



W.P.No.4084 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.4084 of 2024

and

W.M.P.Nos.4397 & 4398 of 2024

Radha Ethiraj

... Petitioner

Vs.

1.The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records comprised in the Notice dated 08.02.2024 on the file of the 2nd respondent and quash the same and consequently, to direct the 2nd respondent to de-seal



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the premises of the petitioner in the Ground Floor portion of the building situated at Door No.8, Old Door No.17, Venkataratnam Street, Teynampet, Chennai – 600 018.

For Petitioner	:	Mr.S.Thankasivan for Mr.P.Muthukumarasamy
For R1	:	Mr.R.Kumaravel Additional Government Pleader
For R2	:	Mr.Y.Bhuvanesh Kumar Standing Counsel for CMDA

ORDER

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

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the Notice dated 08.02.2024 on the file of the 2nd respondent and consequently, to direct the 2nd respondent to de-seal the premises of the petitioner in the Ground Floor portion of the building situated at Door No.8, Old Door No.17, Venkataratnam Street, Teynampet, Chennai – 600 018.



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2.The petitioner appears to have purchased a Ground Floor Flat in Door Door No.8, Old Door No.17, Venkataratnam Street, Teynampet, Chennai, in the year 2004. However, the construction appears to be not in accordance with the sanctioned plan. The petitioner himself admits that the petitioner's husband sought for regularisation of construction under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, on 21.06.2020. However, the 2nd respondent issued a Lock and Seal Notice on 09.12.2022. Since the petitioner had no other defence except the pendency of the application for regularisation of the unauthorised construction stated to have been filed, the petitioner requested only time based on the regularisation application, when the Lock and Seal Notice dated 09.12.2022 was issued to the petitioner. Thereafter, the 2nd respondent has issued the impugned notice dated 08.02.2024 and locked the premises in the Ground Floor which is under the occupation of the tenant of the petitioner.

3.It is the case of the petitioner that the tenant was not even allowed



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to take his belongings from the premises which is now kept under Lock and Seal by the 2nd respondent. Learned counsel for the petitioner states that, in all similar cases where other owners of the Flats approached this Court, this Court has granted liberty to the petitioners therein to pursue their revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, which is pending before the Government and has given interim protection by ordering status *quo*. This Court, in respect of different parcels of the same building, has disposed of the writ petitions with direction to the Government to dispose of the statutory revision and with a further direction to the official respondents to maintain status *quo* till such time the revision petition is disposed of. In this case also, the petitioner has filed a statutory revision before the 1st respondent on 19.02.2024. The Acknowledgment Card is produced.

4.The petitioner appears to have purchased the Flat in the year 2004, believing that the construction could be regularised on payment of regularisation fee as per the Regularisation Scheme which was in vogue at that time. The petitioner appears to have invested her life time savings and



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hence, states that the building cannot be pulled down till such time the regularisation application filed by the petitioner is ultimately decided by the appropriate authority. The learned counsel for the petitioner states that the building is occupied by a tenant who has School going children and therefore, some indulgence may be shown by permitting the tenant to be in possession till such time the revision petition, as well as the regularisation application, filed by the petitioner are disposed of in accordance with law.

5.Learned Standing Counsel appearing for the 2nd respondent/CMDA produced before this Court two orders passed by this Court in the writ petitions filed by third parties, and submitted that the impugned order has been passed pursuant to the directions issued by this Court in those writ petitions. It is seen that one T.Raghunath has filed a writ petition in W.P.No.8397 of 2014 with a prayer to direct the respondents 1 to 3 therein to consider the petitioner's representation. This Court disposed of the said writ petition by order dated 07.12.2016, by directing the 1st respondent in the writ petition to cause an inspection to be made of the building in question within 15 days and if any violations are found, action in



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accordance with law shall be taken. Similarly, one M.Udaya has filed another writ petition in W.P.No.2355 of 2023, challenging the Lock and Seal Notice dated 08.11.2022 issued to her by the 2nd respondent. This Court was not inclined to grant any relief to the petitioner and the said writ petition was dismissed with direction to the 2nd respondent/CMDA to take enforcement action as against the unauthorised construction put up in the subject property. The order appears to be to ensure rigorous compliance of laws relating to planned development of the cities and urban areas and demolition of unauthorised constructions. The order is too general. When the Statute permits the building owners to regularise the unauthorised constructions and when the application filed by the building owners to regularise the unauthorised construction in accordance with law is pending, if any enforcement order is passed resulting in demolition of the building, the situation will be *fait accompli*, as the building owners may not save the building even if their regularisation application is allowed. Therefore, we are not inclined to go further and we are only inclined to preserve status *quo* till such time the petitioner avails the statutory remedy which is available in law.



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6.Considering the grievance of the petitioner and the fact that no further proceedings will be required in case the regularisation application is decided in favour of the petitioner, this Court is inclined to pass the following directions :

- i. Depends on the outcome of the statutory revision as against the impugned order dated 08.02.2024, as well as the regularisation application, stated to have been filed by the petitioner, the respondents shall proceed further with the impugned order.
- ii. However, till such time the regularisation application as well as the statutory revision that is filed by the petitioner are disposed of on merits and in accordance with law, the petitioner's premises can be put to use by the petitioner without causing any hindrance to other tenements in the building.
- iii. The 2nd respondent shall de-seal the premises upon verification of the fact that the petitioner had already filed a statutory revision under Section 80-A of the Tamil Nadu Town and Country Planning Act,



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1971, and had submitted a regularisation application for regularisation of the unauthorised construction, within a period of one week from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
22.02.2024

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Note to Registry :
Issue order copy on 23.02.2024.

Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No

To

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Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.
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