



W.P.No. 29938 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

And

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 29938 of 2019

C. Kartheesan

...Petitioner

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 Certiorari Mandamus, to call for the 5th respondent issued de-occupation notice No. 5634 dated 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, Thiruvanmiyur, Chennai - 600 041, to quash the same and to direct the 1st respondent to process the petitioner application under Section 113-C dated 21.12.2017 within the time frame fixed by this Court.

For Petitioner : Mr.T.C. Gopalakrishnan



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For Mr.Venkataramani,
Senior Counsel

For R1 : Mrs.V.Yamuna Devi
Special Government Pleader

For RR2, 4 and 5 : Mr.D.B.R. Prabhu
Senior Counsel

For R3 : Mr.Y.Bhuvanesh Kumar
Senior Counsel

ORDER

[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 petitioner's application under Section 113-C of the Tamil Nadu Town and Country Planning Act, dated 21.12.2017.

2. The petitioner states that he purchased Shop No.13,



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measuring about 389 sq.ft., situated at Door No. B9-A2 in Guru Complex in the first floor, at Thiruvalluvar Nagar, Thiruvannamipur, Chennai - 600 041. The property purchased by the petitioner was duly registered and he is in possession and enjoyment of the property by paying statutory dues to the concerned authorities. The petitioner further states that he is running a small petty shop and selling tea and cool drinks with a valid licences from the local body. The petitioner also states that the entire building with the first floor is as per the sanction issued by the second respondent. It is stated that the petitioner has purchased the commercial shop which is in the first floor and the approval for commercial shop was already obtained. It is seen that the petitioner has not produced any planning approval or any other document to show that the entire shop that was purchased by the petitioner is in accordance with the approved plan.

3. It is admitted that the second respondent issued the



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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 petitioner. The first respondent rejected the revision petition by order dated 13.07.2016. It was thereafter, the petitioner has submitted an application for regularization in terms of Section 113-C of the Tamil Nadu Town and Country Planning Act, by paying necessary fees.

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.



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5. The learned counsel for the petitioner is not able to demonstrate before this Court as to how the petitioner's construction is authorized. However, the petitioner refers to the application submitted by him for regularization of the building in question in terms of Section 113-C of the Tamil Nadu Town and Country Planning Act. If the petitioner has filed an application for regularization of construction and the regularization of the building is permissible in accordance with law, the petitioner 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 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:-



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(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 No. B9-A2 in Guru Complex at 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 petitioner 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.



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

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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

MSM

To

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2. The Commissioner

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