

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.15759 of 2014

Dadabadi Shri Jin Kusalsuriji
Jinchandrasuriji Trust,
Rep.by its Trustee,
369-371, Konnur High Road,
Chennai - 600102. ... Petitioner

Versus

The Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in letter No.C4/20599/13, dated 04.04.2014 and quash the same and further direct the respondent to forthwith issue planning permission to the petition herein in respect of the application dated 04.12.2013 without insisting on demolition of existing structures and handing over of area through a Registered Gift Deed to the CMDA, the respondent herein.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mr.A.Kumar
Standing Counsel for CMDA

ORDER

By consent of the learned counsel on either side, this writ petitions is taken up for final disposal.

2. Heard Mrs.Hema Muralikrishnan, the learned counsel appearing for the petitioner and Mr.A.Kumar, the learned Standing Counsel appearing for the respondent/CMDA.

3. The learned counsel appearing on either side have not disputed the fact that, the issue involved in this Writ Petition, is squarely covered by an order dated 06.02.2015,

passed by this Court in W.P.Nos.148 of 2014, 18541 of 2012, 12581 of 2012 and 5188 of 2013 [G.Dilip Kumar and others Vs.The Member Secretary, Chennai Metropolitan Development Authority, Chennai and others]. The said Writ Petitions were disposed of, by issuing following directions :

6. In the light of the above, this Court is of the view that it may be true that the interest of the Government should be protected, as there is a need for wider roads and the need is in public interest. At the same time, the interest of the small land owners, who own the land abutting the existing road, cannot be forgotten. Therefore, this Court, in several writ petitions issued directions directing the owner of the land to file an affidavit of undertaking to handover the front portion to the maximum extent required and also undertaking to keep the area free from any construction and subject to such undertaking, the planning permission application was directed to be processed and if it satisfies the other conditions, planning permission to be granted subject to the endorsement that the approval is granted based on the undertaking given by the petitioner and in the event of requirement of the front portion of the land, the land owner or their successors in interest will hand over the land without any resistance.

7. Therefore, this court is of the view that the same direction should be issued in these cases also. Accordingly, the writ petitions are disposed of, directing the petitioners to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to their right to claim compensation. If such affidavit is filed, the respondents shall consider the same and process the application in accordance with the statutory provisions. No costs. Consequently, connected miscellaneous petitions are closed."

4. In the light of the above, this Writ Petition is also disposed of, by directing the petitioner to submit an

affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to its right to claim compensation. If such affidavit is filed, the respondent shall consider the same and process the application in accordance with the statutory provisions. No costs.

ds

s/d-
Assistant Registrar(CS-III)
Dt:8.12.2015

MODIFICATION

M.P.No. 1 of 2015 in W.P.No.15759 of 2014.

The matter having been listed on 8.1.2016, for being modifying the order dated 20.11.2015 in WP.No.15759 of 2014 and made herein and in the presence of Mr.L.Muralikrishnan, Advocate appearing for the petitioner and Mr.A.Kumar, Advocate appearing for the respondent, the court made the following order:

"Heard the learned counsel for the parties and perused the materials placed on record.

2.This Miscellaneous Petition has been filed to modify the order dated 20.11.2015 in W.P.No.15759 of 2014. The operative portion of the order passed in the said Writ Petition reads as follows:

"4.In the light of the above, this Writ Petition is also disposed of by directing the petitioner to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to its right to claim compensation. If such affidavit is filed, the respondent shall consider the same and process the application in accordance with the statutory provisions. No costs. "

3.By virtue of the above order, the petitioner had to undertake to surrender the portion of the land which they had to keep vacant, if the road widening project is undertaken. The petitioner seeks for modification on the ground that they have constructed a Prayer Hall in that area and in the event of road widening project being implemented, they will handover the vacant possession of the portion for implementation of the road

widening without prejudice to their right to receive compensation. In the affidavit filed in support of this Miscellaneous Petition, the petitioner has given the following undertaking:

"5. I submit that at present the area earmarked for the purpose of road widening is not vacant and the structures present thereon have been in existence for varying periods from 138. Therefore, the condition in the present order that the petitioner shall keep the area clear requires modification. I state that the petitioner is ready and willing to give an undertaking that the petitioner will hand over vacant possession of the portion for implementation of road widening without prejudice to its right to receive compensation."

4.The above undertaking is placed on record and the order passed in the writ petition is clarified by observing that the petitioner shall submit an affidavit of undertaking to the respondents to handover the vacant possession of the portion for implementation of the road widening project to its right to receive compensation and till then, the petitioner is entitled to use the building in question as a Prayer Hall.

With the above clarification and modification, the Miscellaneous Petition stands closed."

s/d-

Assistant Registrar(CO)

Dt:20.1.2016

True Copy

Sub-Assistant Registrar

To:

The Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008

+ 1 cc to Mr.L. Muralikrishnan, Advocate SR 1549

ev(co)
prk20/1

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