

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-03-2015

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP No. 20455 of 2014
and
M.P. Nos. 1 and 2 of 2014

V.R. Viswanathan

.. Petitioner

Versus

1. Chennai Metropolitan Development Authority
Represented by its Member Secretary
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008
2. The Additional Commissioner of Police-Traffic
Greater Chennai Police
Kilpauk, Chennai - 600 010

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent in its impugned communications addressed to the first respondent dated 23.09.2013 in Rc.No.Tr./Licence/409/16241/2013 and 09.03.2015 in RC.No.Tr/License/ 684/ 10774/2014, quash the same and consequently direct the first respondent to grant planning permission to the petitioner for construction of the multi-storeyed building in the property situated at Old No.122, New No.67, Nelson Manickam Road, Aminjakarai, Chennai - 600 029.

(Prayer in the writ petition amended as per the order dated 23.03.2015 made in MP No. 2 of 2015 in WP No. 20455 of 2014)

For Petitioner : Mr. R. Muthukumarasamy, Senior Advocate
for Mr. A. Jenasean

For Respondents : Mr. A. Kumar for R1

Mr. R. Vijayakumar
Additional Government Pleader for R2

ORDER

Heard the learned Senior counsel for the petitioner, the learned standing counsel for the first respondent/CMDA as well as the learned Additional Government Pleader appearing for the second respondent and perused the records, including the separate counter affidavits filed by the respondents.

2. The petitioner seeks to quash the communications dated 23.09.2013 and 09.03.2015 of the second respondent addressed to the first respondent and consequently direct the first respondent to grant planning permission to the petitioner for construction of the multi-storeyed building in the property situated at Old No.122, New No.67, Nelson Manickam Road, Aminjakarai, Chennai - 600 029.

3. The petitioner has submitted an application for grant of building plan approval on 07.03.2013 in respect of the property in question for the proposed construction of Block A & B with combined basement with Block A consisting of Ground Floor + First Floor for health centre + 2nd Floor to 6th Floor for office purpose + 7th Floor part with 1 dwelling unit and Block B consisting of Stilt floor for mechanized stack parking + 9 floors with 27 dwelling units. The application was scrutinised by the panel constituted by the first respondent/CMDA and forwarded it to the Government with their recommendation. Thereafter, by order dated 12.07.2013, the Government also accorded approval for issuance of planning permission in favour of the petitioner subject to the condition that he has to submit a revised plan by rectifying certain errors and also to obtain a No Objection from the traffic police. The petitioner was also directed to give an undertaking to the effect that he would fulfil all the Development Regulations provisions, conditions imposed by the Directorate of Fire and Rescue Services and other Departments. By the said order dated 12.07.2013, the first respondent was directed to make regular inspection of the building to avoid deviation. Pursuant thereto, the first respondent, by a letter dated 12.08.2013, called upon the petitioner to furnish the revised plan by rectifying certain defects. The communication dated 12.08.2013 of the first respondent reads as follows:-

"The planning permission application received in the reference 1st cited is under process.

In this regard, you are requested to furnish revised plan rectifying the following defects and other particulars along with the soft copy in APPAS format.

1) Internal Auto Bay of minimum 3.50 m X 11.0m and a service lane of minimum 3.75m width to be provided in site.

2) Outer measurements for Block B are not shown and size of all ducts and cutouts including the offset measurements to be shown in plan

3) A certificate for max. parking capacity from the providing agency concerned along with its brochure

4) Attested copy of Approved demolition plan obtained from the corporation of Chennai for the existing building at site.

5) Section along ramp for physically challenged to be furnished.

6) Section details for 'XX' shown in plan is not furnished

7) The adequate passage width to be shown at some of the locations for the office space

8) Undertaking accepting the conditions stipulated in the NOCs issued by DF&RS, Airports Authority of India

9) NOC from Traffic Police Department

Also you are requested to remit scrutiny fee at the rate of Rs.0.40 per Sq.m at the cash counter of CMDA and furnish the cash bill to MSB (North) Division so as to process your Planning Permission Application further.

4. While the petitioner was in the process of rectifying the defects pointed out in the communication dated 12.08.2013, the second respondent, addressed a communication dated 23.09.2013 to the first respondent stating that since the vehicles flow in the site located road is already exceeding the I.R.C. norms, No Objection Certificate could not be issued to the petitioner. Challenging the order dated 23.09.2013 of the second respondent, the petitioner has filed this writ petition.

5. In the meantime, as per the communication dated 12.08.2013 of the first respondent calling upon the petitioner to rectify certain defects mentioned supra, the petitioner submitted revised plan to the first respondent. On examination of the same, the second respondent once again passed another order dated 09.03.2015 stating the very same reasons which were stated in the order dated 23.09.2013. Therefore, the petitioner has filed MP No. 2 of 2015 to amend the prayer to quash both the orders dated 23.09.2013 and 09.03.2015 of the second respondent.

6. The legal issue arise for consideration in this writ petition is as to whether the second respondent has jurisdiction to pass the impugned order dated 23.09.2013 after the matter was examined by the committee constituted by the first respondent in terms of the development Regulation namely Clause 28 (17) of the Development Regulations for Chennai Metropolitan Area in which the second respondent is one of the members.

7. The issue involved in this writ petition is no longer res integra as it was already considered by this Court in three earlier writ petitions, first of which in WP No. 1665 of 2013 wherein an identical relief was claimed by the petitioner therein challenging the order of the second respondent herein refusing to grant No Objection. By order dated 21.03.2013, this Court held that the reasons given in the order of rejection is beyond the scope of power conferred on the second respondent namely Additional Commissioner of Police (Traffic), Greater Chennai Police, Kilpauk, Chennai - 600 010.

8. In another order passed by this Court in WP No. 7603 of 2014 dated 24.06.2014, this Court had an occasion to consider similar relief sought for by the petitioner therein namely the refusal to grant No Objection Certificate by the second respondent on the same ground as that of the grounds in this writ petition. By the order dated 24.06.2014 in WP No. 7603 of 2014, this Court allowed the writ petition by referring to the earlier order dated 21.03.2013 passed in WP No. 1665 of 2013.

9. Subsequently, In the case of Prince Foundation Limited, rep. by its Managing Director Mr. Ashwin Kumar K. Kamdar vs. Chennai Metropolitan Development Authority, rep. by its Member Secretary and another, WP No. 21754 of 2014, an identical issue came up for consideration by this Court. In the said writ petition, an order of rejection was passed by the second respondent on identical ground as that of the grounds raised in this writ petition. This Court, by order dated 25.11.2014, elaborately discussed the contentions on either side and ultimately allowed the writ petition. The operative portion of the order dated 25.11.2014 can usefully be extracted hereunder:-

"43. From a careful perusal of the Development Regulations, 2008, it is clear that these Regulations also donot stipulate, as one of the pre-conditions, a No Objection Certificate from the Joint Commissioner of Police, Traffic. Nevertheless, he is included as a Member of the Panel, which is empowered to scrutinise the application for construction of a Multi-storeyed building, to ensure that all the stake holders, have a say. No individual is given the power to veto the decision taken by the majority in the panel. Therefore, I do not know how, after convening a meeting of the Multi Storeyed Building panel, comprising of several members, including the representative of the second respondent, the panel could make its decision subject to clearance from one of its own members.

44. Though the Development Regulations contain about 27 annexures and they also contain a set of guidelines for the grant of premium FSI, nothing is found even in these guidelines, which empower the Joint Commissioner of Police to have the last laugh in the matter.

45. If the second respondent has had any objection to the grant of approval, the same could have been put forth in the meeting of the Panel. If the Panel had agreed with the objections of the second respondent, they could have rejected the application. It was also possible for the Panel to overrule the objections of the second respondent in total or accept it to a limited extent and incorporate some conditions that will take care of the objections. But, now, all these possibilities are gone, with the Panel subordinating its own role to the role of one of its members and that too, after the completion of the proceedings in the meeting of the Panel. This, in my considered view, is not authorised either by the Tamilnadu Town and Country Planning Act or by the Development Control Rules, 2004 or by the Development Regulations, 2008. Hence, the petitioner is entitled to succeed.

46. There are also two more issues. The petitioner has already obtained permission for the construction of 101 dwelling units. If the construction of 54 more units alone is the cause for concern, I do not know

whether any development in the entire stretch of the road is going to be prohibited on this ground. Moreover, the impugned order proceeds on the basis that the addition of 54 more dwelling units will increase the traffic flow during peak hours, by 31 cars and 132 motor cycles. But, it does not take into account the possible reduction of traffic flow after the MRTS comes into operation fully and finally. Today, there are no guidelines either in the Act or in the Development Control Rules or the Development Regulations as to how far the traffic flow would impact development. Unless there are guidelines, it is not proper for the experts in the Panel to leave it entirely to the discretion of the traffic police, to switch, on and off, the signal lights, on projects for development. The conferment of such an unguided power upon a single member of a multi member panel, will infringe upon the valuable Constitutional right to property, without there being a sanction of law for the exercise of such power. Therefore, the impugned order is liable to be set aside and the petitioner is entitled to the reliefs prayed for.

47. Therefore, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, the above MPs are closed.

10. As of now, there are no guidelines either in the Development Control Regulations or Rules as to how far the traffic flow would impact development. As pointed out by this Court in the order dated 25.11.2014 in WP No. 21754 of 2014, it is not proper for the experts in the panel to leave it entirely to the discretion of the traffic police, to switch, on and off, the signal lights on projects for development. Further, in the order dated 25.11.2014 in WP No. 21754 of 2014, it was pointed out that one of the members of the panel constituted for scrutiny of applications seeking approval for putting up multi storeyed building himself has passed the order refusing to grant No Objection Certificate when he has not raised such objection in the meeting. In this case also the second respondent participated in the meeting of the Multi storeyed Building Panel and at that time, he has not raised any objection for grant of approval to the petitioner. The second respondent during the course of meeting of the committee ought to have raised such objection for grant of approval in favour of the petitioner with the available data as regards the traffic position in the city of Chennai. Instead, the second respondent has chosen to raise objections for grant of No Objection Certificate when it was sought for by the petitioner. In any event, following the earlier orders passed by this Court in the decisions mentioned supra, the impugned orders passed by the respondents cannot be sustained.

11. In the result, the writ petition is allowed. The impugned orders dated 23.09.2013 and 09.03.2015 of the second respondent are quashed. No costs. The first respondent is directed to consider the revised plan submitted by the petitioner pursuant to the communication in Letter (Ms) No.190 dated 12.07.2013 of the

Government and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008
2. The Additional Commissioner of Police-Traffic
Greater Chennai Police
Kilpauk, Chennai - 600 010

+1 cc to Government Pleader, SR.16367

+1 cc to Mr.A.Kumar, Advocate, SR.16299.

+1 cc to Mr.A.Jenasenan, Advocate, SR.16254.

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krd 16/4

WP No. 20455 of 2014

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