



W.P.No.12586 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.12586 of 2023

and

W.M.P.Nos.12396 & 12397 of 2023

N.Siva Kumar

... Petitioner

Vs.

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.
- 2.The Assistant Executive Engineer,
Unit-39, Adyar,
Greater Chennai Corporation,
Chennai – 600 020.
- 3.The Executive Engineer,
Zone-13, Adyar,
Greater Chennai Corporation,
Chennai – 600 020.



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4. The Assistant Engineer,
DIV-179, Velacherry,
Greater Chennai Corporation,
Chennai – 600 020.

5. The Junior Engineer,
DIV-179, Velacherry,
Greater Chennai Corporation,
Chennai – 600 042.

6. The Additional Secretary (Technical),
Secretariat, Chennai – 600 009.

7. Valli Rajan

8. The Tahsildar,
Velachery,
Chennai – 600 042.

... Respondents

*[R7 and R8 are impleaded as per order of Court
dated 20.07.2023 in W.M.P.No.20266 of 2023
in W.P.No.12586 of 2023]*

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the respondent in Letter No.17977/UD-VII(1)/2020-2, dated 03.03.2023, Letter No.18704/UD-VII(2)/2019-4, dated 18.11.2020, the order issued by the respondents 2, 3 and 4 in Letter No.13/00055/2019 dated 16.08.2019 and Letter No.13/00042/2019 dated 27.09.2019 and quash the same.



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For Petitioner	:	Mr.V.K.Bhuvaneshwar for Mr.M.Vijayakumar
For R1 to R5	:	Mr.D.B.R.Prabhu Standing Counsel
For R6 and R8	:	Mr.R.Kumaravel Additional Government Pleader
For R7	:	No appearance

ORDER

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

(1) Despite several opportunities being given to the petitioner, this Court finds that the petitioner has not produced the original approved plan which according to him was not the one submitted by him before the respondent. It is true that the official respondents are also directed to produce the original plan. However, unfortunately, the respondents are also unable to produce the original plan but only the photocopy of the plan. In the Status Report filed by the 3rd respondent, dated 07.02.2024, it is stated that, due to heavy rain and flood in the year 2015, several records which were maintained in Zone-13 office were seriously affected and were washed away. It is further stated that a photocopy of the plan and the supporting documents, viz., plan advice copy, plan permit copy



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and copies of the Demand Draft and welfare cheque issued by the petitioner, which were kept in the Division Office, are produced before this Court. It is also verified by the 3rd respondent that the said plan is pertaining to the petitioner's plot.

(2) However, the learned counsel for the petitioner has repeatedly made submissions doubting the genuineness of the plan that is now produced before this Court by the official respondents as the one available with them. The petitioner who is supposed to have sufficient number of copies, has come forward with a case that he has lost the plan and expressed his inability to produce the original. In the said circumstances, this Court is unable to accept the contention of the learned counsel for the petitioner that the plan now produced by the official respondents, is not the original plan, which was submitted by the petitioner for approval. It is the specific case of the petitioner that the petitioner had obtained building plan permission and approval by proceedings dated 20.09.2007. This Court has no reason to discard or disbelieve the statement of the learned Standing counsel appearing for respondents 1 to 5 in support of the stand that the plan that is produced by them, is the plan that was



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submitted by the petitioner for approval.

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(3) It is the submission of the learned counsel for the petitioner that the entire construction is strictly in accordance with the approved plan and the Lock and Seal and Demolition Notice dated 16.08.2019 is illegal as there is no deviation at all in the construction put up by the petitioner. It is the further contention of the petitioner that the Corporation officials have issued De-Occupation Notice dated 27.09.2019 to the petitioner mechanically without conducting any inspection or taking measurements of the constructions at any point of time. As against the order dated 16.08.2019 and the De-Occupation Notice dated 27.09.2019, the petitioner has also preferred a statutory revision in terms of the provisions of Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 [in short 'the Act, 1971']. The 1st respondent dismissed the revision petition by order dated 18.11.2020. Again the petitioner filed a review application before the Government and the said review petition was also dismissed by the 1st respondent vide order dated 03.03.2023 by holding that the review is not maintainable as per the statutory provisions. A further direction was also issued to the Corporation officials to take



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necessary enforcement action as per the provisions of the Act, 1971.

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(4) The petitioner has challenged the order passed by the 1st respondent dated 18.11.2020 as well as the subsequent order dated 03.03.2023 mainly on the ground that the deviation noticed by the Corporation officials without furnishing approved plan to the petitioner, is illegal and motivated. It is the further contention of the learned counsel for the petitioner that the plan that is produced now by the respondents is not the original plan submitted by the petitioner for approval. Therefore, the deviation by taking note of the imaginary plan cannot be accepted. This argument cannot be countenanced as the respondents, cannot on their own, draw/manufacture a plan.

(5) Be that as it may, the petitioner is entitled to seek regularisation under Section 113-C of the Act, 1971, if the building is completed before the cut off date, namely, 01.07.2007. However, the 1st respondent has rendered a finding that the construction of the petitioner's building commenced and completed only after the cut off date and therefore, the petitioner is not eligible for regularisation under Section 113-C of the Act, 1971. The conclusion of the 1st respondent as to the ineligibility of



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the petitioner to seek regularisation is on the basis of the interpretation of the petitioner's case and not on any report or inspection or other materials that are produced by the petitioner. Without an opportunity being given to the petitioner, this Court is not inclined to close the door for the petitioner who may otherwise be eligible to seek regularisation either in terms of Section 113-C of the Act, 1971, or under any other subsequent relaxation of the Rules.

(6) Except pointing out that the conclusion of the 1st respondent that the petitioner is not eligible for regularisation, is not in accordance with law, this Court is unable to find any ground to interfere with the orders of the 1st respondent. It is open to the petitioner to file a fresh application under Section 113-C of the Act, 1971 or under any other subsequent Building Regulations or concession to regularise the petitioner's building in accordance with law.

(7) In the result, the writ petition stands **disposed of with a direction** to the petitioner to submit a fresh application seeking regularisation of the construction put up by him before the competent authority and shall communicate the same to the 2nd respondent within a period of four weeks



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from the date of receipt of a copy of this order. If such an application

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seeking regularisation is filed/submitted by the petitioner in the manner

indicated above, **the respondents shall not proceed with any**

enforcement action as per the provisions of the Tamil Nadu Town and

Country Planning Act, 1971, till such time the application of the

petitioner is disposed of in accordance with law. No costs.

Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [NSJ]

08.02.2024

AP

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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