

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.11.2015

CORAM:

THE HONOURABLE MR. **JUSTICE SATISH K.AGNIHOTRI**

and

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

Review Application (Writ) No.117 OF 2015

M.D.Varadharajan : Applicant
versus

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.

2.The Chennai Metropolitan Development Authority,
rep. By its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Salai,
Egmore, Chennai 600 008. : respondents

Petition filed to review the order passed in W.P.No.26348 of 2013
dated 23.1.2014.

For petitioner : Mr.N.R.Chandran, Senior counsel,
for Mr.P.Sathish

For respondents : Mr.N.Sakthivel, Government Advocate, for R-1
Mr.C.Johnson, for R-2

ORDER

K.K.SASIDHARAN, J.

The review applicant purchased an unauthorized layout, which is
part of an unapproved multi industrial layout, and without waiting for the
planning permission, constructed stilt plus four floors with 32 dwelling units.

The application for planning permission was rejected by Chennai

Metropolitan Development Authority (hereinafter referred to as "CMDA"). The related appeal was rejected by the Government. The Writ Petition challenging the Government Order confirming the order passed by the CMDA was dismissed by this Court by order dated 23 January 2014. The applicant has now come up with this review application primarily on the ground that there are no red category industries in the vicinity and as such, the order passed on such misconception requires to be reviewed.

2. The learned Senior Counsel for the applicant contended that the CMDA proceeded as if there are red category industries in and around the site and as such, statute does not permit construction of residential units. The learned Senior counsel submitted that the information collected by the applicant under Right to Information Act clearly shows that there are no red category industries in the area in question. Therefore, it is clear that there is no statutory prohibition for considering the application submitted by the applicant for planning permission.

3. We have also heard the learned Additional Government Pleader and the learned Standing Counsel for CMDA.

4. The applicant purchased a Plot bearing No.6, Comprised in Old

S.No.56, New No.56/3, admeasuring 37.90 cents of land in Gerumbakkam Village in Sriperumbadur Taluk. The plot is part of an unapproved industrial layout. The sale deed in favour of the applicant and the documents available on record clearly show that the site is a part of an unauthorized industrial layout and it is surrounded by industries.

5. It is true that there was a reference in the order passed by the Government with respect to the existence of red category industries in and around the plot in question. However, the fact remains that it was not on the basis of the existence of red category industries, the CMDA rejected the application for planning permission, which was confirmed by the Government.

6. Since the applicant has taken up a contention with respect to the nature of the industries in the area, we have summoned the relevant file from CMDA. The file produced by the CMDA clearly shows that the plot No.6, purchased by the applicant is part of a multi-industrial layout, formed in the year 2002. It is part of an unauthorized industrial layout, formed after 5 August 1975. There are inspection reports available on file, which would make the position very clear that the site in question is part of an unauthorized industrial layout.

7. The documents produced by CMDA proved beyond doubt that the

applicant, flouting building regulations, constructed stilt plus four floors with 32 dwelling units. The applicant wanted planning permission after completion of construction. Rule 7(1) of the Development Rules of Second Master Plan prohibits regularization of unauthorized sites formed after 5 August 1975. Even if there are no red category industries in and around the plot in question, still, it is not possible to regularize the unauthorized layout at this point of time, in view of the statutory prohibition. Similarly, there is no provision under the statute for regularizing a construction of this nature, made without planning permission. None of the grounds raised by the applicant would be sufficient to review the order passed by this Court. We therefore do not find any merit in the contention taken by the applicant.

8. Before concluding, we consider it fit and proper to note certain disturbing trend with regard to illegal construction. The Commissioner, Chennai Corporation, filed a report before this Court stating that in George Town, 99% of the buildings are unauthorized construction. Even multi-storied buildings were constructed without taking building permit. It would not be possible for construction of such high rise buildings overnight. The Corporation is having several Zonal Offices. Without the knowledge of the officials, it would not be possible to construct buildings illegally. Even the applicant herein has put up 32 residential units without planning permission. Though the Government have dismissed the appeal as early

as on 21 June 2013, neither CMDA nor Chennai Corporation took enforcement action. Even after the dismissal of the Writ Petition by this Court on 23 January 2014, the concerned officials have not taken any action against the offending construction. The unholy nexus between builders and officials of CMDA and Corporation is writ large. Even after the tragedy like the one that took place at Moulivakkam, the concerned officials have not learnt lessons. These illegal structures are a threat to the safety of occupants, besides the public at large. We hope that CMDA and Chennai Corporation would wake up from slumber in the near future in the larger public interest.

9. The review petition is dismissed with the above observation. No costs.

(SATISH K.AGNIHOTRI) (K.K.SASIDHARAN, J.)

5 November 2015

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SATISH K.AGNIHOTRI, J.
and

K.K.SASIDHARAN, J.
(tar)

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