



W.P.No. 35006 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 35006 of 2023
and
W.M.P.No.34960 of 2023

S. Rajendra Prasad Jain

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary,
Housing and Urban Development,
Fort St. George, Chennai - 600009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No. 1, Gandhi Irwin Road, Egmore,
Chennai-600008.
3. The Commissioner,
Greater Chennai Corporation,
Ripon Building
Chennai 600003.



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4. The Executive Engineer,
Greater Chennai Corporation,
Zone-10, No.64, Arcot Road, Kodambakkam,
Chennai 600034.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the respondents 2 to 4 in any way interfering with the petitioner's property put up at 1st and 2nd floor at Door No.5/4, Lodi Lodi Khan Street, T.Nagar, Chennai 600017 particularly by way of locking, sealing and demolition of any portion or portions thereof pending final determination of the petitioner's regularization application dated 21.06.2022 submitted under Section 113(c) of the Tamil Nadu Town and Country Planning Act vide registration/receipt No.CMDA/Reg/113C/2684/2022 with the 2nd respondent.

For Petitioner : Mr.D.S.Rajasekaran

For Respondents : Mr.S.Balamurugan for R1
Government Advocate
Mr.Thamarai Selvan for R2
Standing Counsel
Mr.D.B.R.Prabhu for R3 and R4
Standing Counsel

ORDER



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

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This writ petition has been filed to forbear the respondents 2 to 4 in any way interfering with the petitioner's property put up at 1st and 2nd floor at Door No.5/4, Lodi Lodi Khan Street, T.Nagar, Chennai 600017, particularly, by way of locking, sealing and demolition of any portion or portions thereof pending final determination of the petitioner's regularization application dated 21.06.2022 submitted under Section 113(c) of the Tamil Nadu Town and Country Planning Act vide registration/ receipt No.CMDA/Reg/ 113C/2684/ 2022 with the 2nd respondent.

2. It is the case of the petitioner that the petitioner's mother had purchased the property situated at Door No.5/4, Lodi Khan Street, T.Nagar, Chennai 600017 during the year 1977. There is no third floor constructions put up in the building except the head room which is measuring about 200 sq.ft. and the building has been in existence for more than 40 years and additions were put up about 15 years back. All of a sudden, enforcement action was taken by the officials of the 3rd and 4th respondents alleging deviations and violations in the constructions under Section 56 of the Town and Country Planning Act, which is not valid in law and contrary to the provisions of the Town Planning Act. They have issued notice to the petitioner



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calling for approved plan and issued locking and sealing and de-occupation notice to the petitioner.

3. Against the locking and sealing notice and consequential de-occupation notice, the petitioner preferred statutory revision petition and stay petition before the 1st respondent under Section 80(A) and 80(A) (3) of the Tamil Nadu Town and Country Planning Act. The petitioner had also filed regularization application under Section 113(C) of the Tamil Nadu Town and Country Planning Act with the 2nd respondent and the same is pending for consideration and no order has been passed till today.

4. Due to sudden interference by the officials of the 3rd and 4th respondents, the petitioner had filed a writ petition in W.P.No. 26542 of 2022. Pursuant to the order of this Court dated 30.09.2022, the 1st respondent called for enquiry and the petitioner had produced all the relevant documents and also produced the revised plan acknowledgement under Section 113(C) of the Act. Without considering any of the documents, the 1st respondent had directed the petitioner to approach the respondent Nos. 3 and 4 by filing necessary application. The petitioner had filed Review application before the 1st respondent on 07.03.2023 and the said review petition was rejected as not maintainable. The 1st respondent has not perused the records properly and



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has not applied his mind while passing the rejection order dated 27.10.2023.

Thereafter, locking and sealing notice and de-occupation notice dated 28.05.2022 and 22.08.2022 were issued without considering his regularization application pending before the 2nd respondent. Aggrieved by the same, the present writ petition.

5. As against the above said notice dated 28.05.2022, the petitioner filed an application under Section 113 – C of the Tamil Nadu Town and Country Planning Act, 1971 (in short “the Act”) for regularisation on 21.06.2022. Since no action has been taken on the side of the official respondents, the petitioner has filed the present Writ Petition.

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

7. It is submitted that the petitioner has filed an application for regularisation u/s.113-C of the Tamil Nadu Town and Country Planning Act, before the Directorate of Town and Country Planning in the year 2022 itself. In the meantime, the Government Order permitting regularisation is set aside by this Court and now, the matter is subjudice before the Hon'ble Supreme Court.

8. The learned Standing Counsel appearing for the 2nd



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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.

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

“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.”

10. In view of the fact that the matter regarding regularization is seized of by the Hon'ble Supreme Court, the petitioner as well as the respondents



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have to await the orders of the Supreme Court. They are entitled to agitate the issue afresh after the orders are passed by the Supreme Court, on the subject matter. Till then, the respondents are directed not to take any coercive step against the petitioner. Accordingly, the Writ Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

(J.N.B., J.) (N.M., J.)
21.12.2023

msv

Index : Yes / No

Internet : Yes / No

Neutral citation : Yes / No

To

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Rep. by its Secretary,
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2. The Member Secretary,

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12.10.2023