



W.P.No.2638 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.2638 of 2024

Dr.Hisamuddin Papa
S/o late Mr.Hasan Mohiuddin Papa .. Petitioner

v.

1. The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Secretariat
Chennai 600 009
2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Principal Secretary / Commissioner
Greater Chennai Corporation
Rippon Building
Chennai 600 003
4. The Regional Deputy Commissioner (South)
Zone-13, Greater Chennai Corporation



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Dr.Muthulakshmi Salai, Adyar
Chennai 600 020

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5. Executive Engineer
Zone-13, Greater Chennai Corporation
Dr.Muthulakshmi Salai, Adyar
Chennai 600 020

6. Nawab Fazeelathunnisa Begum Saheba
Mosque and Endowment (Wakf)
No.796, Old No.419, Anna Salai
Nandanam, Chennai 600 035

7. Tamil Nadu Wakf Board
No.1, Jaffar Syrang Street
Vallal Seethakathi Nagar
Chennai 600 001
(R6 & R7 impleaded vide order dated
29.02.2024 in WMP.5837/24 in
WP.2638/24)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents from taking any coercive action against the petitioner's building located at No.786, Anna Salai, Nandanam, Chennai 600 035 pending disposal of the regularization applications filed by the petitioner with the 2nd respondent CMDA viz CMDA/Reg-113C/1778/2020 dated 19.02.2020 under the Building Regularization Scheme, 2017 of Section 113-C of the Town and Country Planning Act 1971.

For Petitioner :: Mr.P.H.Aravind Pandian
Senior Counsel for
Mr.Vikram Veerasamy



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For Respondents :: Mr.M.R.Gokul Krishnan
Addl. Government Pleader for R1
Mr.Y.Bhuvaneshkumar
Standing Counsel for R2
Mr.D.B.R.Prabhu
Standing Counsel for R3 to R5
Mr.N.A.Nissar Ahmed
Senior Counsel for
Mr.I.Kowser Nissar for R6
Mr.Avinash Wadhvani for R7

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is filed for issuance of a mandamus forbearing the respondents from taking any coercive action against the petitioner's building located at No.786, Anna Salai, Nandanam, Chennai 600 035 pending disposal of the regularization applications filed by the petitioner with the 2nd respondent-CMDA viz., CMDA/Reg-113C/1778/2020 dated 19.02.2020 under the Building Regularization Scheme, 2017 of Section 113-C of the Town and Country Planning Act 1971.

2. Brief facts that are narrated in the affidavit filed in support of the writ petition are as follows:-



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(a) The petitioner's mother Mrs.Giasunnisa Begum took the subject property on lease from the Wakf known as “Nawab Fazilathunnisa Begum Sahiba Mosque and Endowment”. The lease was in respect of an extent of about 6960 sq.ft., in Plot No.7, Old Door No.424, Anna Salai, Nandanam, Chennai (presently No.786, Anna Salai, Nandanam, Chennai 600 035). The lease was extended periodically. Vide document No.1797 of 1997 dated 11.09.97, the lease was extended for a period of 50 years upto 2046, pursuant to the permission granted by the Sub Court, Chenglepet in I.A.No.36 of 1997 in O.S.No.63 of 1940, a suit which was preferred to frame a scheme for the administration of the endowment.

(b) In 1956, after obtaining a building plan approval from the then Corporation of Madras, a building was constructed by the mother of the petitioner. There were subsequent constructions pursuant to the permission obtained from the Corporation of Madras in 1971. The existing building was demolished and reconstructed pursuant to a plan approved by the Corporation of Madras in 1986. The petitioner's mother also obtained permission for additional construction after payment of requisite fee to the Corporation of Madras. The construction of the building was in accordance



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with the building plan approval.

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(c) The petitioner has obtained a lease agreement from the petitioner's mother in respect of the whole leasehold land along with the building. After the lease, the petitioner is in possession and enjoyment of the property by running a hospital. The petitioner's mother passed away on 16.12.2017 and hence petitioner had inherited the leasehold rights of the property. There is no dispute regarding the ownership over the building constructed in the property, which was originally leased out to the petitioner's mother. The hospital was inaugurated on 27.7.87 by the then Governor. In the meanwhile, pursuant to the order passed in exercise of power under Sections 56 & 57 of the Town and Country Planning Act pointing out the unauthorized construction, the petitioner's mother filed a statutory revision under Section 80-A of the Town and Country Planning Act and the said revision was rejected by order dated 31.03.2017. The writ petition filed by the petitioner's mother in W.P.No.10449 of 2017 was dismissed by order dated 25.4.2017 after recording the fact that large scale deviations are not capable of being regularized by referring to the letter dated 19.11.2013 rejecting the application for regularization on the ground that petitioner's



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mother had not furnished adequate proof to establish that the construction was prior to 1999 to be eligible to apply under the one time scheme introduced under Section 113-A of the Town and Country Planning Act.

(d) Thereafter, the petitioner's hospital building was locked and sealed on 27.12.2018. Aggrieved by the same, the petitioner had preferred special revision under Section 80-A of Town and Country Planning Act. The first respondent taking into consideration the fact that the construction is eligible for regularization under Section 113-C, granted an interim order on 19.6.2019 permitting the petitioner to use the building for approved use subject to compliance of NOC from Fire Service for a period of six months with the condition that the petitioner should either get the building regularized or approved by carrying out necessary modifications.

(e) Thereafter in a writ petition filed by the Wakf in W.P.No.33830 of 2022, this Court by order dated 20.02.2023 directed the official respondents therein to inspect the building and to take action in accordance with law after issuing notice to petitioner and respondents 7 to 9. It is admitted that the petitioner has applied for regularization under Section 113-C and the consideration of regularization is kept in abeyance by the second respondent



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in view of pendency of civil appeal before the Hon'ble Supreme Court regarding regularization. Anticipating coercive action pending regularization application, the petitioner has preferred this writ petition.

3. The learned Senior Counsel appearing for the petitioner, referring to the previous order passed by this Court in W.P.No.35867 of 2016 dated 24.11.2016 and the order in W.P.No.33830 of 2022 dated 20.02.2023, submitted that the petitioner's regularization application under Section 113C is not yet disposed of and it is pending consideration. He submitted that the delay in consideration of the petitioner's application under Section 113-C is due to pendency of the proceedings before the Hon'ble Supreme Court challenging the Government Order giving guidelines for regularization under Section 113-C.

4. This Court, by order dated 05.02.2024, taking note of the previous order passed by this Court in W.P.No.33830 of 2022 dated 20.02.2023 and the premises is locked and sealed, has granted stay of operation of the order in respect of ground plus three floors. The petitioner was not allowed to use



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the fourth floor until further orders by this Court. As far as the lock and seal in respect of fourth floor is concerned, a direction was issued to display the lock and seal order in the entrance of the building so that any third party visiting the building would know that the fourth floor is kept under lock and seal. A further direction was issued to de-seal the premises upto third floor.

5. From the records, it is demonstrated before the Court that pendency of regularization application is acknowledged by all the respondents and that the Corporation has admitted the position that the construction was put up long before 2007 to enable the petitioner to seek regularization under Section 113-C of the Town and Country Planning Act.

6. The learned Senior Counsel appearing for the sixth respondent submitted that the lease in favour of the petitioner's mother was invalid and that therefore the petitioner is not entitled to maintain an application for regularization under Section 113-C. The learned Senior Counsel further submitted that the petitioner, who is in encroachment of the wakf property, cannot be permitted to seek regularization without the consent of the Wakf



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or the Wakf Board. He also submitted that the lease without obtaining permission from the Wakf Board is contrary to the provisions of the Wakf Act and that a person who is in possession or has put up construction on the basis of void lease cannot claim regularization.

7. The learned counsel appearing for the Wakf Board submitted that by virtue of the provisions of Section 113-C and the guidelines, there cannot be regularization of the building which belongs to the Wakf. Stating that the construction is not regularizable as pointed out by this Court earlier, the learned counsel submitted that the petitioner is not entitled to regularization. He finally submitted that the Wakf Board and the Wakf have initiated action for removal of encroachment made by the petitioner and the matter is pending before the Hon'ble Supreme Court. Pointing out that the petitioner cannot be treated as a person in lawful possession of the property on the basis of void lease agreement, a submission was made before this Court that under the scheme of regularization, the petitioner, who is not the owner of property, but a sub-tenant, is not entitled to any indulgence from this Court. The counsel also produced a judgment of this Court in *Amthul Azeez*



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Endowment (Wakf) represented by its President/Managing Committee

reported in *CDJ 2016 MHC 1585*, wherein this Court has held that the lease deed executed in violation of statutory provision found in Section 56 of the Wakf Act does not confer any right on the lessee. Even though the lease alleged in the case was obtained pursuant to an order of Court, the learned counsel submitted that the lease created without the permission of Wakf Board for more than one year is void unless prior sanction of the Wakf Board is obtained. It is further stated that by virtue of Section 56(2) of the Wakf Act, the lease deed which was after the Wakf Act, 1995 which came into force with effect from 1.1.96, cannot be valid even assuming that permission was obtained from the scheme Court.

8. A learned single Judge of this Court, in the judgment referred to above, has held that the permission obtained from the scheme Court shall be ineffective because of the mandatory provision found in Section 56. It is clarified in the said judgment that after coming into force of the Wakf Act, 1995, all leases can be obtained only from the Wakf Board and not from the



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scheme Court as the scheme Court has no jurisdiction.

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9. Though there were certain submissions made by the learned counsels appearing for the respondents 6 & 7, this Court finds from the counter affidavit filed by the Corporation that the petitioner has put up the additional floor long before 2007 and hence the construction put up by the petitioner could be regularized in exercise of power under Section 113-C of the Town and Country Planning Act. In the counter affidavit filed by the fifth respondent, the fact that the petitioner had put up the construction before the cut off date is admitted in more than one phrase. Even though the second respondent-CMDA in their counter affidavit has stated that the petitioner has not produced any document before the authorities concerned as to the date of construction, the CMDA has not given any particulars or material suggesting that the construction put up by the petitioner was after 2007. From the stand taken by the Corporation and other materials, this Court holds that the building was constructed in 2007 and therefore the application for regularization under Section 113-C submitted by petitioner is maintainable. The CMDA in the counter affidavit stated that the



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petitioner has not submitted hard copies of documents and required particulars including credible evidence for the existence of building prior to 01.07.2007. In the absence of any material from the CMDA to suggest that the building could not have been constructed before 2007, the stand taken by the Corporation in the counter affidavit that the construction was put up by the petitioner long before 2007 cannot be ignored. The earlier application for regularization under Section 113-A was pending and was rejected only on the ground that there is no proof for the construction being completed before 1999. The Corporation which is following the petitioner has to be believed.

10. The only objection raised by the respondents 6 & 7 is on the basis of characterizing the lease as unauthorized, as the same is in contravention of the provisions of the Wakf Act. This Court, in the present case, is not inclined to consider the contentious issues regarding validity of the lease, since it is admitted that appeals are pending before the Hon'ble Supreme Court. The contention of the learned counsels appearing for the respondents 6 & 7 that the regularization application is not maintainable, as the



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petitioner is not the owner of premises, cannot be countenanced. Even a lessee can put up construction and seek regularization. The dispute is not regarding ownership over the land, as it is admitted by the petitioner himself that the land originally belongs to the Wakf. The lease was granted to the petitioner by the then mutawalli of Wakf. The fact that the petitioner is in possession of the property by putting up construction for a long number of years is not in issue. However, the question whether the petitioner's possession is pursuant to valid lease or whether the petitioner is lawfully in possession as a tenant after expiry of lease, is not the subject matter of this proceeding. The proceedings initiated by the Wakf Board under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is challenged by the petitioner and the same is pending before the Hon'ble Supreme Court. The learned counsel appearing for the Wakf Board also says that they have taken action for removal of encroachment under Section 54 of the Wakf Act. The disputed questions of fact whether the lease is valid or void and whether the petitioner can be evicted under the Public Premises (Eviction of Unauthorized Occupants) Act or not, need not be considered by this Court for the moment.



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11. This Court noticed that there is a serious dispute as to whether the lease granted in favour of the petitioner's mother was in accordance with the provisions of the Wakf Act. What would or should follow if the lease is not valid, is pending consideration before the Hon'ble Supreme Court. Therefore, this Court for the present, having regard to the admitted position that the petitioner is in lawful possession of the building, of course, in the land belonging to the Wakf Board, is of the view that the petitioner is entitled to seek regularization. Merely because the regularization application is pending before the concerned authorities, this Court for the present is not considering the right or remedy that is available to the petitioner from the respondents 6 & 7. In view of the categorical admission made by the Corporation about the eligibility of the petitioner to seek regularization, as the construction was made prior to 2007, this Court finds that the petitioner's application for regularization is maintainable under Section 113C, of course, subject to other conditions.

12. It is true that this Court earlier in a writ petition filed by the Wakf in W.P.No.35867 of 2016 passed an order on 24.11.2016, directing the



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official respondents to take action for removal of unauthorized construction in accordance with law. In a writ petition filed by the petitioner's mother in W.P.No.10449 of 2017 challenging the order passed by the Government under Section 80-A of the Town and Country Planning Act, this Court dismissed the writ petition after recording the fact that the regularization application submitted earlier under Section 113-A of the Town and Country Planning Act was rejected on the ground that the deviations noticed are not capable of being regularized, as they are not within the permissible limits. The right of petitioner to seek exemption under Section 113-C is not sealed and it is available to the petitioner by virtue of a special scheme in 2012 to regularize buildings completed upto 2007. The petitioner's right under Section 113-C was never considered nor this issue arose for consideration. In the above circumstances, this Court is unable to reject the contention of the petitioner that the petitioner is entitled to seek regularization under Section 113-C.

13. It is also true that the sixth respondent filed a writ petition in W.P.No.33830 of 2022 for a mandamus directing the respondents 1 to 6



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therein to remove the unauthorized construction put up by the petitioner and that the writ petition was disposed of by directing the official respondents to take action for the unauthorized construction put up by the petitioner in deviation of the approved plan. At the time of considering the application for regularization, the petitioner need to show that his possession is lawful and that he is the owner of the building proposed. The original lease was granted long before the proceedings were initiated for unauthorized construction. The then mutawalli, who had granted lease in favour of the petitioner's mother, has acknowledged the tenancy and therefore the Wakf is estopped from challenging the lease. It is not in dispute that the lease granted to the petitioner was never under challenge in any independent proceeding. It is in the said context, having regard to the admitted fact, this Court holds that the petitioner's possession is lawful not only at the time of entry but till such time he is evicted by due process of law.

14. Section 113-C of the Town and Country Planning Act reads as follows:-

“113-C. Exemption in respect of development of certain



buildings.--Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, by order, exempt any building or class of buildings developed on or before the 1st day of July, 2007 from all or any of the provisions of this Act or any rule or regulation made thereunder, subject to the guidelines made in this behalf, by collecting such amount, not exceeding three times of the guideline value of the land, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the planning area.”

Section 113-C, therefore, recognize only ownership over the building as far as exemption is concerned. Any owner of building is entitled to exemption subject to guidelines and payment of prescribed fee.



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15. The learned counsels appearing for the respondents 6 & 7 submitted that the guidelines for exemption of the building do not indicate the petitioner to be eligible for regularization under Section 113-C. However, the construction put up by an individual can be considered for regularization if the person is in lawful possession. In the present case, this Court is unable to consider the petitioner's possession unlawful, merely because the respondents 6 & 7 do not recognize when original lease by the Wakf. The fact that the land was leased out to the petitioner's mother is not in issue. Therefore, a person in physical possession as a tenant has every right to use the building. Since the Wakf Board can give approval for a lease and there is no impediment to ratify any tenancy if it is in the interest of Wakf, this Court finds that the lease in favour of the petitioner cannot be treated as void. However, subject to declaration by Wakf Tribunal or by the Wakf Board cancelling the lease, the original lease can be treated as valid and binding on the Wakf. The Wakf is estopped from disputing the petitioner's lawful possession merely because proceedings for eviction is pending before the other forum.



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16. In view of the conclusions which we have reached regarding the character of possession, this Court finds that the petitioner is entitled to some protection to remain in possession and to use the building till such time the regularization application filed by the petitioner before the second respondent dated 19.02.2020 is disposed of. Therefore, this Court is inclined to dispose of the writ petition with the following directions:-

- (i) Till such time the regularization application stated to have been filed and pending before the first or second respondent under Section 113C is considered and disposed of on merits and the decision is communicated to the petitioner, the respondents 1 to 5 shall not take any coercive action against the petitioner.
- (ii) The petitioner shall not use the fourth floor for any purpose, as the locking and sealing in respect of fourth floor is not interfered with. However, subject to disposal of the application for regularization by the first respondent one way or the other, the respondents 1 to 5 shall not take any coercive action for demolishing the fourth floor. Status quo, as on date, shall be maintained by the petitioner as well by the respondents 1 to 5 as far as fourth floor is concerned.
- (iii) The petitioner is expected to satisfy all the statutory norms or guidelines or requirement for using the building for commercial or hospital purpose.



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(iv) This order will not stand in the way of any other statutory authority for taking action for any other violation by the petitioner de hors the provisions of the Town and Country Planning Act, 1971 and the Combined Development and Building Rules, 2019.

(v) This order will not stand in the way of the respondents 6 & 7 for proceeding with and prosecuting the matter either for eviction or for recovery of possession of the premises in accordance with law.

(vi) It is open to the petitioner to approach respondents 6 & 7 for fresh lease on fresh terms to purchase peace.

Consequently, W.M.P.No.2897 of 2024 is closed. No order as to costs.

Index : yes/no

(S.S.S.R.,J.)

(N.S.,J.)

Neutral citation : yes/no

22.07.2024

SS

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Housing and Urban Development Department
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