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W.P.Nos.31064 & 31067 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.Nos.31064 and 31067 of 2022

and

W.M.P. No.30480 of 2022 in W.P. No.31064 of 2022

and

W.M.P. No.30485 of 2022 in W.P. No.31067 of 2022

U.H.Shahani

... Petitioner in
W.P. No.31064 of 2022

M/s.NUVED rep. By its Proprietor
Mr.Cawas Erach Mistry

... Petitioner in
W.P. No.31067 of 2022

Vs.

The Member Secretary,
Chennai Metropolitan Development
Authority, Chennai – 600 008.

... Respondent in both W.Ps

Prayer in W.P.No.31064 of 2022: Writ Petition filed under

Article 226 of The Constitution of India praying to issue a Writ of
Certiorari to call for the records on the file of the respondent herein

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pursuant to the impugned notice in Letter No.EC/N-I/8283/2019 dated 14.11.2022 and quash the same as illegal.

Prayer in W.P.No.31067 of 2022:

Writ Petition filed under

Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein pursuant to the impugned notice in Letter No.EC/N-I/8283/2019 dated 14.11.2022 and quash the same as illegal and further to direct the respondent not to disturb the business of the petitioner in the basement and ground floor premises at No.29, Balfour Road, Kellys, Kilpauk, Chennai – 600 010, considering the Fire Service License issued by the Tamil Nadu Fire and Rescue Services Department dated 27.07.2022.

For Petitioner : Mr.R.Swarnavel
in both WPs

For Respondent : Ms.P.Veena Suresh,
Standing Counsel
in both WPs



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COMMON ORDER

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

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This common order will govern captioned two 'Writ Petitions' ('WPs' in plural and 'WP' in singular for the sake of brevity) and captioned two 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of brevity) thereat. To be noted, Mr.R.Swarnavel, learned counsel for writ petitioner and Ms.P.Veena Suresh, learned standing counsel for sole respondent (CMDA) in both WPs are before us and both counsel submit that the facts in both WPs are similar.

2. A notice dated 14.11.2022 bearing reference Letter No.EC/N-I/8283/2019 captioned 'De-Occupation Notice' issued by the respondent to the writ petitioners (to be noted, writ petitioner in W.P. No.31064 of 2022 as well as writ petitioner in W.P.No.31067 of 2022 are noticees) has been assailed in the captioned two WPs. To be noted, this '14.11.2022 notice' shall be referred to as 'impugned notice' and a scanned reproduction of one of the impugned notices {to be noted, as 'impugned notice' is same in all respects scanned reproduction of one



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of the impugned notices will suffice} is as follows:

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CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY
Thalambattu Natarajao Building, No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008
Phone : 28414855 Fax: 91-044-28548416

DE-OCCUPATION NOTICE

NOTICE Under Section-56 (2) Sub-Clause (ii) and (2A) of Town and Country Planning Act.1971 requiring discontinuation of the usage of unauthorized building and to restore the land to its original condition under section 49 of the said Act.

Letter No. EC/N-1/8283/2019 **Dated: 14.11.2022**

Sir / Madam,

Sub: CMDA - Enforcement Cell (North-I) - Unauthorized / Deviated construction of Basement Floor + Ground Floor + Mezzanine Floor + 3 Floors Commercial cum Residential building (BF & GF part - Office and storage yard for consumer products, GF part & MF - Shops and 1st, 2nd & 3rd Floors - 12 Dwelling units - 4 houses in every floor) at Old Door No.29, New Door No.20, Balfour Road, Kellys, Kilpauk, Chennai - 600 010 - Locking & Sealing and Demolition Notice already issued - De-occupation Notice for the commercial portion of the building - Issued - Reg.

Ref: 1. Hon'ble High Court Order dated 19.01.2017 in W.P.No.16004/2015 and 23083, 26339 & 12117 of 2014.
2. Regularization Application No.7532.
3. Regularization Application rejected in CMDA letter No.C6/46031/2000.
4. Locking & Sealing and Demolition Notice issued in letter No.EC/C-1/4741/2017 dated 11.04.2017.
5. Show Cause Notice issued in letter even No. dated 31.05.2019.
6. Your letter dated 29.08.2019.
7. The Director, Fire & Rescue Services Department letter R.C.No.12801/C1/2022 dated 07.10.2022.

Kind attention is invited to the references cited.

2. Your application for regularization of unauthorised / deviated construction of Basement Floor + Ground Floor + Mezzanine Floor + 3 Floors Commercial cum Residential building (BF & GF part - Office and storage yard for consumer products, GF part & MF - Shops and 1st, 2nd & 3rd Floors - 12 Dwelling units - 4 houses in every floor) at Old Door No.29, New Door No.20, Balfour Road, Kellys, Kilpauk, Chennai - 600 010 was rejected by CMDA in the reference 3rd cited for non-compliance of the rules prescribed in the Application, Assessment and Collection of Regularization Fee (Chennai Metropolitan Area) Rules, 1999.

3. In the reference 4th cited, CMDA issued Locking & Sealing and Demolition Notice as the building under reference to be complied with fire safety provision to the satisfaction of DF&RS and to furnish NOC from DF&RS within the time stipulated in the Notice.

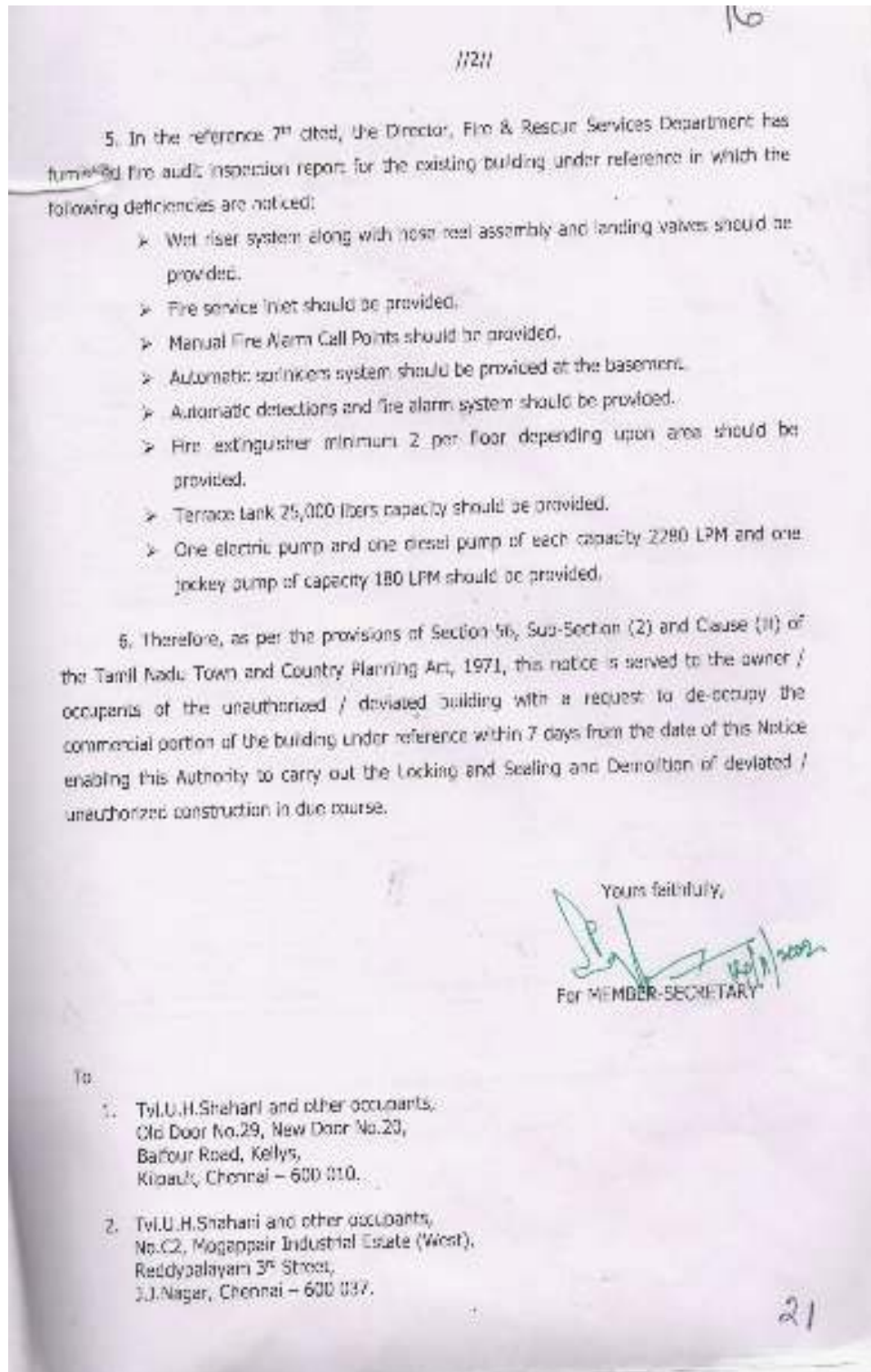
4. Since there is no response from you, CMDA issued Show Cause Notice calling upon you to explain the action taken on the LSD Notice issued earlier in the reference 5th cited.



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3. We are on the simple point of alternate remedy. Therefore, without dilating on facts, we make it clear that we are acutely conscious that alternate remedy is not a bar for exercise of power under Article 226 of the Constitution of India but it is a self imposed restraint. In the case on hand, we find that it is a fit case to relegate the writ petitioner to alternate remedy as factual disputations and contestations which may be difficult to decide on the basis of affidavits and counter affidavits erupt in writ petitioners' campaign against impugned notice.

4. Reverting to captioned matters on hand, as would be evident from the impugned notices (to be noted 'notices dated 14.11.2022 bearing reference Letter No.EC/N-I/8283/2019 scanned and reproduced supra' are being referred to as 'impugned notices' as already alluded to supra), the concluding paragraph i.e., paragraph 6 makes it clear that impugned notices have been made by the respondent under Section 56(2)(iii) of 'The Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972)' (hereinafter 'said Act' for the sake of convenience and clarity).



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5. Immediately below the caption, there is a reference to notice under Sections 56(2)(iii) and (2A) of said Act but the impugned notices have been made under Section 56(2)(iii) as would be evident from the concluding paragraph.

6. From the scheme of the statute qua said Act, it is clear that no appeal or revision or review to the Director or the Tribunal or the District Court has been provided (qua impugned notices) vide Sections 76 to 78 and 81. This takes us to Section 80 which provides for revision.

7. As the notices which have culminated in the impugned notices appear to make a reference to Section 56(2A) of said Act, it may be necessary to mention Section 80-A of the said Act which is captioned 'Special Powers of Government'.

8. Be that as it may, there is no dispute or contestation as between the two counsel before us that either revision under Section



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80 or an application under Section 80-A of said Act will certainly lie qua impugned notices of sole respondent. This means that an effective alternate remedy is available and as already alluded to supra, the captioned matters turn heavily on factual disputations which may be very difficult to decide on affidavits and counter affidavits. Therefore, without expressing any view or opinion on the merits of the matter, we relegate the writ petitioners to the alternate remedy of either revision under Section 80 of said Act or an application under Section 80-A to the Government qua impugned notices. If the writ petitioners chose to take the alternate remedy route, the authority concerned shall consider the revision or the application as the case may be on its own merits and in accordance with law dehors this order or in other words untrammelled by this order. Limitation periods have been prescribed for revision under Section 80 as well as application under Section 80-A and therefore it is open to the writ petitioners to seek exclusion of time spent in the captioned writ petitions in this Court by resorting to Section 14 of The Limitation Act, 1963 and if such a plea is made, we make it clear that it is equally open to the authority concerned to consider the same also on its own merits and in accordance with law but we hasten to add that we are not expressing



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any view or opinion on this aspect also.

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9. Ergo, the sequitur, is captioned WPs are disposed of as closed. Consequently, captioned WMPs are also disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
23.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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P.S.: *After the order was dictated, Mr.R.Swarnavel, learned counsel on record for petitioner requested for return of the original impugned notices so as to enable the writ petitioners to pursue alternate remedy. Registry to return the impugned notices to the counsel on record for the writ petitioners forthwith albeit under due acknowledgment.*

To

The Member Secretary,
Chennai Metropolitan Development
Authority, Chennai – 600 008.

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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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