

GOVERNMENT OF MADRAS  
HEALTH DEPARTMENT

G.O.MS. NO.3125, HEALTH, DATED 20TH AUGUST 1953.

Abstract.

BUILDINGS - Unauthorised constructions etc., Demolition -  
Issue of Stay - Clarification of certain points - Orders passed  
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READ:--

- G.O.No.3211, Health, dated 13-9-1950.  
G.O.No.2652, Health, dated 14-8-1952.  
From the Commissioner, Madurai Municipality, K7-76648-50  
Dated 21-3-1951.  
From the Inspector of Municipal Councils and Local  
Boards, L.Dis.52226-51 dated 23-1-1952.  
From the Director of Town Planning, Rc.No.558-51  
dated 12th April 1952.  
From the Director of Town Planning, Roc.No.1522/52-A4  
dated 8th June 1953.

ORDER:--

The Director of Town Planning in his Circular No. D.Dis.BA.No.467/45 dated 18th October 1945, issued detailed instructions to the Executive Authorities of Municipalities and Panchayats in regard to the entertainment of appeals relating to the construction of buildings and demolition of unauthorised constructions. With reference to paragraphs 8 to 10 of these instructions and the orders issued in G.O.No. 3211, Health, dated 13th September 1950, the following points have been raised for clarification.

1). Whether demolition proceedings have to be stayed by the Executive Authority concerned till orders are passed on an appeal preferred by the aggrieved party, or whether the demolition can be proceeded with pending orders on the appeal -

- i) In cases where the owner prefers an appeal to the Municipal Council;
- ii) in cases where an appeal is preferred to the Director of Town Planning either through the Executive Authority or the Council; and
- iii) in cases where an appeal to the Government against the orders of the Director of Town Planning or a review petition to the Director of Town Planning is preferred and where no stay orders are issued by the Government or the Director of Town Planning;-

2). Whether demolition can be proceeded with in the absence of stay orders from the appellate authority; and

3). Whether the entire construction can be demolished or only the construction done after the issue of notice.

2. The Government have carefully examined the above points and they issue the following orders on them -

Point 1(i). There is no provision in the Madras District Municipalities Act for preferring an appeal to the Municipal Council against an order of the Executive Authority directing the demolition of a building under sections 338 to 340 of the Act. Proceedings under these sections would commence only after the issue of a notice under section 216 of the Madras District Municipalities Act and its subsequent confirmation under the same section. While an appeal would lie to the Municipal Council on an order issued by the executive authority under section 216, no appeal would lie on an enforcing order under sections 338 or 339 of the Act. It will not be, therefore, right on the part of the executive authority to stay the demolition proceedings

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instituted by him on the mere ground that an appeal petition has been preferred to the Council.

Points 1(ii) and (iii):-

There is no provision for preferring an appeal as such either to the Government or to the Director of Town Planning. Rule 15 of the Building Rules enables the Government either suo motu or on an application to exempt any building from the operation of all or any of the provisions of those rules and this power has been delegated to the Director of Town Planning. The question, therefore, of the Government or the Director of Town Planning granting a stay order does not in fact arise. If a person to whom a notice of demolition has been issued does not produce any exemption order from the Government or the Director of Town Planning according to which the construction may be permitted to remain, before the time specified in the notice to show cause why the construction should not be demolished, the executive authority will have to enforce his order. If an aggrieved person moves the Government or the Director of Town Planning to grant exemption from all or any of the provisions of the Buildings Rules and intimates the executive authority of the fact of having done so, the executive authority should stay demolition in respect of the cases referred to in points 1(ii) and 1(iii) pending receipt of the orders of the competent authority on application for exemption. In cases where such an application has been preferred while demolition proceedings have already been instituted, and if the party under the cover of such an application prefers to proceed with the construction or reconstruction as the case may be unauthorisedly, such unauthorised further construction should be stopped and the executive authority should carry out the demolition proceedings to the extent of the construction made by the party in addition to what he had already done prior to preferring the appeal. Action taken in such cases should be only to maintain the status quo till such time as the application for exemption has been disposed of by the competent authority. Though the above procedure is not warranted by the rules, the Government have considered that this course of action should be adopted as a matter of administrative practice in order to mitigate hardship in deserving cases.

Point (2):-

Neither the Madras District Municipalities Act, nor the Building Rules contemplate the issue of stay orders by the Government or the Director of Town Planning after the executive authority issues his order under section 339 directing the demolition of an unauthorised construction.

Point (3):-

Section 216(1) of the Madras ~~Municipalities~~ District Municipalities Act lays down that an executive authority may make an order requiring the owner or the builder to demolish the work done, or so much of it as in the opinion of the executive authority has been unlawfully executed, or to make such alterations, as may in the opinion of the executive authority be necessary to bring the work into conformity with the provisions of the Act, by-laws or rules or with the plans and particulars on which permission was accorded or the order of the council was based. No further clarification of the point is considered necessary.

3. Apart from the clarification of the points raised above, the following instructions are also issued for the guidance of Municipal councils -

Several instances have been brought to the notice of the Director of Town Planning and the Government wherein municipal councils had interfered with the orders of the executive authorities refusing permission to build for want of compliance with some rule or other of the Building Rules and granted permission of their own accord on the plea that the Council's decision on appeal under section 322 of the Act was final. In such cases the Government had either to cancel the resolutions passed by the Municipal Councils or to issue directions to the concerned Municipal Councils to revoke the resolutions by fresh resolutions so as to set right the position and make it conform to the provisions of the Act. The Municipal Councils should observe the provisions of section 192, of the Madras District Municipalities Act which specifies that no piece of land should be used as a site for the construction of a building and that no building shall be constructed or reconstructed otherwise than in accordance with the provisions of that part of the Act and any rules made under the Act relating to the use of building sites or construction or reconstruction of buildings. This particular provision of the Act imposes certain restrictions on the exercise of discretionary powers of local authorities. The Municipal Councils are not empowered even on appeals to grant a permission which will be contrary to the provisions of any rules made under Chapter X of the Act. The power to relax such rules is vested only in the Government and the Director of Town Planning to whom the power has been delegated by the Government. The appellate powers vested in Municipal Councils by Section 322 of the Act do not relate to the matters covered by section 192 of the Act. The Municipal Councils should, therefore, refrain from unnecessarily interfering with the orders of the executive authorities legally passed by them under section 192 of the Act or the rules framed thereunder. Their attention is also invited in this connection, to the orders issued in G.O.No.2652, Health, Dated 18th August 1952.

/By Order of the Governor of Madras/

S.A. Subban,  
Deputy Secretary to Government.

To the executive Authorities of all Municipalities  
(through the Chairmen, Municipal Councils concerned).

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No.

Municipal Office, Coimbatore  
Dated 24-9-1953

Copy communicated to Town Planning Officer, all Building Inspectors and H-1 to H-7 for information and necessary action.

(Sd.) T.A. Narasa Reddy,  
Commissioner.

/True copy forwarded By Order/

*T.A. Narasa Reddy*  
M a n a g e r.

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