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W.P.Nos.33053 & 30645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.33053 & 30645 of 2023

and WMP.No.32738 of 2023

W.P.No.33053 of 2023

Mrs.Susan John

... Petitioner

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Fort St.George,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner,
Greater Corporation of Chennai,
Ripon Building, Chennai – 600 003.
- 3.The Executive Engineer,
Zone – X, Greater Corporation of Chennai,
No.117, N.S.K.Salai,
Kodambakkam, Chennai – 600 029.
- 4.The Assistant Executive Engineer,
Unit – 29, Zone – X, Greater Corporation of Chennai,



W.P.Nos.33053 & 30645 of 2023

Vadapalani, Chennai – 600 032.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned rejection order passed by the 1st respondent vide order dated 14.11.2023 in Letter No.5649096/UD VI (3) / 2023-1 and to quash the same and consequently direct the respondents 2 to 4 their men, agents, subordinates or any one acting under them from Locking and Sealing the Plot No.8, Door No.2, Lambert Nagar, First Cross Street, Virugambakkam, Chennai – 600 087.

For Petitioner : Mr.Murali Kumaran Senior Counsel for
Mr.S.Santhan

For R1 : Mrs.R.L.Karthika
Government Advocate

For R2 to R4 : Mr.D.B.R.Prabu, Standing Counsel

W.P.No.30645 of 2023

Mr.Immanuvel Jackzon David Roger

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.

2.The Additional Secretary, (Technical)
Housing & Urban Development Department,
Secretariat, Chennai – 600 009.

3.The Additional Chief Secretary/Commissioner,



W.P.Nos.33053 & 30645 of 2023

Greater Chennai Corporation,
Chennai – 600 009.

4. The Executive Engineer,
Zone – 10, Greater Chennai Corporation,
No.117, N.S.K.Salai,
Kodambakkam, Chennai – 600 032.

5. Susan John

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 herein to consider the petitioner representation dated 19.09.2023 and thereby take appropriate enforcement action as per the order passed by the 2nd respondent in Letter No.4327865/UD 6(3)/2023-3 dated 16.06.2023 with respect to deviated and unauthorized construction of building at Plot No.8, Door No.2, 1st Cross Street, Lambert Nagar, Virugambakkam, Chennai – 92, within a time frame fixed by this Court.

For Petitioner : Mr.K.Jayachandran

For R1 & R2 : Mrs.R.L.Karthika
Government Advocate

For R3 & R4 : Mr.D.B.R.Prabu, Standing Counsel

* * * * *

ORDER

[Order of the Court was made by N.MALA,J.]

The Writ Petition in W.P.No.30645 of 2023 is filed for a writ of Mandamus directing the respondents 2 to 4 to consider the petitioner's representation dated



19.09.2023 and thereby take appropriate enforcement action as per the order passed by the second respondent in Letter No.4327865/UD 6 (3) / 2023 dated 16.06.2023 with respect to deviated and unauthorized construction of building at Plot No.8, Door No.2, 1st Cross Street, Lambert Nagar, Virugambakkam, Chennai - 600 092, within a time frame fixed by this Court.

2.The Writ Petition in W.P.No.33053 of 2023 is filed for a writ of Certiorarified Mandamus calling for the records of the impugned rejection order passed by the 1st respondent vide order dated 14.11.2023 in Letter No.5649096/UD vi(3)/2023-1 and to quash the same and consequently direct the respondents 2 to 4 their men, agents, subordinates or any one acting under them from locking and sealing the pLot no.8, Door No.2, Lambert Nagar, First Cross Street, Virugambakkam, Chennai - 600 087.

3.As both the writ petitions pertain to the same property the writ petitions are taken up together and disposed of by this common order.

4.The petitioner in W.P.No.33053 of 2023 will be referred to as petitioner and the petitioner in W.P.No.30645 of 2023 will be referred to as the complainant.



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5.The petitioner in W.P.No.33053 of 2023, who is also the 5th respondent in W.P.No.30645 of 2023 is the owner of the subject property in Plot No.8, Door No.2, Lambert Nagar, First Cross street, Virugambakkam, Chennai - 600 087. The petitioner states that the aforesaid plot measuring an extent of 3600 sq.ft. together with building was acquired by her under a will which was probated before this Court on 15.03.2007. Under the terms of the will, the petitioner was entitled to life interest over the subject property and after her lifetime the property would devolve on her children absolutely. According to the petitioner, she was a Christian by religion and she used to visit the C.S.I. Church at Virugambakkam for offering prayers. While so, she got acquainted with one of the members of the Church viz., Mr.Thomas, who requested her to engage him as Supervisor to aid her in the construction activities, which she proposed to raise in her property. The said Thomas indulged in acts of cheating and fraud. Taking advantage of her innocence, he created documents forging her signatures and acted in detriment to the trust reposed by her with a view to grab her property. When the petitioner questioned him on his illegal acts, he hired the service of his relative viz. Mr.S.Immanubel Jackzon David Roger. The said relative filed a false complaint against the building of the petitioner to the Chennai Corporation stating that the construction was made without planning permission. On the basis of the false complaint the



Corporation officials issued a notice dated 27.01.2023, calling upon the petitioner to produce the approved plan. Thereafter, the petitioner was issued with a lock & seal and demolition notice on 15.02.2023. Challenging the said notice the petitioner preferred a revision petition under Section 80A and 80 (A)3 of the Town and Country Planning Act, 1971, before the respondent on 13.03.2023. Pending revision petition, the officials of the Corporation issued a De-occupation notice dated 20.03.2023. Hence having no other alternative, the petitioner filed a writ petition in W.P.No.10245 of 2023. This Court vide order dated 03.04.2023, directed the first respondent to dispose of the revision petition, within a period of 12 weeks. Thereafter the first respondent vide order dated 16.06.2023 disposed of the 80A revision petition directing the petitioner to rectify the deviations in the building and to restore it as per the approved plan or to get revised approval for the rectified building as per Tamil Nadu Combined Development and Building Rules, 2019, within a period of three months. The first respondent further stayed the lock & seal and demolition notice dated 15.02.2023, pending rectification of the building by the petitioner. The first respondent further directed the officials of the Greater Chennai Corporation to proceed with further enforcement action after the expiry of three months, if the petitioner failed to comply with the direction. The petitioner states that she leased the 1st and 2nd floors of the subject building to Axis Bank, Virugambakkam Branch and as she was finding it difficult to vacate the Bank from the



said premises, she sought for extension of time by six months vide representation dated 14.09.2023 to the first respondent. While her extension application was pending the officials of the Chennai Corporation issued the de-occupation notice on 03.11.2023. The first respondent thereafter vide the impugned order dated 14.11.2023, rejected the representation of the petitioner. The petitioner aggrieved by the said rejection order of the first respondent has filed the above writ petition for the aforesaid relief.

6.W.P.No.30645 of 2023 is filed by one Immanubel Jackzon David Roger hereinafter suffered to as the complainant, for a writ of mandamus to direct the respondents 2 to 4 to consider his representation dated 19.09.2023 and to take appropriate enforcement action as per the order passed by the second respondent in the order No.4327865/UD 6 (3) / 2023 dated 16.06.2023 with respect to deviated and unauthorized construction put up by the petitioner (5th respondent) at Plot No.8, Door No.2, 1st Cross Street, Lambert Nagar, Virugambakkam, Chennai - 600 092, within a time frame fixed by this Court.

7.The learned counsel for the petitioner submitted that the impugned order is erroneous and liable to be set aside. The learned counsel appearing for the petitioner submitted that the impugned order was passed without considering the grounds raised



by the petitioner in her representations dated 14.09.2023 and 16.06.2023. The learned counsel for the petitioner further submitted that though genuine reasons were stated by the petitioner for not complying with the order of the first respondent dated 16.06.2023, within the stipulated time, the first respondent even without discussing the said grounds rejected the petitioner's representations. The learned counsel therefore prayed that the writ petition in W.P.NO.33053 of 2023 be allowed by granting further time to the petitioner to comply with the order passed in the revision by the first respondent.

8.Before considering the merits of the case we deem it fit to record certain developments that took place in the course of hearing of the writ petition.

9.The complainant appeared in person and filed an affidavit dated 28.11.2023 praying to dismiss the writ petition, as according to him, the same was filed fraudulently by forging his signatures. The petitioner further prayed to take appropriate criminal action against the persons who indulged in the crime of forging his signature in the valakat and the affidavit filed in the writ petition. When the matter was taken up by this Court on 01.12.2023 the learned counsel appearing for the complainant appeared before this Court and stated that the complainant viz., Immanuvel Jackzon David Roger had given a vakalat to file the writ petition and therefore he filed the writ petition. However,



as the complainant had filed an affidavit stating that he had not signed the vakalat, the affidavit and he was not aware of the filing of the writ petition, this Court directed the case to be listed on 05.12.2023 for appearance of the complainant as well as Mr.K.Jayachandran, learned counsel for the complainant. When the matter was taken up for hearing on 08.12.2023, the complainant retracted his statement made in the sworn affidavit and stated that the writ petition was filed at his instance.

10.We are not able to comprehend as to why the complainant filed the sworn affidavit disputing his signature and what prompted him to retract from the same. Be that as it may, we have recorded these facts only to high light that the conduct and the motive of the complainant in filing the writ petition is dubious. We are refraining from initiating any action against the complainant only because he is an Advocate and we do not want to spoil his career. We warn the complainant not to indulge in such iniquitous practise in future.

11.Coming to W.P.No.33053 of 2023, we find force in the contention of the petitioner that the first respondent has not applied his mind to the reasons stated by the petitioner in her representations dated 14.09.2023 and 16.06.2023 while rejecting her request for extension of time. The first respondent in paragraph No.3 though extracted



the statement of the petitioner that she was requesting for time because the Bank officials had some protocol to follow and the other tenants were not in a position to close their business did not give any reasons for rejecting the same. The 1st respondent merely recorded the fact that the petitioner had not rectified the defects and that she had also not obtained revised planning permission and rejected her request. According to the 1st respondent the petitioner's statement that she was unable to vacate the tenants was a pretext to get extension of time.

12.We have gone through the affidavit filed by the petitioner and we find that the writ petitioner has given plausible reasons for seeking extension of time. In the affidavit the petitioner has further stated that necessary instructions have been given to the bank and that they are in the process of giving permission to the higher official to move from the subject building.

13.We are therefore inclined to grant further time of four months to the petitioner to comply with the directions of the first respondent in his order dated 16.06.2023. It is made clear that on the expiry of the said period, if the petitioner fails to comply with the directions, the respondent shall be at liberty to take further enforcement action as per law. It is needless to state that the respondent shall not take any coercive action till the



W.P.Nos.33053 & 30645

time stipulated by this Court.

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14. Accordingly, the Writ Petition in W.P.No.33053 of 2023 is allowed with the above directions. The Writ Petition in W.P.No.30645 of 2023 stands disposed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

J.N.B.J., N.M.J.,
08.12.2023

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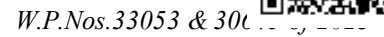
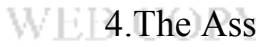
To

1. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Fort St. George,
Secretariat,
Chennai – 600 009.

2. The Commissioner,
Greater Corporation of Chennai,
Ripon Building, Chennai – 600 003.

3. The Executive Engineer,
Zone – X, Greater Corporation of Chennai,

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J.NISHA BANU, J.
&
N.MALA, J.
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W.P.Nos.33053 & 30611 of 2023

08.12.2023