



W.P.No.29002/2019

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.29002/2019 & WMP.No.28770/2019

S.Pradeep Cholayil

... Petitioner

Vs.

1.The Secretary

Housing & Urban Development
Department, Government of Tamil Nadu
Secretariat, Fort St George
Chennai 600 009.

2.The Member Secretary

Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai
Gandhi Irwin Road, Egmore
Chennai 600 008.

3.The Commissioner

Greater Chennai Corporation
Ripon Buildings, Chennai 600 003.

4.N.Praveena

... Respondents



W.P.No.29002/2019

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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records pertaining to Letter No.13756/UD-VI[2]/2019-2 dated 13.09.2019 of the 1st respondent and quash the same.

For Petitioner	: Mr.A.L.Somayaji, Senior counsel for Mr.S.Shyam Kumar
For R1	: Mr.L.S.M.Hasan Fizal Additional Government Pleader
For R2	: M/s.Veena Suresh
For R3	: Mr.D.B.R.Prabhu 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 to quash the order of the 1st respondent dated 13.09.2019, whereby the statutory appeal preferred by the petitioner under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971, has been rejected.



W.P.No.29002/2019

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

(3) The petitioner purchased a fully constructed commercial area in the Ground Floor measuring about 2150 sq.ft., of a building in the year 2017. It is the case of the petitioner that on 19.04.1995, the vendor of the petitioner obtained Planning Permission from the 2nd respondent and also obtained Building Permission from the 3rd respondent to put up stilt + 3 Floors. It is also the case of the petitioner that his vendor submitted an application for regularization with the 2nd respondent for the entire building. The 2nd respondent considered the application of the vendor of the petitioner for regularization and it is stated by the petitioner that the regularization application was also accepted subject to payment of Rs.2,07,485/- towards development charges, which according to the petitioner, was paid by his vendor. It is also stated that the petitioner's vendor had remitted the Scrutiny Fee and submitted a revised plan. It was thereafter, the petitioner had purchased the property by a Sale Deed dated 10.11.2017. When the subsequent application for regularization was pending, it appears that the petitioner was directed to produce the



W.P.No.29002/2019

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approved Plan. It is the further case of the petitioner that on 19.12.2018, he submitted a reply to the notice issued by the 2nd respondent calling upon the petitioner to submit the approved Plan. Following this notice and reply, the 2nd respondent passed an order, directing locking, sealing and demolishing the building. The grievance of the petitioner is that the application of the petitioner's vendor for regularization as well as the reply of the petitioner to the notice, were not considered by the 2nd respondent. It is in the above circumstances, the petitioner appears to have filed a statutory appeal before the Government challenging the order stated to have been passed under Sections 56[2][iii] and 2[a] of the Tamil Nadu Town and Country Planning Act, 1971 [hereinafter referred to as 'the Act, 1971']. When the appeal under Section 80-A of the Act, 1971, was filed, the petitioner also filed an application for stay on 28.06.2019. Apprehending that the respondents may take coercive action during the pendency of the application for stay, the petitioner earlier filed a writ petition in WP.No.20842/2019 for issuance of a writ of mandamus forbearing the 2nd respondent therein from in any way interfering with the building by way of locking or sealing or by demolition, pending final



W.P.No.29002/2019

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order being passed in the statutory appeal preferred by the petitioner under Section 80-A of the Act, 1971. This Court, vide order dated 16.07.2019, disposed of the writ petition by directing the 1st respondent therein/Government to dispose of the stay application within a period of ten days from the date of receipt of a copy of that order. Pursuant to the direction of this Court in the said writ petition, the 1st respondent passed the present impugned order dated 13.09.2019 rejecting the statutory appeal filed by the petitioner under Section 80-A of the Act, 1971. Aggrieved by the same, the petitioner is before this Court by filing the present writ petition.

(4) Mr. A.L. Somayaji, learned Senior counsel appearing on behalf of the petitioner made the following submissions:-

- The impugned order passed by the 1st respondent is not on merits and that the petitioner has not been given sufficient opportunity to put forth his case. Pointing out that a request was made on behalf of the petitioner for an adjournment, the learned Senior Counsel submitted that the petitioner's appeal was rejected without even hearing the petitioner.



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W.P.No.29002/2019

- The regularization application submitted by the petitioner earlier pertaining to the property, is pending before the 2nd respondent and that, any coercive action without even considering the eligibility of the petitioner to go for regularization, will be against the settled principles of law.
- The scheme for regularization has been announced by the Government of Tamil Nadu from time to time and with the modified scheme and taking into account the further developments, the petitioner is entitled to some benefits by way of regularization, which the respondents ought to have considered before rejecting the appeal filed by the petitioner.
- Learned Senior Counsel pointed out from the counter affidavit of 1st respondent about the pendency of regularization application with revised plan before CMDA and the serious violations. The 2nd respondent in the counter, referred to several documents to be submitted by petitioner to regularize the construction and about the requirement to remit regularization fee.



W.P.No.29002/2019

WEB COPY

(5) We heard the submissions of the learned Additional Government Pleader appearing for the 1st respondent and the respective learned Standing counsels appearing for respondents 2 and 3 and also perused the materials placed.

(6) This Court, considering the facts and circumstances of the case, is of the view that the Impugned Order is in violation of principles of natural justice inasmuch as the petitioner has not even been heard on merits. Further, the application for regularization ought to have been considered before the appeal was considered and disposed of on merits. When this Court earlier directed the 1st respondent to consider the application for grant of stay, it would have been appropriate for the 1st respondent to preserve status quo till the statutory appeal is considered on merits and that, in the meanwhile, directed the 2nd respondent to consider the regularization application which is also pending. Since the Impugned Order will cause irreparable injury/hardship to the petitioner in case the order of demolition is implemented even before considering the application for regularization, this Court is of the view that the Impugned Order is liable to be set aside.



W.P.No.29002/2019

WEB COPY

(7) Accordingly, the writ petition stands **allowed** and this Court is inclined to pass the following directions:-

- (a) The **Impugned Order** dated 13.09.2019 passed by the 1st respondent vide Letter No.13756/UD-VI[2]/2019-2 is hereby **set aside** and the matter is remitted to the 1st respondent for fresh consideration.
- (b) The respondents are directed to maintain **status quo** till such time the statutory appeal filed by the petitioner under Section 80-A of the Act, 1971, is reconsidered and decided/disposed of on merits after hearing the petitioner.
- (c) The 2nd respondent shall pass appropriate orders on the application for regularization submitted by the petitioner on merits and in accordance with law within a period of **twelve weeks** from the date of receipt of a copy of this order.
- (d) It is open to the 2nd respondent to require production of relevant documents and remittal of necessary regularization fee.
- (e) After the 2nd respondent pass final order on the regularization application, the 1st respondent shall consider the statutory appeal filed by the petitioner under Section 80-A of the Act, 1971, within a



W.P.No.29002/2019

*further period of **six weeks** thereafter.*

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(f) It is also open to the respondents to take into account the subsequent Government Orders or the Circulars enlarging the scope of regularization before passing final order in the statutory appeal. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S, J.]
02.01.2024

AP

Internet : Yes

To

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W.P.No.29002/2019

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