



W.P.No.17628 of 2023

PRAYER: Writ petition filed under Article 226 of Constitution of India, praying for writ of Certiorarified Mandamus calling for the records pertaining to Letter No.11/00140/2023 dated 25.05.2023 issued by the respondents and quash the same and direct the respondents to consider the application filed by the petitioner under the Building REgularisation Scheme 2017 for the subject property within a time frame. and after observing the due process enumerated under the Town and Country Planning Act and its Rules.

For petitioner : Mr.Murali Kumaran, Senior counsel
for Mr.A.S.Kailasam Associates

For respondents : Mr.D.B.R.Prabhu, Standing counsel
for R1 to R3.

Mr.P.Kumaresan, Addl Advocate General
for Mr.C.N.Vinobha for R4.

ORDER

Per J.NISHA BANU, J.

This writ petition is filed challenging the Letter No.11/00140/2023 dated 25.05.2023 issued by the respondents and seeks to quash the same. The petitioner seeks further direction to the respondents to consider the application filed by the petitioner under the Building Regularisation Scheme 2017.



W.P.No.17628 of 2023

2. The impugned Notice dated 25.05.2023 is Lock and seal and demolition Notice issued by the respondents 1 to 3 to the petitioner, stating that the ongoing unauthorised construction of the petitioner is being carried out in deviation to the approved plan. The Notice further called upon the petitioner to restore the building in accordance with the approved plan within 30 days from the date of receipt of the notice, failing which, action will be taken under Sub section (4) of Section 57 of the Town and Country Planning Act, 1971 as amended by Act 61 of 2008 to lock and seal the premises so as to stop further construction and to demolish the building as per the approved plan without any further notice.

3. The petitioner in this writ petition submits that he is the owner of the property situated at Plot No.43 at Jayabharathi Nagar measuring an extent of 2286 sq.ft. It is stated that the vendor of the petitioner had already approached the competent authority for obtaining sanction for putting up a superstructure in the property and since the property is not coming under the Greater Chennai Corporation, the local Panchayat



W.P.No.17628 of 2023

granted sanction on 14.08.2000. The petitioner then constructed the superstructure and completed in 2001.

4. The petitioner further averred in the writ petition that as per the sanctioned plan, ground plus first floor was permitted. But due to personal requirement, certain modification was carried out and 2nd floor was included in the building structure.

5. The petitioner would submit that he permitted the Reliance Jio Infor Corp Ltd., to install cell phone tower in the terrace floor. The residents Association resisted the said cell phone tower for several health reasons and filed W.P.No.10118 of 2017. According to the petitioner, for rectifying the construction and exempting the building under G.O.Ms.No.110 and 111 dated 22.06.2017, Regularisation application was made under Section 113-C of the Tamil Nadu Town and Country Planning Act and the same is pending.

6. The petitioner further stated that the prayer in the above referred



W.P.No.17628 of 2023

to Writ Petition filed by the Residents Welfare Association was not to erect any mobile tower in any place in the residential area of Jayabharathi Nagar and annex housing plots. The said W.P.No.10118 of 2017 was decided by this court on 28.04.2023 with a direction to the respondent authorities to take steps to demolish the second floor and all affixtures in the said unauthorised construction. The petitioner would submit that as against the decision of this court in WP.10118 of 2018, he is taking steps to file appeal. As per the direction issued therein, the impugned order has been passed and the said notice has been issued without affording opportunity to the petitioner and therefore, the same has to be set aside.

7. The 4th respondent filed counter affidavit. It is submitted that sanction was issued by the local authority for the ground plus one floor and without getting any approval from the concerned authority, 2nd floor was constructed and used the said building for commercial purposes and permitted to put up cell phone tower at the terrace of the building.

8. The 4th respondent submitted that this court in W.P.No.10118 of



W.P.No.17628 of 2023

2017, directed the respondents to take steps to demolish the second floor.

WEB COPY
This court further found that the petitioner has not filed any application for regularisation of the 2nd floor. Till the cut off date, the petitioner has not applied for regularization. As per G.O.(Ms).No.109 dated 21.09.2021, the Government has extended the cut off date for receipt of regularization application under Section 113-C scheme till the month of September 2022. But the petitioner has not come forward to file the application till September 2022. Since the petitioner has constructed the second floor after 20 years and since the same is in total violation of the Act, the respondent issued lock and seal notice to the petitioner.

9. In the rejoinder filed by the writ petitioner, it is stated that the submission made by the counsel was without his instructions and the petitioner filed a Review Petition to review the order dated 28.04.2023 in W.P.No.10118 of 2017. It is contended that Section 113-C lays down the eligibility of falling under the scope of the said section and as per which once the building falls within the cut off date from Section 113-C, as and when the application is made, the petitioner is entitled for regularization



W.P.No.17628 of 2023

of the building. It is further contended by the learned counsel for the petitioner that the State Government proposed to refix the cut off date fixed in Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, from 2007-2019.

10. Heard both sides.

11. Admittedly, the impugned Notice dated 25.05.2023 is Lock and seal and demolition Notice issued by the respondents 1 to 3 to the petitioner. The impugned order would go to show that the ongoing unauthorised construction of the petitioner is being constructed in deviation to the approved plan.

12. The petitioner's contention is that he is entitled for regularisation of the building under Section 113-C and relied upon the order of this court dated 03.07.2023 passed in W.P.No.23889 of 2017. The said order would read that since some of the parties have moved the Apex court as against the setting aside of the G.O (Ms)No.110 and 111,



W.P.No.17628 of 2023

Housing and Urban Development [UD4(3)] Department dated 22.06.2017 and the Apex court is seized of the matter, the parties would be bound by the orders that would be passed by the Apex court. In paragraph 7, the Honourable First Bench has held as under:-

“7. We, accordingly, dispose of the writ petitions with an observation that if subsequently after the orders are passed by the Apex Court the petitioners have any remedy open, they are entitled to agitate the same afresh. In that event, all contentions are kept open. There will be no order as to costs.”

13. In the case on hand, construction carried out is totally not in accordance with the approved plan, having major deviations and the same is used for commercial purpose. Therefore, we are of the considered view that the violated portions have got to be demolished as held by the learned Single Judge in W.P.No.10118 of 2017. In our view, no application for approval after completion of the building can be entertained. The tower erected on the 2nd floor is totally an unauthorised construction, which has been clearly pointed out in the Advocate Commissioner's Report presented before the learned Single Judge. The



W.P.No.17628 of 2023

learned Single Judge therefore, directed the authorities of Greater Chennai Corporation (R1 and R2) to take steps to demolish the second floor and all affixtures in the said unauthorised construction, in accordance with law at the earliest possible. The petitioner is given a week's time from the date of receipt of a copy of this order to remove the belongings in the building, otherwise it will be construed that the belongings have been vacated by the petitioner. The respondents 1 to 4 are directed to take enforcement action against the petitioner's building at the earliest.

14. In the light of the above directions, the Writ Petition fails and the same stands dismissed. The respondents are directed to carry out the directions stated supra in letter and spirit. No costs. Consequently, connected miscellaneous petition is closed.

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

nvsri

30.10.2023



W.P.No.17628 of 2023

To

WEB COPY

1.The Assistant Engineer

Division No.153, Ward 79, Bank St, Ram Nagar
Ambattur, Chennai-600 053

2.The Assistant Executive engineer

PWD Estate, Chepauk, Triplicane
Chennai-600 005

3.The Executive engineer,

Zone-11, No.33, Arcot Road, Bhuvaneswari Nagar,
Valasaravakkam, Chennai-600 087.

4.The Chairman, Chennai Metropolitan Development

Authority, Thalamuthu Natarajan Maaligai, Gandhi Irwin
Road, Egmore, Chennai-600 008



WEB COPY



W.P.No.17628 of 2023

J.NISHA BANU, J.
and
N.MALA, J.

nvsri

order in
WP.No.17628 of 2023

30.10.2023