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GOVERNMENT OF TAMIL NADU
2008

[Regd. No. TN/CCN/117/2006-08.
[Price: Rs. 3.20 Paise.



TAMIL NADU GOVERNMENT GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 229]

CHENNAI, SUNDAY, JULY 27, 2008
Aadi 12, Thiruvalluvar Aandu-2039

Part IV—Section 2

Tamil Nadu Acts and Ordinances

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ORDINANCE :

No. 4 of 2008—The Tamil Nadu Laws (Special Provisions)
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AND WHEREAS, in the Special Leave Petitions filed before the Supreme Court of India against the above Judgement of High Court of Madras, quashing the above said Tamil Nadu Ordinance 1 of 2007 and the said Tamil Nadu Act 39 of 2007, the Supreme Court has ordered that *status quo* as on 14-12-2007 shall be maintained until further orders and the petitioners shall not pass any order of regularization in the meantime;

AND WHEREAS, the validity of the said Tamil Nadu Act 39 of 2007 is pending before the Supreme Court of India and the said Tamil Nadu Act 39 of 2007 will cease to operate from the 27th day of July 2008.

AND WHEREAS, there is a need to make provisions to deal with deviations which may be marginal or gross in nature in a balanced and just manner without compromise on the safety and transport mobility but at the same time keeping in view the spirit and text of judicial pronouncements;

AND WHEREAS, the modern requirements of fire safety precautions in commercial and shopping centers should be gone through thoroughly evolving a safety measure and to make provisions to empower the planning authority suitably;

AND WHEREAS, the committee headed by the retired Supreme Court Judge sought for more time for submitting report and the Government will require more time to consider the report of the retired Supreme Court Judge and there is an urgent need for deferring enforcement action against unauthorized buildings;

AND WHEREAS, the purpose and objective of the Tamil Nadu Laws (Special Provisions) Act, 2007 has not been subserved and it is expedient to have a law to provide temporary relief to the people of Chennai Metropolitan Planning Area against such action for a period up to 26th July, 2009 within which various issues referred to above to be finalized;

AND WHEREAS, it is expedient to have a law for a period of one year to provide temporary relief and to minimise hardships and irreparable loss to a large number of people including small traders;

AND WHEREAS, the Legislative Assembly of the State is not in session and the Governor of Tamil Nadu is satisfied that circumstances exist which render it necessary for him to take immediate action for the purposes hereinafter appearing;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor hereby promulgates the following Ordinance:—

1. (1) This Ordinance may be called the Tamil Nadu Laws (Special Provisions) Ordinance, 2008.

(2) It extends to the Chennai Metropolitan Planning Area.

(3) It shall come into force at once.

(4) It shall cease to have effect on the expiry of one year from the date of its commencement, except as respects things done or omitted to be done before such cesser, and upon such cesser section 8 of the Tamil Nadu General Clauses Act, 1891, shall apply as if this Ordinance had then been repealed by a Tamil Nadu Act.

Short title,
extent and
commence-
ment.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

- (a) “building rules, regulations and bye-laws” means rules, regulations and bye-laws made under the Chennai City Municipal Corporation Act, 1919, the Tamil Nadu District Municipalities Act, 1920 and the Tamil Nadu Panchayats Act, 1994 as the case may be, relating to buildings; Tamil Nadu Act IV of 1919.
Tamil Nadu Act V of 1920.
Tamil Nadu Act 21 of 1994.
- (b) “Chennai Metropolitan Planning Area” means the Chennai Metropolitan Planning Area specified under clause (23-a) of section 2 of the Tamil Nadu Town and Country Planning Act, 1971; Tamil Nadu Act 35 of 1972.
- (c) “detailed development plan” means a detailed development plan approved under the Tamil Nadu Town and Country Planning Act, 1971, in respect of any area covered under the Chennai Metropolitan Planning Area; Tamil Nadu Act 35 of 1972.
- (d) “Development Control Rules” means the Development Control Rules for Chennai Metropolitan Planning Area;
- (e) “Government” means the State Government;
- (f) “local authority” means the Chennai City Municipal Corporation established under the Chennai City Municipal Corporation Act, 1919 or Municipalities or Town Panchayats (within Chennai Metropolitan Planning Area) established under the Tamil Nadu District Municipalities Act, 1920 or Panchayat Unions or Village Panchayats (within Chennai Metropolitan Planning Area) established under the Tamil Nadu Panchayats Act, 1994 or the Chennai Metropolitan Development Authority constituted under the Tamil Nadu Town and Country Planning Act, 1971, legally entitled to exercise control in respect of the areas under their respective jurisdictions; Tamil Nadu Act IV of 1919.
Tamil Nadu Act V of 1920.
Tamil Nadu Act 21 of 1994.
Tamil Nadu Act 35 of 1972.
- (g) “Master Plan” means the Master Plan for Chennai Metropolitan Planning Area, published under the Tamil Nadu Town and Country Planning Act, 1971; Tamil Nadu Act 35 of 1972.
- (h) “public street” means public street as defined in clause (37) of section 2 of the Tamil Nadu Town and Country Planning Act, 1971; Tamil Nadu Act 35 of 1972.
- (i) “punitive action” means action taken by local authority within Chennai Metropolitan Planning Area under the relevant law against unauthorized development and shall include demolition, whether in pursuance of court orders or otherwise;
- (j) “relevant law” means in case of—
- (i) the Chennai Metropolitan Development Authority, the Tamil Nadu Town and Country Planning Act, 1971; Tamil Nadu Act 35 of 1972.
- (ii) the Chennai City Municipal Corporation, the Chennai City Municipal Corporation Act, 1919; Tamil Nadu Act IV of 1919.
- (iii) the Municipalities and Town Panchayats, the Tamil Nadu District Municipalities Act, 1920; and Tamil Nadu Act V of 1920.
- (iv) the Panchayat Unions and Village Panchayats, the Tamil Nadu Panchayats Act, 1994; Tamil Nadu Act 21 of 1994.

(k) "unauthorized development" means use of any land or any building or construction of any building carried out,—

- (i) in deviation from any planning permission or building permit; or
- (ii) without obtaining any planning permission or building permit; or
- (iii) in contravention of the land use zoning under the Master Plan or any approved detailed development plan; or
- (iv) in contravention of the Development Control Rules for Chennai Metropolitan Planning Area, building rules, regulations, bye-laws applicable to areas within the Chennai Metropolitan Planning Area;

and includes unauthorized occupation by hawkers and street vendors in the public street and by the people in the slum area.

(2) The words and expressions used but not defined herein shall have the meanings respectively assigned to them in the Tamil Nadu Town and Country Planning Act, 1971, the Chennai City Municipal Corporation Act, 1919, the Tamil Nadu District Municipalities Act, 1920 and the Tamil Nadu Panchayats Act, 1994.

Tamil Nadu
Act 35 of
1972.

Tamil Nadu
Act IV of
1919.

Tamil Nadu
Act V of
1920.

Tamil Nadu
Act 21 of
1994.

3. (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Government shall within a period of one year from the date of commencement of this Ordinance, take all possible measures, with due regard to environment, to finalise norms, policy guidelines and feasible strategies to deal with the problems of unauthorized developments with regard to the under mentioned categories, namely:—

Government to
finalise
norms and
policy
guidelines
etc.

(a) land use not conforming to, the Master Plan, detailed development plans or any Planning permission;

(b) construction in deviation from or beyond planning permission or building permit;

(c) development without any planning permission or building permit; and

(d) unauthorized occupation by, the hawkers and street vendors, in the public street and by the people in slum area;

so that the developments of Chennai Metropolitan Planning Area take place in a sustainable and planned manner.

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, *status quo* as on the date of the commencement of this Ordinance shall be maintained in respect of the categories of unauthorized development mentioned in sub-section (1).

(3) All notices issued by any local authority or any authority empowered under relevant law for initiating action against the categories of unauthorized development mentioned in sub-section (1) prior to 27th day of July 2007 shall be deemed to have been suspended and no punitive action shall be taken during the said period of one year.

(4) Notwithstanding any other provision contained in this Ordinance, the Government may, at any time, before the expiry of one year withdraw the concession given in sub-section (2) or sub-section (3) as the case may be, by notification in the *Tamil Nadu Government Gazette* in respect of the categories of unauthorized development mentioned in sub-section (1).

The provisions of this Ordinance not to apply in certain cases.

4. During the period of operation of this Ordinance, no relief shall be available under section 3 in respect of the following categories of unauthorized development, namely:—

(a) any unauthorized development started or continued on or after the 27th day of July 2007;

(b) commencement of any activity anywhere in the Chennai Metropolitan Planning Area in violation of the provisions of the Master Plan or any detailed development plan on or after the 27th day of July 2007;

(c) unauthorized occupation on public street except in those cases which are covered under clause (d) of sub-section (1) of section 3; and

(d) removal of people in slum area, hawkers and street vendors in accordance with policies of the Government, for clearance of land required for any public project.

5. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law made by the legislature of the State for the time being in force.

6. The Government may, from time to time issue such directions to any local authority or any authority under any relevant law as it may deem fit, for giving effect to the provisions of this Ordinance and it shall be the duty of such local authority or authority to comply with such directions.

Ordinance to over-ride other laws.

Power to give directions.

25th July 2008.

SURJIT SINGH BARNALA,
Governor of Tamil Nadu.

EXPLANATORY STATEMENT.

There has been rapid increase in the population owing to industrialization, migration and various other factors, putting pressure on land and infrastructure in the Chennai Metropolitan Planning Area leading to unauthorized developments which are not in conformity with the provisions of the Acts, building rules, regulations and bye-laws in force in the Chennai Metropolitan Planning Area.

2. The Government have constituted a committee headed by a retired Supreme Court Judge to look into all aspects of developments and to suggest necessary modifications to the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972). The committee is looking into the aspects including various aspects of unauthorized constructions and unauthorized use of the premises and yet to submit its recommendation. It is expected that the recommendations of the committee aforesaid may involve substantial amendments to the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and some with retrospective effect, and in particular to the provisions relating to construction and use of the premises, thereby changing the position as obtaining now under the said Act.

3. The Chennai Metropolitan Development Authority has prepared the draft Master Plan II for Chennai Metropolitan Planning Area, with the perspective year 2026 keeping in view the emerging new dimensions in urban development, and the finalization of the Master Plan-II for Chennai Metropolitan Planning Area, 2026 is likely to take some more time. It is also expected that the Master Plan II for Chennai Metropolitan Planning Area 2026 may change the present position in urban development.

4. A comprehensive policy for the improvement of slum areas and resettlement of the people in slum area wherever necessary in the Chennai Metropolitan Planning Area is contemplated by the State Government.

5. A detailed study of the issues relating to unauthorized occupation by the vendors and hawkers in the public streets is contemplated with a view to evolving a scheme for regulating their activities in terms of the Master Plan II.

6. Action for violation of the provisions of the Acts, buildings rules, regulations, bye-laws in force in the Chennai Metropolitan Planning Area before a final view is taken in the matter by the Government may cause avoidable hardship and irreparable loss to a large number of people including small traders.

7. The Government have, enacted the Tamil Nadu Laws (Special Provisions) Act, 2007 (Tamil Nadu Act 39 of 2007) so as to defer the enforcement action by the authorities against the violation of laws in force. The validity of the said Act, has been challenged before the High Court, Madras and a Division Bench of High Court, Madras has quashed the said Act. The Government have filed Special Leave petition before the Supreme Court of India against the above Judgment of High Court, Madras. The Supreme Court of India has ordered to maintain the *status-quo* as on 14-12-2007. Since, the said Tamil Nadu Act 39 of 2007 will cease to operate from the 27th day of July 2008, there is an urgent

need to defer such enforcement action in Chennai Metropolitan Planning Area for a period of one year. The Government have, therefore, decided to bring in a legislation for the above purpose.

8. The Ordinance seeks to give effect to the above decision.

(By order of the Governor)

S. DHEENADHAYALAN,
Secretary to Government,
Law Department.