



WEB COPY



W.P.No.13951 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

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

W.P.No.13951 of 2022
and W.M.P.Nos.13204 & 13205 of 2022

Usha Sundaresan

... Petitioner

Vs.

1.The Government of Tamilnadu
rep.by its Secretary to the Government
Housing and Urban Development Department
Fort St.George, Chennai – 600 009.

2.The Executive Engineer
Office of the Corporation
Zone – 09, Valluvarkottam
Chennai – 600 034.

3.V.Kalyana Raman

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings bearing Notice Zone – IX DN-118/TPENF/21/2021 dated 28.12.2021 of the 2nd respondent and the confirming order of the 1st respondent bearing letter No.821/UD-VI[2]/2022-4 dated 11.05.2022 and quash the same.

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For Petitioner : Mr.K.Elango
For Respondents : Mr.Abishek Murthy
Government Advocate for R1
Mr.D.B.R.Prabhu
Standing counsel for R2
Mr.Anish Gopi
for M/s P.B.Ramanujam for R3

ORDER

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

This Writ Petition has been filed praying to quash the order of the 2nd respondent dated 28.12.2021 and the order of the 1st respondent dated 11.05.2022, whereby, the 1st respondent directed the petitioner to rectify the violation of the building within 30 days.

2.It is averred in the affidavit of the Writ Petition that the petitioner is the absolute owner of the flat bearing No.1, Ground Floor, Old No.257/1, New No.280, Avvai Shanmugam Salai, Gopalapuram, Chennai – 600 086. In 1989, it was demolished and four flats were constructed. According to the petitioner with the consent of all the four flat owners of the premises, temporary roof for car parking area has been done.



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3.However, the 3rd respondent sent an objection letter to the authorities concerned alleging the construction of car shed put up by the petitioner. Hence, the 2nd respondent issued locking, sealing and demolition notice dated 28.12.2021 to the petitioner.

4.The petitioner sent detailed representation dated 09.01.2022. The petitioner also filed W.P.No.1853 of 2022. This Court, by an order dated 22.02.2022 directed the 1st respondent therein to consider the representation of the petitioner dated 09.01.2022 on merits and in accordance with law. In the meantime, the petitioner also filed an appeal under Section 80A of the Town and Country Planning Act, 1971, before the 1st respondent.

5.According to the petitioner, on 07.04.2022, the 1st respondent fixed the date of personal hearing, but did not allow the petitioner to submit her case and mechanically passed the impugned order dated 11.05.2022. Hence, the present Writ Petition.



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6.The learned counsel for the petitioner submitted that the petitioner has put up car shed with corrugated sheets, which is standing on four iron pipes. The said structure could not be construed as building as per the provisions of Section 3 [4] of the Tamil Nadu Town and Country Planning Act. Further, in the appeal proceedings, the petitioner was not heard. The learned counsel further contended that the impugned order dated 11.05.2022 did not indicate the actual violations / deviations / unauthorized construction.

7.The learned Standing counsel appearing for the 2nd respondent / Greater Chennai Corporation submitted that as per Part IV Section 28 of the Tamil Nadu Combined Development and Building Rules, 2019, no structure shall be constructed within the minimum prescribed set back area. He further submitted that both the petitioner as well as the 3rd respondent had put up temporary structures in the set back area and terrace flooring unauthorizedly.

8.Heard both sides and perused the materials available on record.

9.Pursuant to the direction of this Court in W.P.No.1853 of 2022 dated



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22.02.2022, the 1st respondent by order dated 11.05.2022 disposed of the appeal and directed the petitioner, to rectify the building violation within the stipulated time. Since it is the contention of the petitioner that the 1st respondent did not consider the petitioner's submissions on the personal hearing held on 07.04.2022, the impugned order dated 11.05.2022 is set aside and the matter is remitted back to the 1st respondent to pass orders afresh, after hearing the submissions of the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. Till such time, the respondents 1 and 2 are directed not to take any coercive action.

10. With the above direction, this Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

(J.N.B.,J.) (N.M.,J.)
17.10.2023

Index : Yes / No
Speaking Order : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
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J.NISHA BANU,J.
and
N.MALA,J.

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