



WEB COPY



W.P.No.25737 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2023

CORAM

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

W.P.No.25737 of 2023
and
WMP.Nos.25162 & 25163 of 2023

1.G.Sathyanarayana Bhootra

2.S.Srilatha Bhootra

3.S.Vishal Bhootra

4.S.Kunal Bhootra

... Petitioners

Vs.

Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
“Thalamuthu-Natarajan” Building,
No.1, Gandhi-Irwin Road, Egmore,
Chennai – 600 008.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 09.08.2023 passed by the respondent vide Letter No.EC/C-II/12765/2017 and quash the same; and, consequently direct the respondent to afford an opportunity of hearing to the petitioners within a time frame as may be fixed by this Court.



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W.P.No.251 of 2023

For Petitioners : Mr.Vignesh Venkat

For Respondent : Mr.C.N.Vinobha
Standing Counsel

* * * * *

ORDER

[Order of the Court was made by J.NISHA BANU,J.]

This Writ Petition is filed to call for the records pertaining to the impugned order dated 09.08.2023 passed by the respondent vide Letter No.EC/C-II/12765/2017 and quash the same; and, consequently direct the respondent to afford an opportunity of hearing to the petitioners within a time frame as may be fixed by this Court.

2.The learned counsel appearing for the petitioners submitted that the present writ petition pertains to a commercial building situated in Door Nos.5 & 6, Prakasam Road, T.Nagar, Chennai – 17 which belonged to one Devendra Kumar. The said Devendra Kumar had entered into a joint venture agreement with one M/s.Indra Foundations for developing the property and for construction of commercial flats. He further submitted that the petitioners purchased various portions of the nearly finished building in the year 2005 and have been in enjoyment over the same ever since. With a personal grudge, the erstwhile owner Devendra Kumar preferred W.P.No.21661 of 2017 seeking for a



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direction to consider his representation for removal of unauthorized construction in the building. Pursuant to an order of this Court dated 16.08.2017, a status report was filed by the respondent on 12.09.2017.

3.The learned counsel for the petitioners further submitted that only then it came to the knowledge of the petitioners that the owners and builder had deviated from the existing plan, constructed portions and fraudulently sold the same to the petitioners suppressing the truth of the deviation. These petitioners therefore gave an undertaking to this Court stating that they would remove the deviations in the basement and fourth floor and that they would apply for regularization of the fourth floor and the minor deviations under Sec 113 C of the Town Planning Act. A compliance affidavit dated 22.06.2018 was filed before this Court. Recording satisfaction of the same, the aforesaid W.P. Came to be disposed off on 28.06.2018.

4.While so, the petitioners received a notice dated 25.07.2023 calling for personal hearing on 28.07.2023 with regard to a complaint filed by one M.D.Lokeshwari. The learned counsel for the petitioners would submit that since the petitioners were not given sufficient time for collecting relevant material for their case, the same was intimated to the respondent in the hearing on 28.07.2023 and also by written letter on 03.08.2023.



W.P.No.251 of 2017

Another letter was sent to the respondent on 16.08.2023 seeking a copy of the complaint filed by the said M.D.Lokeshwari so that the petitioners could effectively put forth their case. However, the respondent has passed the impugned order vide a Letter No.EC/C-II/12765/2017 dated 09.08.2023, without affording an opportunity to the petitioners to present their case. Hence the writ petition.

5.It is submitted by the learned counsel for the petitioners that the petitioners filed application for regularisation through online u/s.113-C of the Tamil Nadu Town and Country Planning Act, before the Chennai Metropolitan Development Authority / 1st respondent and the same is pending consideration.

6.The learned Standing Counsel appearing for the respondent 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.

7.The Hon'ble First Bench of this Court in W.P.No.9725 of 2017 [K.Perumal Vs. The State of Tamil Nadu, Rep. by the Secretary to Government and others], by order dated 27.07.2023, while dealing with the writ petitions seeking directions to enforce the locking and sealing and demolition notice, held as under:-



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“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.”

8.In view of the fact that the matter regarding regularization is seized of by the Hon'ble Supreme Court, the respondent has to await the orders of the Hon'ble Supreme Court. The petitioner is entitled to agitate the issue afresh, after the orders are passed by the Hon'ble Supreme Court, on the subject matter. Till then, the respondent is directed not to take any coercive step against the petitioners.

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

J.N.B.J., N.M.J.,
27.09.2023

NOTE: ISSUE ORDER COPY ON 22.11.2023

Index : yes/no
Internet : yes/no
Speaking order/Non-speaking order
ah



W.P.No.25, 2024

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To
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J.NISHA BANU, J.
&
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