



WEB COPY



W.P.No.23010 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

and

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 23010 of 2023
and W.M.P.No. 22509 of 2023

C.Hemalatha

..Petitioner

Vs.

1.The Executive Officer,
Sankari Town Panchayat,
Salem District.

2.Deputy Director of Town and Country Planning,
Directorate of Town and Country Planning (DTCP),
Thalavaipatti Post, Irumbalai Main Road, Salem – 636 302.
(R2 impleaded vide order dated 19.09.2023
made in WMP.No.26655/2023 in
W.P.No.23010/2023
by JNBJ. NMJ)

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the record pertaining to the impugned order dated 19.05.2023 passed by the respondent vide ROC No. 551/2022/A2, and quash the same and further direct the respondent to regularize the petitioners building situated at Survey No.257/3L1A9A1, Palpavi Street, Sankari Village, Sankari Taluk, Salem District.

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For Petitioner : Mr.B.Balavijayan

For Respondents : Mr.S.N.Devi for R1
Standing Counsel
Mr.E.Vijay Anand for R2
Additional Government Pleader

ORDER

(Order of the Court was made by J.Nisha Banu,J.)

Challenging the order dated 19.05.2023 passed by the 1st respondent, by which, the petitioner was required to comply with the planning permission by demolishing/ altering the first and second floor of the building and to demolish the third floor of the building within a period of 90 days from the date of receipt of the notice and also requested to discontinue the usage of the building within a period of 60 days from the date of receipt of the notice, failing which, appropriate action will be taken under Section 56- sub section(2-A) of of the Tamil Nadu Town and Country Planning Act, 1971 (Tamilnadu Act of 1972).



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2. Learned counsel for the petitioner would submit that the petitioner is

is the absolute owner of the property situated at Survey No.257/3L1A91, Palpavi street, Sankari Village, Sankari Taluk, Salem District measuring to an extent of 1.12.65 hectares including the building raised therein. Originally, the property was purchased by one Deenadayalan and his wife Indira from one S.K.Karumpayiram vide registered sale deed dated 23.03.2015 and planning permission was applied for building construction and approval. The permission was granted to construct building in the ground floor, first floor and second floor and the same was completed in the year 2016. Thereafter, the property was purchased by the petitioner's brother Boobalan in the year 2022 and the petitioner's brother executed a settlement deed in favour of the petitioner on 06.10.2022 and the petitioner became the absolute owner of the property. While so, on 06.01.2023, notice was issued by the respondent calling upon the petitioner to produce the documents related to the property. On 06.02.2023, the petitioner was informed that inspection will be conducted and on 18.05.2023, the respondent conducted inspection of the said property and passed the order under Section 56(1) of the said Act on 19.05.2023 which is under challenge in the present writ petition.



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3. Learned counsel for the petitioner would submit that the building plan approval was sanctioned as early as in the year 2015 and the construction was completed in the year 2016 itself. He would further submit that the modification which was done in the building, as identified by the respondent in the impugned order, will come within the ambit of regularisation. The respondents, without giving due opportunity to the petitioner, had passed the impugned order. Further, the modification was done in the internal structure of the building which do not exceed the constructed floor area of the building as stipulated in the Regulations. Hence, he would pray that the impugned order is liable to be set aside.

4. Learned Additional Government Pleader appearing for the 2nd respondent would submit that the petitioner was given sufficient time to remove the unauthorised construction made in the 3rd floor as well as the deviation made in the ground floor vide notice dated 23.11.2023, but so far, the unauthorised construction is not removed and the petitioner/owner is also continuing with the usage of building after the stipulated period. Hence, the writ petition has to be dismissed and further enforcement action has to be taken.



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

6. As per the notice dated 21.11.2023, the petitioner was directed to remove the unauthorised construction made in the 3rd floor as accepted by her and the ground floor (car parking area) as alleged by the respondents vide order passed by the Secretary, Sankari Town Panchayat, Salem District within a period of two(2) weeks therefrom. As per the impugned order dated 19.05.2023, the petitioner/owner was also directed to discontinue the usage of the building within a period of 60 days. Even after lapse of nearly seven months from the date of impugned order and the time stipulated by this Court as per the order dated 21.11.2023, the petitioner has not complied with the direction. Moreover, the petitioner has not filed any application for regularisation of the building also. Therefore, we are not inclined to entertain the present writ petition. The respondents are directed to take further enforcement action as against the building in question as per law.



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7. Accordingly, the Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (N.M.,J.)
01.12.2023

Index : Yes / No
Speaking Order : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
msv/vsi

To

1.The Executive Officer,
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2.Deputy Director of Town and Country Planning,
Directorate of Town and Country Planning (DTCP),
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And

N.Mala,J.

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