



WP.No.5741/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

WP.No.5741/2024 & WMP.Nos.6347 & 6348/2024

R.Giridharan

... Petitioner

Vs.

- 1.The Additional Secretary [Technical]
Housing and Urban Development
Department, Fort St George
Chennai-09.
- 2.The Commissioner
Avadi City Municipal Corporation
Avadi, Chennai 600 054.
- 3.The Director of Town and Country Planning
CMDA Office Complex, Market Road
Srinivasa Nagar, Virugambakkam
Chennai 600 107.
- 4.The Tahsildar
Avadi, Chennai 600 054.



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5.S.Mahadevan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records of the proceedings in the Letter No.5505042/UD VI[2]/2023-6 dated 13.02.2024 on the file of the 1st respondent, quash the same and to consequently direct the respondents 1 to 3 to de-seal the petitioner's residential property situated at Door No.185, Town Survey No.6/0, Block No.16, Ward No.1, Survey No.716/1, Paruthipattu Village, Avadi Municipality, Tiruvallur District.

For Petitioner	: Mr.R.Harikrishnan for Mr.Sharath Chandran
For RR 1, 3 & 4	: Mrs.V.Yamuna Devi, Spl.GP
For R2	: Mr.R.A.Gopinath, Standing counsel

ORDER

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

(1)The present writ petition has been filed by the petitioner challenging the order passed by the 1st respondent dated 13.02.2024, with a prayer to quash the same and for a further direction to the respondents 1 to 3 to de-seal the petitioner's residential property situated at Door No.185, Town Survey No.6/0, Block No.16, Ward No.1, Survey No.716/1, Paruthipattu Village, Avadi Municipality, Tiruvallur District.



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(2) Mrs. V. Yamuna Devi, learned Special Government Pleader accepts notice on behalf of respondents 1, 3 and 4. Mr. R. A. Gopinath, learned Standing counsel accepts notice on behalf of the 2nd respondent.

(3) The petitioner claims exclusive title to the property in which he has put up construction. As against the order directing the petitioner to lock and seal the premises, the petitioner has preferred a revision under Section 80-A of the Town and Country Planning Act, 1971 and the review petition is dismissed by the impugned order.

(4) The grievance of the petitioner is that the revision was dismissed not on the ground that the petitioner's building cannot be regularised but on the ground that the petitioner has put up construction by encroaching into the Government Poramboke land. The petitioner has produced before this Court, certain revenue records to show the bona fides of his claim. The impugned order states that the petitioner has put up the construction by encroaching the Government Poramboke land. This was not on the basis, the proceedings were initiated originally by the 2nd respondent for removal of unauthorised construction. It is stated by the petitioner that he has applied for regularisation.



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(5)The learned counsel for the petitioner relied upon the order passed by this Court in the writ petition filed by one Mala in WP.No.5045/2024, who was aggrieved by the very same impugned order that is put to challenge in the present writ petition. This Court, vide order dated 27.02.2024, quashed the impugned order and remitted the matter back to the 1st respondent for passing appropriate orders after hearing the petitioner therein.

(6)This Court, after hearing the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1,3 and 4 and the learned Standing counsel appearing for the 2nd respondent, is of the view that the same order can also be passed in the present case, where the impugned order clearly reveals total non application of mind and lack of opportunity given to the petitioner to put forth his case to prove his lawful possession. The impugned order dated 13.02.2024 dismissing the revision petition treating the petitioner as an encroacher, is in violation of principles of natural justice.

(7)Hence, the impugned order dated 13.02.2024 is quashed and the matter is remitted back to the 1st respondent to give the petitioner a fair opportunity



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to put forth his case before passing the order involving factual disputes.

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(8) In an enquiry under section 80-A of the Act, unless it is admitted before the Government that the property is exclusively belong to the Government and the encroachment is objectionable, the 1st respondent is not supposed to reject the revision only on the ground of encroachment. It is open to the petitioner to produce all his documents and establish his lawful possession before the 1st respondent. The 1st respondent is directed to consider the revision petition afresh on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

(9) It is reported now that the premises of the petitioner has now been put under lock and seal.

(10) Since the order passed in the revision petition is set aside, the official respondents are directed to de-seal the premises bearing Door No.185, Town Survey No.6/0, Block No.16, Ward No.1, Survey No.716/1, Paruthipattu Village, Avadi Municipality, Tiruvallur District, and maintain status quo till such time the revision is again disposed of by the 1st respondent on merits and in accordance with law pursuant to this order.



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(11)The writ petition stands **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

(12)The learned Standing counsel appearing for the 2nd respondent is requested to inform the officials so that the 2nd respondent may de-seal the premises without insisting a copy of this order.

[S.S.S.R., J.] [G.A.M., J.]
01.03.2024

AP

Internet : Yes

NOTE: Issue order copy on 04.03.2024.

To

- 1.The Additional Secretary [Technical]
Housing and Urban Development
Department, Fort St George, Chennai-09.
- 2.The Commissioner
Avadi City Municipal Corporation
Avadi, Chennai 600 054.
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and
G.ARUL MURUGAN, J.,

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