



WEB COPY



W.P.No.33893 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P.No.33893 of 2023
and W.M.P.No.33753 of 2023**

1.V.Haribabu
2.V.Shanthi
Petitioners

...

-Vs-

1.The Secretary to Government
Government of Tamil Nadu
Housing and Urban Development (UD4(3)
Department, Chennai 600 009.

2.The Member Secretary
Town and Country Planning Office
Pallavaram Municipality, 3rd Main Road
Pallavaram New Colony, Chromepet
Chennai 600 044.

3.The Municipal Comissioner
Pallavaram Municipality
Now Tambaram Corporation
3rd Main Road, Pallavaram New Colony
Chromepet, Chennai 600 044.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to consider and dispose the petitioner's representation dated 27.07.2023 and 25.09.2023 and consequently directing the respondents for implementation of online platform to implement the provisions u/s.135 of



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Tamil Nadu Urban Local Bodies Act 1998 for regularization of unauthorized building and also to regularize the petitioners unauthorized building at No.5, Thirukkural Street, Anna Nagar, Hasthinapuram, Chennai 600 044 by collecting penalty as well as plan approval charges as per the provisions of law within the stipulated time as prescribed by this Court.

For Petitioners : Mr.R.Balaguru Swamy

For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader
for Mrs.Raja Rajeswari-for RR 1 and 2

ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

The petitioners herein had constructed a dwelling house in the Municipal area of the third respondent. Though they made an application for getting approval of the building plan, it was rejected. Despite that, since construction has already been made, the petitioners approached the Government by filing an appeal under Section 80A of the Tamil Nadu Town and Country Planning Act which was dismissed on 22.12.2022. Thereafter, aggrieved by the said order passed by the Government, a review application under Section 81 of the said Act also had been filed by the petitioners, which was also dismissed on 20.03.2023. The said order passed by the authority in the review petition filed by the petitioners was challenged before this Court in W.P.No.1950 of 2023.



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2. However, subsequently they found that there is a provision under Section 452 of the Coimbatore City Municipal Corporation Act, which is being followed by the third respondent Municipality also, where under, appeal provision is available to file an appeal against any rejection order passed by the plan approving authority. Hence, the petitioners had filed an appeal before the Standing Committee of the third respondent on 10.04.2023.

3. When that was pending consideration, the objector of the petitioners one Vijaya filed a writ petition in W.P.No.8135 of 2021 seeking action to be taken against the petitioners for the alleged unauthorized construction. When that writ petition came up for consideration before a Division Bench of this Court, the learned Standing Counsel who appeared on behalf of the third respondent Municipality had taken a stand that under the Tamil Nadu Urban Local Bodies Act, 1998 which is now being given effect to, there is a provision called Section 135 under the heading 'Powers of Commissioners to regularize unauthorized construction', where appeal procedure has been provided as to how an application seeking regularization of unauthorized construction can be filed and the proceedings can be regulated.



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4. Therefore, citing the said provision the learned Standing Counsel appearing for the third respondent Municipality who appeared before the Division Bench had stated, of course on instructions that, the appeal / review filed by the petitioners before the Standing Committee of the third respondent Municipality had been referred under Section 135 of the Tamil Nadu Urban Local Bodies Act, 1998. Therefore, that can be directed to be disposed of on merits.

5. Recording these developments, the Division Bench by order dated 16.06.2023 inter alia had given a direction to the following effect.

" 8. Considering the submission of the learned counsel for the parties, we direct the third respondent Commissioner to dispose of the said application submitted by the respondents 5 and 6, on its own merits and in accordance with law, after affording an opportunity to the petitioner, to place her objection, if any. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. If the said application is rejected, then the third respondent Commissioner shall proceed for removal of the unauthorized construction in accordance with law."

6. Despite this direction had been given in the writ petition filed by the objector of the petitioners as stated supra, since no action immediately was forthcoming from the Municipality, the petitioners had given a detailed representation on 27.07.2023 stating all the aforesaid developments and seeking the indulgence of the third respondent



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Municipality on the said appeal which was pending before the third respondent to be considered under Section 135 of the Act as stated supra.

7. The said representation since has not been considered so far and the appeal / review now to be considered under Section 135 of the Act also has not been considered, the petitioners have once again approached this Court by filing the present writ petition.

8. Heard the learned counsel for the petitioners, who, after having reiterated the aforesaid, would seek the indulgence of this Court. Heard the learned Special Government Pleader who would submit that, the referred appeal under Section 135 of the Act, if at all not so far been considered, the same would be considered and within a shortest possible time orders would be passed thereon on merits.

9. Considering the said submission made by both sides and taking into account of the aforesaid facts, this Court is inclined to dispose of this writ petition with the following orders.

- That there shall be a direction to the third respondent to consider the appeal of the petitioners, which is to be decided under Section 135 of the Tamil Nadu Urban Local



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Bodies Act, 1998 and decide the same, of course after giving necessary opportunity as contemplated under the said provision to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

- Despite this order, as the present one is a reiteration of the earlier order passed by this Court in the earlier round of litigation in the said W.P.No.8135 of 2021 dated 16.06.2023, if no action is taken by the respondent Municipality, it is open to the petitioners to take appropriate action in accordance with law.

10. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (G.A.M.,J.)
11.12.2023
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Index : Yes
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KST



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