



WEB COPY



W.P.No.21638 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.21638 of 2023

R.Muddu Malla Reddy

... Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.The Executive Engineer,
Zone IX,
Corporation of Chennai,
T.Nagar,
Chennai – 17.

3.The Assistant Commissioner,
Zone IX,
Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai – 34.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to initiate action to remove the unauthorized construction put up in the ground floor and the open terrace of Rajathi Apartments, situated at No.10, South Boag Road, T.Nagar, Chennai - 600 017, as contemplated under the Tamil Nadu Town and Country Planning Act, 1971, and the Chennai City Municipal Corporation Act, by considering the representation of the petitioner dated 07.06.2023.

For Petitioner : Mr.K.Selvakumar
For Respondents : Mr.D.B.R.Prabhu
Standing Counsel

ORDER

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

This writ petition is filed by the petitioner for issuance of a Writ of Mandamus directing the respondents to initiate action to remove the unauthorised construction put up in the Ground Floor and the open terrace of Rajathi Apartments, situated at No.10, South Boag Road, T.Nagar, Chennai - 600 017, as contemplated under the Tamil Nadu Town and Country Planning Act, 1971.



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2.The petitioner appears to be a purchaser of Ground Floor of Flat in "Rajathi Apartments" situated at South Boag Road, T.Nagar, Chennai. The grievance of the petitioner is that, after selling the flat which was in accordance with the original approved plan, the promoter has built an additional construction not only in the Ground Floor which was totally reserved for parking, but also in the open terrace. It is the case of the petitioner that approval was originally granted to 18 units in three floors by showing the Ground Floor as area reserved for parking. The petitioner made a representation to initiate action under the provisions of the Tamil Nadu Town and Country Planning Act, 1971, to remove the unauthorised construction.

3.However, it appears that, pursuant to the representation of the petitioner, the respondents have taken action by issuing a De-Occupation Notice. As against the order/notice for De-Occupation, it appears that a revision petition was filed by the owners of individual units as well by the promoter under Section 80A and 80A(3) of the Tamil Nadu Town and



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Country Planning Act, 1971.

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4.Learned counsel appearing for the 1st respondent has produced before this Court the proceedings in Letter No.5379870/UD VI(3)/2023-5, dated 18.12.2023, issued by the Additional Secretary to Government (Technical), Housing and Urban Development Department, Chennai – 9. The Government has passed the said order on appreciation of facts and circumstances brought to its notice. The operative portion of the order passed by the Government in the revision filed by the interested persons reads as under :

“17.After careful examination of the above facts and submission made, the Government hereby setaside the lock and seal notice dated. 17.10.2023 and all other proceedings issued in respect of the building in the said premises. Greater Chennai Corporation is directed to issue a fresh locking and sealing notice stating all the deviations/ violations to the approved plan obtained during 1981. The revision petitioners are granted three months time to obtain revised approval for the existing building satisfying the Tamil Nadu Combined Development and Building Rules, 2019. The application for planning permission shall be submitted jointly by all the



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lawful owners of the building. On expiry of the above said three months time the Greater Chennai Corporation shall proceed with necessary action as per the provisions in Tamil Nadu Town and Country Planning Act, 1971 if the petitioner failed to comply the above directions.

18.All the revision petitions filed under section 80A and 80A(3) of Tamil Nadu Town and Country Planning Act, 1971 stated in para one above are disposed accordingly.”

5.Having regard to the nature of the order passed by the Government and the liberty given to the persons interested, this Court is of the view that the present writ petition cannot be entertained. It is to be noted that the petitioner has not impleaded all the persons who are either the petitioners before the State in the revision petitions under Section 80A or the other owners of the building or the promoter. It is in the said circumstances, while holding that the writ petition itself is liable to be dismissed for non-joinder of necessary parties, this Court is of the view that no order on merits can be passed in view of the nature of order passed by the Government while deciding the revision petition filed by the interested persons.



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6. Therefore, leaving it open to the writ petitioner either to challenge the order, dated 18.12.2023, passed in the revisions filed under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971, or to approach the authorities, who may also hear the writ petitioner and the persons who are interested, this writ petition is dismissed. No costs.

(S.S.S.R., J.) (N.S., J.)
02.01.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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