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W.P.No.7436 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.7436 of 2023

and

W.M.P.Nos.7514 & 33245 of 2023

- 1.Roopesh Lakshman
- 2.Raaziaa Banu
- 3.A.K.Shamashuddin
- 4.Nasima Palanpurwala
- 5.Mustafa M. Kesaria
- 6.Vasanth Kumari
- 7.Rezwana Haji
- 8.T.V.Srivathsan
- 9.Razia Feroze Dhanaliwala

... Petitioners

Vs.

- 1.The Secretary to Government,
Housing and Urban Development,
Secretariat,
Chennai – 600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai – 600 008.



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3. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

4. Touch Stone Apartments Owners Association,
Represented by its Secretary,
Zainab Huzefa Dhanaliwala,
No.10, Vasu Street, Kilpauk,
Chennai – 600 010.

... Respondents

*[R4 impleaded vide order dated 31.07.2023 made in
W.M.P.No.20403 of 2023 in W.P.No.7436 of 2023]*

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 of the 1st respondent in Letter No.3114481/UD-VI(2)/2022-3, dated 16.02.2023, and to quash the order passed by the 1st respondent and consequently, to forbear the 2nd and 3rd respondents from initiating any coercive action pending disposal of the regularisation application filed by the petitioners.

For Petitioners : Mr.S.Thiruvengadam

For R1 : Mr.R.Vigneshwaran
Additional Government Pleader

For R2 : Mr.R.Sivakumar

For R3 : Mr.D.B.R.Prabhu



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Standing Counsel

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For R4

:

Mr.V.J.Balaji

ORDER

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

The petitioners have filed the above writ petition challenging the order of the 1st respondent dated 16.02.2023, dismissing the revision petition filed by the petitioners under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971.

2.Brief facts that are necessary for the disposal of this writ petition are as follows :

The petitioners are the owners of apartments at Door No.10, Vasu Street, Kilpauk, Chennai. The petitioners state that the entire building, which consists of 35 dwelling units, was completed even in the year 1996. Pursuant to the directions of this Court in W.P.No.18096 of 2021 regarding grievance expressed by some of the flat owners as against others who have encroached into the common area, the CMDA officials appear to have



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inspected the entire building. Following the inspection, the CMDA has issued notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, on 12.08.2022 and thereafter, issued De-Occupation Notice dated 13.09.2022. The petitioners filed a special revision petition before the Secretary to Government as against the notice. The petitioners also filed a writ petition challenging the De-Occupation Notice earlier. Since the 2nd respondent have sealed the Ground Floor premises on 17.09.2022, the earlier writ petition filed by the petitioners was disposed of with direction to the 2nd respondent to de-seal the premises, pending disposal of the revision petition. However, the petitioners' revision was thereafter, dismissed confirming the order of the 2nd respondent, on the ground that the petitioners are not entitled to seek regularisation under Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, as the application was not filed in time.

3.Learned counsel appearing for the petitioners states that an application has now been filed under Section 113-C of the Act. The learned counsel appearing for the official respondents admit that the application



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submitted by the petitioners under Section 113-C of the Act, is pending.

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4.The issue regarding manner in which exemption/regularisation by invoking the power under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, is stated to be pending before the Hon'ble Supreme Court. In the said circumstances, this Court is inclined to issue the following directions :

- i. The 2nd respondent is directed to consider the application stated to have been filed by the petitioners under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, for exemption or regularisation of the building, and pass appropriate orders on merits and in accordance with law.
- ii. Till such time the application filed by the petitioners for exemption under Section 113-C of the Act is considered and disposed of on merits, the respondents are directed to maintain status *quo*.
- iii. In case the petitioners' application for exemption or regularisation is rejected, it is open to the respondents to proceed with enforcement action.



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Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
23.04.2024

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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2. The Member Secretary,
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S.S. SUNDAR, J.



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N. SENTHILKUMAR, J.

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