

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
18.02.2015	05.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.29404 of 2014

U.Shobanaa

Rep., by Power of Attorney Agent U.Vijaya

No.22, Rajaram Mehta Nagar,

Nelson Manickam Road,

Aminjikarai,

Chennai - 600 029.

... Petitioner

Vs

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.The Assistant Engineer,
Town Planning,
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records in the first respondent proceedings No.BC1/8804/2013, dated 01.10.2014, and quash the same and consequently, direct the first respondent to grant the planning permission to the petitioner of putting up construction of Basement Floor+Ground Floor +3 Floors office building on Plot Nos.6&7, Old Door No.10(part), New No.48/2L, 48/1L, Sterling Road, Nungambakkam, Chennai - 600 034, in Old Survey No.353, R.S.Nos.537/17, 537/18, Block-30 of Nungambakkam Village without insisting for Open Space Reserve (OSR) charges in respect of petitioner's application No.SBC No.519/2013, dated 16.05.2013.

For petitioner .. Mr.PL.Narayanan

For Respondent .. Mr.P.Tamilmani for R1

Mr.T.C.Gopalakrishan for RR2&R3

O R D E R

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent, dated 01.10.2014 and to direct the first respondent to grant planning permission to the petitioner for putting up the construction of the said property without insisting for Open Space Reservation Charges (OSR), while processing the petitioner's application, dated 16.05.2013.

2. Heard Mr.PL.Narayanan, learned counsel appearing for the petitioner, Mr.P.Tamilmani, learned counsel appearing for CMDA and Mr.T.C.Gopalakrishan, learned counsel appearing for the second and third respondents and considered the materials placed on record.

3. The property in question originally formed part of a larger extent of about 27 grounds and 567sq.ft., owned by one Mr.N.Sambantham and his family members and they formed the same into a Housing lay out and obtained permission from the then Corporation of Madras in Application No.137 of 1970, dated 11.11.1970. The layout plan approval was granted by the second respondent by proceedings, dated 15.05.1974 in approval No.177/1973. In the said approved layout, plot Nos.6 & 7 were purchased by the petitioner's close relatives by sale deed dated 28.01.1987, registered as document Nos.53 of 1987 and 23 of 1987 registered as document No.64 of 1987, on the file of the Sub-Registrar, Thousand Lights. Subsequently, the plot No.6 was settled in favour of U.Shanthakumari by deed of settlement dated 13.11.2008, registered as document No.976 of 2008 and plot No.7 was settled in favour of U.Shobhan Babu, by deed of settlement dated 21.02.2007 registered as document No.174 of 2007. Subsequently, the plot No.6 was settled in favour of U.Karuna Sesh by settlement dated 13.11.2008 bearing document No.977 of 2008 and plot No.7 was also settled in favour of U.Karuna Sesh, pursuant to a release deed dated 25.05.2010, registered as document No.473 of 2010. The said U.Karuna Sesh settled both the properties in favour of his daughter, the Writ Petitioner by way of settlement dated 04.11.2010, bearing document No.980 of 2010, on the file of the Sub-Registrar, Joint-II, Central Chennai.

4. It is to be noted that in the recital of all these documents, there is a reference to the layout approval granted by the Corporation in L.A.No.177 of 1973, therefore, there can be no doubt as to the fact that plot Nos.6&7, which are now the properties owned

by the petitioner formed part of an approved layout. The land owner has executed a power of attorney in favour of her mother on 31.07.2012, registered as document No.625 of 2012, for development of the properties. When an application was made to the respondent for Planning Permission, the respondent has demanded OSR charges. The only reason for demanding OSR charges is by treating the plot as 'unauthorised sub-division'. Admittedly, the respondent Corporation nor the CMDA has any record to show that plot Nos.6&7 owned by the petitioner does not form part of the approved layout in L.A.No.177 of 1973.

5. Counter affidavit of the CMDA erroneously shifts the onus on the petitioner stating that the petitioner did not produce any evidence that the sites were of that extent prior to 05.08.1975 and the authenticated copy of the approved layout in L.A.No.173 of 1973 duly attested by Corporation of Chennai has not been furnished. The petitioner has furnished registered documents from the year 1983 onwards, wherein the recitals clearly state that the land form part of the approved layout and the petitioner has produced before this Court as well as before the respondent, the sub-division which was sanctioned on 09.08.1974, signed by the Assistant Engineer Town Planning, Corporation of Madras. The said plan produced by the petitioner clearly shows that the entire area was sub-divided into seven plots and each measuring a different extent. The petitioner having produced these documents and the petitioner not being the promoter of the layout cannot be called upon to produce a document, which is not within her reach. The Planning Authorities should have records in their possession to show as to what are the sub-division effected, which are the layout sanctioned etc. Shifting the burden on a person, who became the owner of the property in 2010, after about 36 years after the property was sub-divided is wholly arbitrary and unreasonable. The documents produced before this Court clearly shows that the plots now owned by the petitioner for which she has applied for a planning permission forms part an approved layout and the sub-division was approved by Corporation of Madras vide proceedings dated 09.08.1974 of the Assistant Engineer, Town Planning, Corporation of Madras and therefore, the question of directing the petitioner to pay OSR charges is wholly without jurisdiction.

6. As rightly pointed out by the learned counsel for the petitioner, the second respondent is bound to under Section 10 of the Madras City Municipal Act, to maintain records of sanctioned layout, as they are very important records. It is a pity that the Development Authorities are now shifting the onus on the subsequent purchaser of the land to establish the facts and which are not within their knowledge, more particularly when the CMDA does not have any record to show that the sub-division was unauthorised. Assuming the CMDA or the Corporation had record to show that there was no sub-division, they would be justified in shifting the onus on the

promoter or petitioner to prove the contrary. Admittedly, the CMDA and Corporation do not have any records whereas the petitioner has got a true copy of the records, which ought to have taken note of by the respondents. Without taking into consideration of all these issues, the first respondent has passed the impugned order which is an out come of sheer non-application of mind and arbitrary exercise of power.

7. In the result, the Writ Petition is allowed, the impugned order is quashed and the respondents are directed to process the Planning Permission application dated 16.05.2013, in application No.SBC No.519 of 2013, without insisting for payment of Open Space Reservation Charges. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn.

To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.The Assistant Engineer,
Town Planning,
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

+ 1 cc to Mr.T.C. Gopalankrishnan, advocate SR.12435
+ 1 cc to Mr.P.C. Narayanan, Advocate Sr.12830

W.P. No.29404 of 2014

TM(CO)
Eu 16.03.15