

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P. No.13643 of 2015 and M.P. No.1 of 2015

Mrs. Shantha Srinivasan

Petitioner

Vs.

- 1 The Secretary to Government
Housing and Urban Development Department
Secretariat
Fort St. George
Chennai 600 009
- 2 The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore
Chennai 600 008
- 3 The Commissioner
Chennai City Municipal Corporation
Ripon Buildings
Chennai 600 003
- 4 The Executive Engineer
Zone IX
Corporation of Chennai
Zonal Office IX
Chennai
- 5 Arzu Mistry
- 6 Umeed Mistry
- 7 Ravi Raju

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the resolution passed by the second respondent in the 247th Authority Meeting held on 24.12.2014 in A.R. No.150 of 2014 permitting the re-classification of the land use at New Door No.86, Old Door No.89, Chamiers Road,

(Pasumpon Muthuramalingam Road), Mylapore in R.S. No.3915/6, Block No.85 of Mylapore Village, Mylapore - Triplicane Taluk, Chennai District from primary residential use zone to mixed residential zone as illegal, invalid and contrary to law.

For petitioner Mr. T. Saikrishnan
for M/s. Sai, Bharath and Ilan

For R1 Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For R2 Mr. K. Raja Shrinivas

For RR 3 & 4 Ms. Karthikaa Ashok
Standing Counsel

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the first respondent. Mr. K. Raja Shrinivas, learned Standing Counsel, accepts notice for the second respondent. Ms. Karthikaa Ashok, learned Standing Counsel, accepts notice for respondents 3 and 4.

2 By the instant petition, the petitioner seeks a writ of declaration to the extent of quashing the resolution passed by the second respondent in the 247th Authority Meeting held on 24.12.2014, whereby and whereunder, the authority resolved to reclassify the land use of the site in question from Primary Residential Use Zone to Mixed Residential Use Zone, subject to certain conditions.

3 It is a well settled proposition of law that a resolution, by itself, is not an order and the same cannot be given effect to, unless a proper formal order is passed on the basis of such resolution by the competent authority. Thus, a resolution, by itself, cannot have the force of law. Further, it is pertinent to point out that a resolution is only an expression of opinion in the form of recommendations, which will have a binding effect, only after the same is accepted and proper formal order is passed. It is also to be noted that a resolution cannot be subjected to judicial review, inasmuch as it is a simple minutes of the proceedings.

4 In this regard, it would be apposite to quote the judgment rendered by one of us (Satish K. Agnihotri, J.) in Chhattisgarh High Court in Payal Travels vs. State of Chhattisgarh and Others, following a catena of decisions of the Supreme Court. The relevant portion of the said judgment reads thus:

"14. It is a trite law that a resolution is not an order and the same cannot be given effect to unless a

proper formal order is passed on the basis of resolution by the competent authority. It has been held in a catena of decisions of the Supreme Court that resolution is a mere guideline or recommendation and the same is not effective ipso facto."

5 The aforestated judgment in Payal Travels case was subsequently followed by one of us in Vaswani Industries Ltd. vs. Souther Eastern Coalfields Ltd. in the order dated 07.02.2012.

6 The Supreme Court, in New India Assurance Company Ltd. vs. Nusli Neville Wadia and another¹, while examining the effect of guidelines, observed that resolutions are mere guidelines and not controlled by the statutory provisions. The relevant observation runs thus:

"23. Issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant."

7 Further, the Supreme Court, in Sethi Auto Service Station and another vs. Delhi Development Authority and Others², observed thus:

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

8 Thus, applying the well settled principles of law, as summarised above, to the facts of this case, we have no hesitation to hold that the instant writ petition is premature, at this stage.

1 (2008) 3 SCC 279

2 (2009) 1 SCC 180

9 As an upshot, this writ petition is dismissed as not maintainable. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

cad

To

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Zonal Office IX
Chennai

- 1 cc to Mr. Sai Bharath & Ilan, Advocate, Sr. 24303
1 cc to Mr.K. Raja Shrinivas, Advocate, sr. 24584
1 cc to Mr.A. Karthika Ashok, Advocate, Sr. 24316
1 cc to Government Pleader, sr. 24740

W.P. No.13643 of 2015

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