



WEB COPY



W.P. No.16003 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.16003 of 2023

M.Dinesh Kumar Jain

.. Petitioner

Versus

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

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the respondent to forthwith remove the lock and seal affixed on 28.04.2023 in the petitioner's property at Old No.50/1A, New No.109, Maddex Street/Road, Vepery, Chennai 600 007 comprised in S.No.815 for a period of about six months so far as to enable the petitioner to rectify and restore the said premises in conformity



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with the sanctioned plan and the present Tamil Nadu Combined Development Rules 2019 on the basis of the petitioner representation dated 02.05.2023 addressed to the respondent.

For petitioner : Mr.L.Chandrakumar

For respondent : Mr.R.Sivakumar, Standing Counsel

ORDER

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

The present Writ Petition has been filed for issuance of a Writ of Mandamus directing the respondent to forthwith remove the lock and seal affixed on 28.04.2023 in the petitioner's property situated at Old No.50/1A, New No.109, Maddex Street/Road, Vepery, Chennai 600 007 comprised in S.No.815 for a period of about six months so far as to enable the petitioner to rectify and restore the said premises in conformity with the sanctioned plan and the present Tamil Nadu Combined Development Rules 2019 on the basis of his representation dated 02.05.2023.



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2. The petitioner is the owner of the above said property and after obtaining necessary planning permission, he constructed a building. Due to certain deviations in the building, the respondent issued a locking, sealing and demolition notice on 05.08.2019 and de-occupation notice was also issued on 20.09.2019. Challenging the same, the petitioner filed WP.No.8703 of 2020 seeking to remove the lock and seal affixed in his property and this Court by the order dated 01.07.2020 directed the respondent to remove the lock and seal affixed in the petitioner's premises to enable him to rectify the deviation. Due to Covid-19 and continuous lock down, the petitioner was not in a position to rectify the deviation and therefore, the respondent once again re-sealed the premises on 22.01.2021. Challenging the same, the petitioner preferred Special Revision before the Government of Tamil Nadu.

3. The petitioner also made a representation dated 07.03.2022 to de-seal his premises, but the same was not considered and hence, he filed WP.No.7054 of 2022 seeking mandamus for de-sealing his premises. This Court vide order dated 29.03.2022, directed the respondent to de-seal the



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premises for a period of 3 months. The petitioner also made a regularisation application under Section 113(C) of the Tamil Nadu Town and Country Planning Act. As the petitioner's family members were affected by Corona, he could not rectify the deviation in the stipulated time. However, all of a sudden without any prior notice, the respondent suddenly came to his premises and sealed the same on 28.04.2023. Subsequently, he made a representation to the respondent on 02.05.2023 for de-sealing the premises, but the same has not been considered and hence, the present petition.

4. The respondent has filed a detailed counter affidavit stating that the petitioner had obtained planning permission only for ground floor plus first floor but during inspection, it was observed that the petitioner constructed stilt floor plus 4 floors commercial building. Therefore, the CMDA issued Locking & Sealing and Demolition Notice on 05.08.2019 and de-occupation notice on 20.09.2019. Subsequently, they also sealed the premises on 15.10.2019. Therefore, the petitioner filed WP.No.8703 of 2020 and WP.No.7054 of 2022 seeking time for rectifying the deviations. Though this Court granted sufficient time in the above Writ Petitions, the petitioner did



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not rectify the deviation. Further, the revision petition filed by the petitioner under Section 80-A of the Tamil Nadu Town and country Planning Act, 1971 was disposed of directing the petitioner and CMDA to comply with the direction of this Court.

5. The learned counsel for the petitioner submitted that the petitioner has filed an application under Section 113 C of the Tamil Nadu Town and Country Planning Act seeking regularisation of his building, which is still pending.

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

7. On a perusal of the documents, it is seen that though the petitioner obtained planning permission for ground plus first floor residential building, he constructed stilt plus 4 floors. Hence, the respondent issued lock and seal notice and also sealed the premises. The petitioner by filing Writ Petitions in WP.No.8703 of 2020 and WP.No.7054 of 2022 sought time for rectifying the deviations. Though necessary time was given in the above Writ Petitions,



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the petitioner did not rectify the deviation. The review petition filed by the petitioner under Section 80-A of the Act was also disposed of with a direction to the petitioner and CMDA to comply with the order of this Court. Further CMDA was directed to initiate further action and hence, the petitioner's premises was re-locked and re-sealed on 28.04.2023.

8. With regard to the contention of the petitioner that the regularisation application filed under Section 113 of the Act is still pending, this Court is of the view that the application under the said Section can be filed only by those who had completed his buildings before 01.07.2007, but the petitioner has completed his construction in the year 2009. Therefore, the aforesaid contention is not applicable to the facts of the case.

9. The Hon'ble Supreme Court in the decision of ***Supertech Limited vs. Emerald Court Owner Resident Welfare Association and others reported in 2021 10 SCC*** held that when planning and building regulations are violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby



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directly resulting in an increased harm to the environment and a dilution of safety standards and hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

10. In the light of the above discussion and the decision of the Hon'ble Supreme Court referred supra, this court is of the view that there is no merit in this Writ Petition. Hence, the Writ Petition stands dismissed. The respondent shall take further action in accordance with law without any further delay. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J] [P.D.B., J]
26.06.2023

Speaking order: Yes/No
Index : Yes/No
pvs

To
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