

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 24604 of 2015

&

M.P. No. 1 of 2015

Seethalakshmi Natarajan

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Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
2. The Assistant Executive Engineer,
Corporation of Chennai,
Zonal Office, Zone N 10 - Ward N 134,
Chennai - 3.
3. The Assistant Engineer/Assistant
Executive Engineer,
Town Planning Approval Section,
Regional Officer Centre,
Corporation of Chennai, No. 36 G,
Pulla Avenue, Shenoy Nagar,
Chennai - 40.
4. The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai -8.

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Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondents 1 to 3 to forthwith issue the Planning Permission to the premises at Old Door No.1, Present Door No. 38 E, Azeez Nagar, 2nd Street, Railway Station Border Road, Puliur Village, Kodambakkam, Chennai - 24, without insisting to handover the area facing the road through a registered Gift Deed to CMDA or the Corporation of Chennai.

For Petitioner :: Mr.L. Chandrakumar

For Respondents :: Mr.P.V.Selvakumar for
R1 to R3
Mr.P. Tamilmani,
Govt. Pleader (Pondicherry) for R4

O R D E R

This writ petition is filed for issue of a Writ of Mandamus directing respondents 1 to 3 to forthwith issue the Planning Permission to the premises at Old Door No.1, Present Door No. 38 E, Azeez Nagar, 2nd Street, Railway Station Border Road, Puliyur Village, Kodambakkam, Chennai - 24, without insisting to handover the area facing the road through a registered Gift Deed to CMDA or the Corporation of Chennai.

2. The case of the petitioner is that she is the absolute owner of the property bearing Old Door No.1, Present Door No. 38 E, Azeez Nagar, 2nd Street, Railway Station Border Road, Puliyur Village, Kodambakkam, Chennai - 24 and she is in use and occupation of the same. The petitioner wanted to demolish and put up a new construction and therefore, she applied for planning permission to the 3rd respondent. The 3rd respondent directed compliance of certain conditions including execution of a registered Gift Deed in anticipation of road widening over a portion of the petitioner's property. According to the petitioner, though there is no provision under the relevant Act insisting for execution of Gift Deed by the owner of the property in anticipation of road widening, however, the petitioner, in paragraph No.5 of the affidavit filed in support of the writ petition has stated that she is willing and she also undertakes to handover the required portion of her property if the process commences for road widening. The petitioner would further undertake that she will not put up any construction in the area earmarked by the respondents for road widening and that she would hand over possession, in case of road expansion, without any resistance, if need arises. The petitioner would also state that based on this affidavit of undertaking, the respondents may be directed to issue Building Permission, without insisting upon execution of a Gift Deed in anticipation of road widening.

2. Heard Mr.L. Chandrakumar, learned counsel for the petitioner and Mr.P.V. Selvakumar, learned counsel for R1 to 3 and Mr.P. Tamilmani, learned Government Pleader (Pondicherry) for R4.

3. It is seen that the respondents have taken a reasonable approach while considering the request of the petitioner for granting permission for demolition and reconstruction of the building in the occupation of the petitioner, in anticipation of the road widening, instead of fighting at the fag end. The petitioner has been put on notice of the anticipated road widening and she cannot plead ignorance or create any problem at a later stage and therefore, such a condition has been rightly put forth by the respondents. Moreover, the petitioner herself has stated that she will not put up any construction in the portion, which may be required for road widening in future and has also undertaken to hand over possession, in case, the property is required for expansion. The above undertaking of the petitioner would safeguard the interest of the respondents.

4. Therefore, this Court directs the petitioner to submit an affidavit to the respondents undertaking not to put up any construction in the portion earmarked by the respondents in anticipation of road widening and also to surrender possession of the property, if it is required for road widening, without prejudice to her right to claim compensation. The said affidavit has to be filed within a week's time from the date of receipt of a copy of this order and on receipt of the same, the respondents shall consider the same and process the application of the petitioner, in the light of the affidavit of undertaking given by the petitioner, in accordance with law, within a period of two weeks thereafter. The writ petition is disposed of accordingly. No costs. Connected M.P. Is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

nv
To

1. The Commissioner,
Corporation of Chennai,
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Chennai - 3.
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Zonal Office, Zone N 10 - Ward N 134,
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4. The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai -8.

+1 cc to Mr.P.V.Selvakumar, Advocate, sr.41365
+1 cc to Mr.L.Chandrakumar, Advocate, sr.41788

W.P. No. 24604 of 2015

rj(co), kra(26/08)