



WP.No.544/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.544/2022 & WMP.No.582/2022

Arokiya Doss

... Petitioner

Vs.

- 1.The Secretary to Government
Housing and Urban Development
Fort St George, Chennai 600 008.
- 2.The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai 600 003.
- 3.The Assistant Engineer
Greater Chennai Corporation
Division-173, Kamarajar Salai
Raja Annamalaipuram
Chennai 600 028.
- 4.The Assistant Executive Engineer
Unit-40, Greater Chennai Corporation
LB Road, Chennai -20.



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5.The Executive Engineer
Zone-13, Greater Chennai Corporation
LB Road, Chennai-20.

6.The Chairman
Audikesava Perumal Peyalwar Devasthanam
Mylapore, Chennai-600 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records comprised in Letter No.174/UD-VI[2]/2021-3 dated 15.09.2021 on the file of the 1st respondent and quash the same.

For Petitioner	: Mr.S.Thanga Sivan
For R1	: Mr.R.Vigneshwaran,GA
For R2 to R5	: Mr.E.C.Ramesh, Standing counsel
For R6	: Mr.P.B.Sampath Kumar

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The present writ petition has been filed to quash the proceedings of the 1st respondent dated 15.09.2021.



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(2)The petitioner has challenged the rejection of the statutory appeal filed by the petitioner under Section 80-A of the Town and Country Planning Act, 1971, by the 1st respondent-Corporation.

(3)The case of the petitioner is that the property in Plot No.A-1, Karikalan Street, Raja Annamalaipuram, which is the subject property of this writ petition belongs to Sri Audikesava Perumal Peyalwar Devasthanam, 6th respondent herein. It is his case that the land was originally in the occupation of one Mr.Murugan who had put up a building. The father of the petitioner, according to the petitioner, purchased the building from the said Murugan vide Document No.1558 dated 22.07.1992. It is also his case that a Lease Agreement was entered into between the 6th respondent / Temple and the petitioner's father on 22.03.2005. The petitioner states that after the demise of his father, the petitioner is in continuous and uninterrupted possession and is residing there with his wife and children. The petitioner submitted an application for demolition and reconstruction on 13.11.2014 without a consent from the temple.

(4)When the petitioner was expecting permission for demolition and reconstruction, he received a Lock and Seal notice dated 03.01.2019 from



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the respondents and thereafter, the petitioner filed a revision under Section 80-A of the Town and Country Planning Act as against the Lock and Seal Notice. The statutory revision preferred by the petitioner was disposed of by directing the authority to decide the petition submitted for demolition and reconstruction. There was an observation by the 1st respondent that no further action should be taken until the decision of the respondents on the application submitted by the petitioner.

(5) After the disposal of the statutory revision filed by the petitioner on 14.11.2019, the petitioner once again applied for fresh permission on 11.01.2020. When the Executive Engineer called upon the petitioner to furnish certain documents along with the No Objection Certificate from the 6th respondent/Temple, the petitioner could not get the Certificate and hence, the application was rejected and the 4th respondent issued an order calling upon the petitioner to discontinue the occupation of the residential premises. Thereafter the petitioner again preferred a revision under Section 80-A of the Act and the same was disposed of vide impugned order dated 15.09.2021 in the following lines:-



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"9.The official from Greater Chennai Corporation has informed that it is an unauthorised construction with 18 sq.m. on the temple land. Greater Chennai Corporation has also informed that their planning permission application dated 11.01.2020 was submitted to Greater Chennai Corporation and the same was as unconsidered and returned on 28.02.2020, due to non furnishing of required documents and Greater Chennai Corporation also issued De-occupation notice on 03.03.2020 to the said premises.

10.It is observed that the land belongs to temple and the structure thereon put up by the appellant unauthorisedly. Earlier, the Government had granted 3 months time as they produced the no objection certificate from Devasthanam issued during 2005 and the planning permission application submitted to Greater Chennai Corporation was pending at that time. The planning permission application submitted by the appellant was already returned by Greater Chennai Corporation for want of some additional particulars including the present no objection certificate from the temple Devasthanam. Further,



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during the hearing the temple devasthanam has informed that it is an illegal occupancy. Sri Audikesava Perumal peyalwar Devasthanam was called for hearing as per the orders of the Hon'ble High Court. However, it is to be mentioned that neither the Devasthanam as the land owner nor the appellant as an occupier has not made any written submission to the Government subsequent to the hearing.

11.Hence, the appeal filed by the appellant Thiru Arokiya Doss under Section 80[A] of Tamil Nadu Town and Country Planning Act, 1971, against the De-occupation Notice for the building put up at Plot No.A1, D.No.13/15, Karikalan Street, Govindaswamy Nagar, Raja Annamalaipuram, Chennai 600 028 is rejected and the Greater Chennai Corporation is directed to pursue necessary enforcement action."

(6) From the nature of the order passed by the 1st respondent, this Court finds that the petitioner cannot prosecute his application for planning permission without the consent of the 6th respondent/Temple.

(7) Though the 6th respondent/Temple has not filed any counter, the learned



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counsel appearing for the 6th respondent/Temple submitted that the temple has not granted any permission to the petitioner and is not going to give any No Objection Certificate to the petitioner to put up any construction. It is also reported that the petitioner is not paying any rent to the temple as on date.

(8) It is in the said circumstances, in order to avoid forcible eviction by the 6th respondent/Temple authorities, learned counsel for the petitioner sought the indulgence of this Court to grant sufficient time to vacate the premises.

(9) The learned counsel for the 6th respondent/Temple has no objection for giving time if the petitioner gives an undertaking before this Court that he would vacate the premises within a reasonable time.

(10) The petitioner has now filed an affidavit before this Court in the following lines:-

"3.....I hereby give my undertaking that I shall vacate the house situated at S.No.3960/3, plot No.A-1, Audikesava Perumal Peyalwar Devasthanam, and most humbly pray that the Hon'ble Court may be pleased to grant me reasonable time to vacate the same as I also need to find alternate accommodation



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keeping in mind the two school going daughters."

(11) In view of the undertaking given by the petitioner and the learned counsel for the petitioner submits that the petitioner is willing to pay market rent for the premises from June 2024, this Court is of the view that the 6th respondent/Temple authorities can defer action under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The respondents 2 to 5 may also put on hold to take enforcement action till the end of May 2025.

(12) Considering the facts narrated above, this Court is inclined to dispose of the writ petition in the following lines:-

A) Respondents 2 to 5 shall keep in abeyance the enforcement action till May 2025.

B) The 6th respondent/Temple is directed to defer any action against the petitioner till 31.05.2025 provided the petitioner pays a sum of Rs.5,000/- towards damages for use and occupation of the building with effect from the month of June 2024.

C) If the petitioner is unable to honour his undertaking, it is



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made clear that he will have to face contempt and the person incharge of the temple is entitled to move an application before the Deputy Commissioner for removal of encroachment.

*D) The 6th respondent/Temple is entitled to collect past rent upto 31.05.2024. Regarding arrears, the 6th respondent / temple shall send a communication to the petitioner informing him about the quantum as well as the period of arrears. If such communication is received, the petitioner shall pay the **entire arrears within a period of three months from the date of receipt of such communication.***

E) If there is a serious dispute with regard to quantum or period, the temple can initiate steps independently to collect the arrears.

F) It is open to the petitioner to submit an application for lease on fresh terms in respect of vacant land. If an application is submitted, the same may be considered by



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the temple administration in accordance with law after getting approval from the competent authority satisfying that such lease will be in interest of temple.

(13)The writ petition stands **disposed of accordingly.** No costs.

Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
25.06.2024

AP

Internet : Yes

To

- 1.The Secretary to Government
Housing and Urban Development
Fort St George, Chennai 600 008.
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- 6.The Chairman
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