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W.P.No.34727 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Writ Petition No.34727 of 2022
and
W.M.P.Nos.34149 & 34150 of 2022

N.Gopinathan

.. Petitioner

Vs.

1.The Executive Engineer,
Greater Chennai Corporation zone IX,
No.1, Lake Area 4th cross street,
Nungambakkam, Chennai-600 034.

2.The Secretary,
Government of Tamil Nadu, Housing and
Urban Development (H&UD) Department,
Secretariat,
Chennai-600 009.

.. Respondents

(R2 suo motu impleaded vide order of
this Court dated 23.12.2022 made in
W.P.No.34727 of 2022)

Prayer: Writ Petition is filed under Article 226 of the Constitution of
India, praying for issuance of a Writ of Certiorari to call for the records of



W.P.No.34727 of 2022

the respondent and quash the De-occupation Notice No. Zone-IX/DN-123/TPENF/001/2022, dated 12.08.2022 respectively.

For Petitioner : Mr.S.Sridhar
For R1 : Mr.D.B.R.Prabhu
Standing Counsel
For R2 : Mr.A.Selvendran
Special Govt. Pleader

ORDER

(Order of the Court was delivered by V.M.VELUMANI,J.)

The present writ petition is filed challenging the De-occupation Notice No. Zone-IX/DN-123/TPENF/001/2022, dated 12.08.2022 of the 1st respondent.

2.Heard the learned counsel appearing for the petitioner as well as learned Standing Counsel appearing for the 1st respondent, learned Special Government Pleader appearing for the 2nd respondent and perused the entire materials on record.



W.P.No.34727 of 2022

3. According to the petitioner, the property bearing Door No.44/55/1, Beemanna 2nd Street, Alwarpet, Chennai was purchased by his father and after obtaining permission, he put up construction. The property was assessed for property tax in the year 1986 and the petitioner and his father were paying the property tax to the 1st respondent for the building regularly. The property tax was reassessed in the year 2013. In the reassessment order, it was clearly mentioned that there is a building in the ground and first floor assessed to property tax. There is a small room in the second floor for storing waste goods. One Lakshmi, who is the neighbour of his house, due to enmity was giving complaint against the petitioner's father from the year 2012. Thereafter, his father sent explanation to the 1st respondent stating that the building constructed by him was authorized one. While so, the petitioner's father died on 23.02.2015. Now, the petitioner is living in the said property and he has not put up any additional construction. While so, the Officials of the 1st respondent without any inspection and without any enquiry, locked and sealed the small portion in the second floor and issued De-occupation notice dated 12.08.2022.



W.P.No.34727 of 2022

4.Learned counsel appearing for the petitioner submitted that petitioner met Area Engineer, produced all the records and requested him to inspect the premises before taking any action. The Area Engineer abused the petitioner in vulgar language and threatened the petitioner over phone that entire building will be locked and sealed. In such circumstances, the petitioner has come out with the present writ petition for the above stated relief.

5.Mr.A.Selvendran, learned Special Government Pleader appearing for the 2nd respondent, filed status report and submitted that petitioner's entire premises is unauthorised. In the year 2012, the premises was locked and sealed. The petitioner's mother Kanniammal filed revision before the 2nd respondent. The said revision was rejected on 13.07.2016 after hearing the petitioner's mother and officials of the Corporation. The petitioner gave representation dated 05.12.2022 and sought for six months time. The said representation was treated as revision filed under Section 80A of the Tamil Nadu Town and Country Planning Act, against the impugned order and the Additional Secretary conducted enquiry. The petitioner appeared before the 2nd respondent for enquiry on 15.12.2022. The petitioner and Officials of the 1st respondent also appeared for



W.P.No.34727 of 2022

enquiry. Suppressing the earlier dismissal of revision and enquiry in his representation, the petitioner filed present writ petition. Entire construction is unauthorised one. Hence, the petitioner is not entitled for relief sought for in the writ petition and prayed for dismissal of the writ petition.

6.The learned counsel appearing for the petitioner in reply submitted that the petitioner has not filed any appeal challenging the impugned order and the petitioner has given only representation seeking six months time. He further submitted that the petitioner will file appeal within a week challenging the very same impugned order and prayed for disposal of the writ petition.

7.From the above materials, it is seen that earlier, 1st respondent locked and sealed the building put up in the second floor. The revision filed by the petitioner's mother was dismissed. Challenging the said rejection of revision, the petitioner's mother filed W.P.No.10290 of 2016. This Court by the order dated 23.03.2016 passed the following order in the said writ petition:



W.P.No.34727 of 2022

“4.Having regard to the facts situation, as aforestated and also having regard to the submission of the learned Standing Counsel for Chennai Corporation that one more opportunity be granted to the petitioner, we are of the considered view that in the facts of the case, the petitioner be granted one more opportunity to place her case, along with all the relevant documents, before the authorities and it is ordered accordingly. Further, the authorities are directed to examine afresh, the case of the petitioner in the light of the submissions made by her and also the documents, if any, produced by her and pass a fresh order within a period of two weeks from the date of the petitioner approaching them.

”

8.Learned counsel appearing for the petitioner has not produced any document to show that as per the order of this Court dated 23.03.2016, the petitioner's mother has filed documents before the authorities. Now the 1st respondent has issued De-occupation notice dated 12.08.2022 for locking and sealing of the premises.

9.In view of the submission of the learned counsel appearing for the petitioner that petitioner will file revision/appeal before the



W.P.No.34727 of 2022

Government within one week, the writ petition is disposed of directing the petitioner to file revision/appeal challenging the notice dated 12.08.2022 within one week from the date of receipt of a copy of this order. If any such revision/appeal is filed, the 2nd respondent is directed to dispose of the revision/appeal within four weeks from the date of receipt of the revision/appeal. If no such revision/appeal is filed, the 1st respondent is at liberty to take proceedings as per law. No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.M.V., J) (R.H., J)
23.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

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**V.M.VELUMANI,J.
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