



W.P(MD)No.5767 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5767 of 2024

Manjukunvar Durgsingh

... Petitioner

Vs.

1.The Commissioner,
Tiruchirappalli City Corporation,
Tiruchirappalli – 620001.

2.Assistant Commissioner,
Mandalam-II,
Tiruchirappalli City Corporation,
Tiruchirappalli-620001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent herein to consider the petitioner's representation dated 22.07.2022 to unseal and unlock the petitioner's building.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by
M/s.R.B.Law Associates for R1 & R2



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ORDER

Heard both sides.

2. The petitioner had purchased the petition mentioned property on 23.06.2022. It is a house property. It is located in a continuous building area. It appears that the petitioner's vendor had committed some illegality. That is why, the property was locked and sealed. The petitioner wants this Court to direct the respondents to remove the lock and seal. Such a blanket direction cannot be issued. All that the Court can do is to permit the petitioner to approach the first respondent for carrying out the rectification measures. In other words, illegality earlier committed cannot be regularised. Instead, the property can be altered in a manner so as to comply with the legal position that originally obtained.

3. The learned Additional Advocate General appearing for Trichy Corporation submits that alteration must be in consonance with the Tamil Nadu combined Development and Building Rules, 2019. I am of the view that an existing construction cannot be directed to fall in line with the newly promulgated rule. The petitioner thus has two options before her. Either she opts for the position that prevailed originally in which case she cannot carry out any development activity. She can only ask for restoration of the original



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position that obtained earlier. In the alternative, she can apply for alteration as per new Rules.

4. The petitioner is permitted to submit proper application before the first respondent. When it is received, the first respondent is directed to enquire into the same and pass final order on merits and in accordance with law within a period of eight weeks thereafter. My attention is drawn to the order dated 24.06.2022 in W.P.(MD)No.19522 of 2021 filed by the group of residents against the Trichy Corporation. On 24.06.2022, the following order was passed:-

“5. The primary contention of the learned counsel appearing for the petitioners is that the building is being put up in a continuous building area and therefore, it is not necessary to leave any side set back. The learned counsel appearing for the impleaded respondents would contend that till date no such declaration has been made. Since such a stand was earlier taken, this Court directed the authorities to make an inspection. The learned Additional Advocate General appearing for the corporation submitted that pursuant to the said direction given by this Court, inspection was conducted and it was found that the area in question deserves to be declared as a continuous building area. In fact the local body proposes to make recommendation in that regard.

6. Rule 30(1) of Tamil Nadu Combined Development and Building Rules 2019 is as follows:-



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“ 30. Area of special character.—

(1) Continuous Building Areas (CBA).— Buildings without side set back are permissible in a plot or site in continuous building areas set apart in the approved Master Plan or Detailed Development Plan or in the other areas as may be declared by the local body as CBA with the approval of the Directorate of Town and Country Planning or Government as the case may be from time to time. However in an approved layout area only in the plots classified for continuous type of buildings it is permissible. ”

7. This issue need not be put on hold till the council meeting is convened. The commissioner is the executive authority. The Commissioner is directed to forward the proposal to the Director of Town and Country Planning and after getting his approval, the area in question shall be declared as a continuous building area. The Commissioner, Trichy Municipal Corporation shall forward the proposal to the Director of Town and Country Planning within a period of two weeks from the date of receipt of a copy of this order. The Director of Town and Country Planning shall take a call on the proposal of the local body within a period of three weeks thereafter. Once the area in question is declared as continuous building area, the ground set out in the impugned communication will automatically go. This writ petition stands disposed of with the aforesaid direction.

8. It is needless to add that after the area in question is declared as a continuous building area, the petitioners' application for revised plan shall be disposed of on merits and in accordance with law as expeditiously as possible. I make it clear that there is no restriction for the petitioners to complete the construction to the extent it conforms to the original building plan. The petitioners' counsel categorically states before this Court that no aerial encroachment on the land of the impleaded respondents will be committed. The said undertaking is recorded.”



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5. The Secretary to Government, Municipal Administration and Water Supply Department, Government of Tamil Nadu, Chennai is directed to pass final order on the proposal submitted by the Trichy Corporation and the local planning authority within a period of twelve weeks from the date of receipt of a copy of this order in the meanwhile.

6. The Writ Petition is disposed of. No costs.

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