deviations in 2nd, 3rd and 4th floor respectively.

4. According to the learned counsel for the petitioner, the petitioner's shop is well within the planning permission issued by the Competent Authority and it is no way connected with other unauthorized shops vested in the complex. Aggrieved by the lock and seal and de-occupation notice dated 06.01.2016, the petitioner preferred an appeal



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under Section 80A of Town and Country Planning Act, 1971.

The 1st respondent called the petitioner and other shop owners/occupants of the said complex for enquiry and without inspecting the premises, rejected his appeal vide order dated 12.09.2019 bearing Ref.No.19588/UD-VII(2)/2018-4.

5. Pursuant to which, the petitioner was issued with de-occupation notice dated 03.07.2018 and 20.08.2018 and thereafter, the 5th respondent sealed the petitioner's shop along with shop No.4 which is situated on the ground floor except all other shops. In the meanwhile, Guidelines for the Exemption of buildings, 2017 were issued by the 1st Respondent Department through G.O.(Ms).No. 110, dated 22.06.2017. Therefore, the petitioner filed an application dated 21.08.2018 under Section 113 – C of the Tamil Nadu Town and Country Planning Act, 1971 (in short “the Act”) for regularisation. Since no action has been taken on the side of the official respondents, the petitioner has filed the present Writ Petition.



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6. Heard the learned counsel on either side and perused the materials available on record.

7. It is submitted that the petitioner has filed an application for regularisation u/s.113-C of the Tamil Nadu Town and Country Planning Act, before the Directorate of Town and Country Planning in the year 2018 itself. In the meantime, the Government Order permitting regularisation is set aside by this Court and now, the matter is subjudice before the Hon'ble Supreme Court.

8. The learned Standing Counsel appearing for the respondents relied on the judgment of this court dated **27.07.2023 in W.P.No.9725 of 2017** and prayed this court to take a similar view in this matter.

9. The Hon'ble First Bench of this court in *W.P.No.9725 of 2017 by order dated 27.07.2023 [K.Perumal Vs. The State of Tamil Nadu, Rep.by the Secretary to Government and others]*, while dealing with the writ petitions seeking directions to enforce the locking and sealing and



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demolition notice, held as under:-

“3.We have disposed of other writ petitions, with an observation 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”. We have observed that the parties may take steps pursuant to the judgment of the Apex Court.

4.In case, after the judgment of the Apex Court, if it is found that the fifth respondent is not entitled for regularisation, then the petitioner may agitate afresh.”

10. In view of the fact that the matter regarding regularization is seized of by the Hon'ble Supreme Court, the petitioner as well as the respondents have to await the orders of the Supreme Court. They are entitled to agitate the issue afresh after the orders are passed by the Supreme Court, on the subject matter. Till then, the respondents are directed not to take any coercive step against the petitioner. Accordingly,



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the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

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(J.N.B,J.) (N.M., J.)
08.11.2023

Index : Yes / No
msv

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