



W.P.No. 30322 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 15.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

And

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 30322 of 2019

and

WMP.Nos.30314 & 30315 of 2019

1.G. Jayanthi

2.N. Ganeshkumar

...Petitioners

Versus

1. The Secretary to Government
Housing and Urban Development Department
Fort George, Chennai - 600 009.

2. The Commissioner
Corporation of Chennai
Park Town, Chennai.

3. The Member Secretary,
Chennai Metropolitan Development Authority
Thalaimuthu Natarajan Maligai
No.11, Gandhi Irwin Road, Chennai.



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4.The Regional Deputy Commissioner (South)
Enforcement Cell
Adyar, Chennai - 600 020.

5.The Executive Engineer-I,
Zone - 13, Greater Chennai Corporation, Adyar
Chennai - 600 020.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India prays to issue Writ of Certiorarified Mandamus, to call for the 5th respondent de-occupation Notice No.5634 issued on 04.10.2019 under Section 56, 2(A) & 57 read with Section 85 of Town and Country Planning Act, 1971, to the petitioner property situated at Shop No. 13, Guru Complex, Plot No. B9/A2, 2nd Main Road, Survey No.216, PT, Thiruvalluvar Nagar, Thiruvannamipur, Chennai-600 041, to quash the same and to direct the 1st respondent to process the application dated 28.09.2019 submitted under Section 113-C within the time frame fixed by this Court.

For Petitioner	:	Mr.T.C. Gopalakrishnan
For R1	:	Mrs.V.Yamuna Devi Special Government Pleader
For R3	:	Mr.Y.Bhuvanesh Kumar Senior Counsel
For RR2, 4 & 5	:	Mr.D.B.R. Prabhu Senior Counsel



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ORDER

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

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to quash the order passed by the 5th respondent who issued de-occupation Notice No. 5634 dated 04.10.2019 and to direct the 1st respondent to process the petitioners application under Section 113-C of the Tamil Nadu Town and Country Planning Act, dated 28.09.2019.

2. The petitioner's state that they purchased Shop Nos.F3, F4, measuring about 1426 sq.ft., situated at Plot No. B9-A2 in the first floor, 1st Main Road, Thiruvalluvar Nagar, Thiruvannamiyur, Chennai-600 041. The properties purchased by the petitioners were duly registered and they are in possession and enjoyment of the properties by paying statutory dues to the concerned authorities. The petitioners further state that they are running a small petty shop and selling tea and cool drinks with a valid licences from the local body. The petitioners also state that the entire building with the first floor is as



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per the sanction issued by the second respondent. It is stated that the petitioners have purchased the commercial shops which are in the first floor and the approval for commercial shop was already obtained. It is seen that the petitioners have not produced any planning approval or any other document to show that the entire shops that were purchased by the petitioners are in accordance with the approved plan.

3. It is admitted that the second respondent issued the impugned lock and seal and demolition notice dated 06.01.2016 noting down several deviations and violations building regulations in the whole building. After the said notice issued by the second respondent, the same has been challenged by filing a revision under Section 80-A of the Tamil Nadu Town and Country Planning Act, by the vendor of the petitioners. The first respondent rejected the revision petition by order dated 13.07.2016. It was thereafter, the petitioners have submitted an application for regularization in terms of Section 113-C of the Tamil Nadu Town and Country Planning Act, by paying necessary fees.



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4. The 5th respondent has now issued the impugned de-occupation

Notice No. 5634 dated 04.10.2019 under Section 56, 2-A & 57 read with

Section 85 of the Tamil Nadu Town and Country Planning Act, 1971.

Challenging the order under Section 57 to rectify the deviation in the premises,

the above writ petition is filed.

5. The learned counsel for the petitioners is not able to demonstrate

before this Court as to how the petitioners' construction is authorized.

However, the petitioners refer to the application submitted by them for

regularization of the building in question in terms of Section 113-C of the Tamil

Nadu Town and Country Planning Act. If the petitioners have filed an

application for regularization of construction and the regularization of the

building is permissible in accordance with law, the petitioners may be safe and

at least some portion of the building could be saved from demolition by

showing the regularization order. In this case, the respondents have not denied

the pendency of the application for regularization. This Court has verified the



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materials produced before this Court and finds that the building is unauthorized,

and not in accordance with the approved plan, and hence, this Court passes the

following order:-

(a) The 3rd respondent/CMDA is directed to consider the application for regularization submitted by the petitioner in respect of the premises in question which is located in the first floor in Door Nos. F3 and F4 in Guru Complex, First Floor, 1st Main Road, Thiruvalluvar Nagar, Thiruvananthapuram, Chennai - 600 041.

(b) The third respondent is further directed to consider the said application within a period of 12 weeks from the date of receipt of a copy of this order, after hearing the petitioner and giving him an opportunity of hearing to the petitioner herein.

(c) Till such time, the regularization application stated to have been filed by the petitioner is disposed of on merits, the impugned de-occupation notice shall be kept in abeyance.

(d) Depending upon the outcome of the regularization application stated to have been filed by the petitioner, the respondents shall drop or take enforcement action against the petitioner in terms of the impugned order.



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(e) It is also open to the petitioner to challenge the order that would be passed by the third respondent/CMDA in case any adverse order is passed.

6. It is also represented by the learned counsel appearing for the third respondent/CMDA that the regularization application filed by the petitioners in terms of Section 113-C of the Town and Country Planning Act, would be subject to the outcome of the appeal that is pending before the Hon'ble Supreme Court regarding the validity of Government order specifying the manner of regularization. The statement of the learned counsel for CMDA is recorded.

7. The Writ Petition is disposed of accordingly. No costs.
Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J] [N.S., J]
15.02.20 24

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
MSM



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