



WEB COPY



W.P. No. 7152 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 7152 of 2020

Mr. R. Rajarajan

..Petitioner

Vs.

The State rep. by the

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Periyamet, Chennai – 600 003.
2. The Managing Director,
Tamil Nadu Housing Board,
Office of the Tamil Nadu
Housing Board,
Nandanam, Chennai – 600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Besant Nagar Division,
Adyar, Chennai – 600 020.
4. The Member Secretary – CMDA,
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.



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5. A. Ramamoorthy
6. R. Durga
7. P. Anjalai
8. Baba Dhandapani
9. K. Kanchana
10. V.S. Vijayalakshmi
11. S. Santhi
12. R. Ramadass
13. D. Gopalakrishnan

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 1st respondent to consider the petitioner's representation dated 09.12.2019 and to take appropriate action on the same.

For Petitioner :: Mr.V.S. Senthilkumar
For Respondents :: Mr.G.T. Subramanian for R1
Mr.D. Veerasekaran,
Standing Counsel (TNHB)
for R2 & R3
Mr.V. Sudalaiselvan for R4
Mr.Lenin Samuel
for R5 to R10, R12 & R13

ORDER

(Made by *S. Vaidyanathan,J.*)

The present writ petition is filed for issue of a Writ of Mandamus

directing the 1st respondent to consider the petitioner's representation dated



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09.12.2019 and to take appropriate action on the same.

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2. The case of the petitioner is that out of 24 MIG Flats to be developed in the property situated in Velachery by the Tamil Nadu Housing Board, he has been allotted MIG Flat NO.M-23, 4th Floor vide letter dated 30.06.2016. When the construction activity was in progress, the petitioner and other allottees used to pay constant visits to the site. During such visits, the petitioner and other allottees were very much concerned about the violations and encroachments made by people residing in the rear side of their apartment regarding which a representation was given to the 3rd respondent. However, no action was taken. The petitioner sent repeated representations to respondents 2 to 4, which proved to be of no avail. Thereafter, the petitioner sent an application under the Right to Information Act seeking information on the action taken on his representation and in reply to the same, vide letter dated 02.01.2020, the Tamil Nadu Housing Board stated that they have issued notice to the rear side houses dated 23.09.2019 to rectify the violations and to remove the projections. Further, according to the petitioner, the authorities vide their reply to the RTI had categorically admitted that the request of the petitioner pertaining to the rear side apartment was genuine, but still no action was taken. As there were no



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effective steps taken to remove the encroachments and violations made by people residing in the rear side houses, the petitioner again sent a detailed representation dated 09.12.2019 to the 1st respondent seeking speedy action. However, for reasons best known, the 1st respondent did not take any measures. Therefore, aggrieved by the inaction on the part of the 1st respondent, the present writ petition has been filed.

3. When the matter is taken up for hearing, it is represented by the learned counsel for the Corporation that the building constructed by respondents 5 to 13 has been kept under lock and seal as the approved plan has not been submitted.

4. Learned counsel for respondent Nos. 5 to 10, 12 & 13 submitted that as against the notices issued under Section 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, special appeal revision petitions under Section 80A of the said Act have been filed by the private respondents before the Principal Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai –9.

5. In response to the above submission, on behalf of the petitioner,



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it is submitted that the petitioner was not made as a party to the said proceedings.

6. Mr.A.Selvendran, learned Special Government Pleader, to the query posed by this Court regarding the status of the special appeal revisions filed as against the notices issued to the private respondents, submitted that in cases where directions were issued by this Court, the special appeal revisions were disposed of and that there is possibility of the special revisions filed by private respondents being pending before the Government.

7. Heard the submissions of all parties.

8. This Court has passed several orders that whenever special appeal revision petition is filed following a complaint made, the complainant should be made as a party to the said proceedings and should also be heard. In this case, the petitioner, based on whose complaint, the lock and seal notices have been issued, which in turn, resulted in filing of special revisions, must be made as a party to the said proceedings and the authority concerned should issue notice to the petitioner by making him as a party to the special revisions, if they are pending. From the counter affidavits filed by respondent Nos. 5 to 10, it is seen that special appeal revision petitions filed



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by them on 02.11.2020 are still pending before the authority concerned.

Since more than 3 years have elapsed, the said petitions filed by the aforesaid respondents as well as by respondents 11 to 13, if any, (as there are no details provided regarding the special appeal revisions filed by respondents 11 to 13), shall be heard on a day-today basis by the authority concerned without adjourning the same beyond 3 working days at any given point of time and dispose of the same within a period of

six months from the date of receipt of a copy of this order. The



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petitioner/complainant shall also be heard before taking a final decision in the matter.

9. It is made clear that if approved plan is available, then the building has to be brought in accordance with the approved plan. If no approved plan is available, there cannot be any approval as it would amount to putting the cart before the horse and it is needless to state that if the construction has been made either in violation of the approved plan or without any approved plan, the same will have to be razed to the ground. The decision of this Court in W.P. No. 226 of 2019 dtd 10.01.2024, more so, paragraph No.10 needs to be adhered to in its letter and spirit. If the authority fails to adhere to the time limit, it is open to the aggrieved parties to file contempt petition and this Court, at that stage, will decide whether there is wilful and deliberate disobedience of the orders of this Court.

10. To be noted, in the present writ petition, no adverse orders are passed against the private respondents. We expect the parties to co-operate. No one can question the proceedings at the interlocutory stage and has to await the final orders of the Authority. The Government can also think of amending the Tamil Nadu Town and Country Planning Act, 1971 to impose conditions like payment of 10 times EB charges till the building is brought

S. VAIDYANATHAN,J.



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AND

K. RAJASEKAR,J.

nv

in accordance with the plan.

11. The writ petition stands disposed of with the above directions.

No costs.

(S.V.N.J.) (K.R.S.J.)
12.01.2024

nv

To

1. The Commissioner,
Corporation of Chennai,
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Periyamet, Chennai – 600 003.
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Office of the Tamil Nadu
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