

In the High Court of Judicature at Madras

Reserved on : 15.06.2015

Dated : 19.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.9865 of 2015
and M.P.No.1 of 2015

K.R.Babu .. Petitioner
Vs.

- 1.State of Tamil Nadu
rep. by Secretary to Government,
Housing & Urban Development (UD-I)
Department,
Secretariat, Chennai-600 009.
- 2.The Chennai Metropolitan Development
Authority rep. by its Member Secretary,
No.8, Gandhi Irwin Road,
Egmore, Chennai-600 008. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records of the Second Respondent herein and to quash the impugned order passed in Letter No.ES2/11265/2014 dated 20.03.2015.

For Petitioner : Mr.M.Balasubramanian

For Respondent-1 : Mr.P.S.Sivashanmugasundaram
Spl. Government Pleader

For Respondent-2 : Mr.K.Raja Srinivas

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records of the Second Respondent and to quash the impugned order passed in Letter No.ES2/11265/2014 dated 20.03.2015.

A Resume of Facts:

2. According to the Petitioner, he is the owner of the building situated at Door No.11, Lattice Bridge Road (now Dr.Muthulakshmi Salai) Adyar, Chennai-600 020, where he had constructed the present existing building thereon with basement, ground, mezzanine and six floors at Door No.11, Lattice Bridge Road, Adyar, Chennai-600 020 comprised in T.S.No.13/5, Block No.21 of Urur Village, Chennai. Since the layout of the said area was prepared by Modern Builders some 29 years ago, the issue of obtaining sub division for the said site would not arise. The upper five floors at Door No.11, Lattice Bridge Road, Adyar, Chennai-600 020 are mainly occupied by Computer Training Centre and other Educational Institutions.

3. The stand of the Petitioner is that he applied for regularisation of his building at Door No.11, Lattice Bridge Road, Adyar, Chennai-600 020 based on the Regularisation Scheme announced by the State Government. In so doing, he had prepared the necessary drawings and detailed calculations by engaging the technical experts in the Civil Engineering field who are competent to deal with the subject matter.

4. The Learned counsel for the Petitioner brings it to the notice of this Court that Petitioner has applied for regularisation on 07.05.1999 before the Second Respondent/Chennai Metropolitan Development Authority, Chennai-8 by means of proper application therefor. He had also remitted a sum of Rs.22,860/- towards scrutiny fee on 07.05.1999 itself and thereafter, as per direction of the Second Respondent, he had also remitted a huge sum of Rs.5,72,970/- with the Second Respondent on 25.10.2000 by way of Regularisation Fee and Regularisation charges. Further, it is represented on behalf of the Petitioner that after receiving the said sum from the Petitioner, the Second Respondent/Chennai Metropolitan Development Authority, Chennai-8, passed an order in its letter No.Reg./C3/8892/99 dated 29.10.2001, holding that the construction of his building is regularisable on payment of an exorbitant amount of Rs.79,00,892 to the Second Respondent/Authority.

5. The Learned counsel for the Petitioner contends that the Petitioner filed Statutory Appeal during the year 2001 before the First Respondent/State of Tamil Nadu, Housing & Urban Development (UD-I) Department, Secretariat, Chennai-600 009 and later, State Government had received many complaints from various quarters making grievance that the regularisation charges claimed by the Second Respondent/Chennai Metropolitan Development Authority, Chennai-8 is an exorbitant and arbitrary one and also, a request was made to the Government to reduce the charges. That apart, consequently, State Government had issued directions to the Second

Respondent on the above lines. As a matter of fact, the Second Respondent passed a revised order in Ler.No.REG/C3/8292/99 dated 06.06.2002, determining and claiming a huge sum of Rs.36,16,285/- as regularisation charges and directed the Petitioner to remit the remaining regularisation fee of Rs.30,26,950/- after adjusting the already paid sum of Rs.5,89,335/-. Moreover, the Second Respondent/Chennai Metropolitan Development Authority, Chennai-8 had directed the Petitioner to remit a sum of Rs.60,000/- towards development charges by the same order. In reality, the order of the Second respondent also mentioned that the said regularisation order will be given effect to on payment of the said huge amount by the Petitioner.

6.The primordial plea taken on behalf of the Petitioner is that in the Memorandum of Appeal filed by the First Respondent/State of Tamil Nadu, Housing & Urban Development (UD-I) Department, Secretariat, Chennai-600 009, Petitioner's counsel had specifically stated that the Second Respondent/Chennai Metropolitan Development Authority had passed an order dated 06.06.2002, without considering the layout approval prepared by Modern Builders some 29 years ago in respect of the site in question and demanded a sum of Rs.9760/- at the rate of Rs.20/- per sq.mt. payable for sub division of the said site admeasuring 488 sq. mt.

7.Besides this, the Second Respondent/Chennai Metropolitan Development Authority had wrongly mentioned the width of the road as 526 sq. mt. and further, it had adopted erroneously the commercial rate of Rs.900/- per sq. mt. and demanded an exorbitant sum of Rs.4,73,400/- that when only basement, ground and mezzanine floors are used for commercial purpose and upper five floors are occupied by Computer Centre and other private educational institutions. In short, the Second Respondent had committed an error in arriving at huge amount, as against Rs.315/- per sq. mt. that is to be adopted for 40.08 sq. mt. which comes only to a sum of Rs.12,625/- and that in calculating floor space index, the Second Respondent had wrongly calculated an extent of 1340 sq. mt. which is equally arbitrary and exorbitant one. As such, a sum of Rs.30,15,000/- claimed under this caption is illegal and arbitrary one.

8.Yet another line of argument projected on the side of the Petitioner is that the Petitioner in the appeal filed, had taken a plea that only a sum of Rs.6,54,193.38 is chargeable by way of regularisation fee based on a proper and impartial calculation and after deducting a sum of Rs.5,89,335/- already remitted by him and in fact, only a sum of Rs.64,858.38 is payable as balance amount. Also that, the Petitioner had requested for a personal hearing before the First Respondent in the Statutory Appeal so as to enable his counsel to submit the actual calculation sheets, drawings and

also make legal submissions for a proper and lawful adjudication of the matter in issue.

9.It is represented on behalf of the Petitioner that the First Respondent/State Government after lapse of three years had passed the impugned order in G.O.(D) No.660, Housing & Urban Development (UD I) Department, dated 12.12.2005 in a cryptic manner and without providing any opportunity of personal hearing to him or to his counsel as requested, which in turn had resulted in failure of justice. Substantially, Petitioner challenged the aforesaid order in W.P.No.744 of 2006 before this Court and this Court was pleased to set aside the order and remitted the matter back to the First Respondent for fresh disposal. In the appeal petition filed by the Petitioner, the First Respondent had passed an order on 30.10.2009, wherein, the First Respondent had directed the Second Respondent/Chennai Metropolitan Development Authority to take a decision expeditiously.

10.The Learned counsel for the Petitioner draws the attention of this Court to the fact that the First Respondent/State Government had issued notice to him and to his tenants on 28.07.2014, calling upon him to produce the approved plan. He sent reply immediately through his advocate on 20.07.2014 setting out the facts in detail and the pendency of regularisation application bearing No.REG.C6/8892/99 before the Monitoring Committee for consideration. After submitting his reply, Petitioner met some of the officials of the Second Respondent and they had stated that after "Mugalivakkam incident", the Enforcement Wing of the Chennai Metropolitan Development Authority is issuing notice to all in a routine fashion.

11.The Learned counsel for the Petitioner urges before this Court that after lapse of eight months, Petitioner received the present impugned Demolition Letter No.ES2/11265/2014 dated 20.03.2015 addressing the same in the name of his elder brother K.R.Mohanram and the same was served to his tenants who are in occupation of the Petitioner premises with incorrect particulars of the building and without considering his lawyer's reply dated 30.07.2014, which is mentioned in Ref.No.2 in the impugned order.

Petitioner's Contentions:-

12.The Learned counsel for the Petitioner submits that the impugned order in Letter No.ES2/11265/2014 dated 20.03.2015 is contrary to law and arbitrary and unjust and without jurisdiction.

13.The Learned counsel for the Petitioner projects an argument that the Second Respondent/Chennai Metropolitan Development Authority had failed to take note of the significant aspect

mentioned in the reply letter sent by the Petitioner's counsel for the stop work notice dated 30.07.2014 and indeed, the construction was over in the year 1996 itself. Also, it was mentioned in the reply that the matter is pending before the Monitoring Committee for regularisation and the Petitioner had complied with all formalities as required by the Committee.

14.The Learned counsel for the Petitioner contends that the impugned order dated 20.03.2015 has been addressed to the Petitioner's brother who has nothing to do with the subject property in issue which itself indicates that the impugned order was prepared in a causal manner without proper verification of records.

15.The Learned counsel for the Petitioner invites the attention of this Court that the Second Respondent without considering the reply sent by the Petitioner's counsel dated 30.07.2014 and also failed to follow the order dated 30.10.2009 passed by the First Respondent in regard to the matter pending before the Monitoring Committee.

16.Expatiating his contention, the Learned counsel for the Petitioner submits that Second Respondent/Chennai Metropolitan Development Authority had failed to take into account the important fact that building of the Petitioner was constructed in the year 1996 and he had produced all the revenue records such as property tax, electricity service connection card/bills, water and sewerage tax etc., before the Second Respondent for regularisation. Moreover, as per the decision of the Hon'ble Division Bench of this Court that if any construction is put up prior to 28.02.1999 is regularisable and the same is confirmed by the Hon'ble Apex Court.

17.Per contra, it is submission of the Learned counsel for the Second Respondent/Chennai Metropolitan Development Authority that the Petitioner had submitted regularisation application to regularise the building concerned of basement floor, ground floor, mezzanine floor, first floor to fifth floor and sixth floor part commercial building at Door No.11, L.B. Road, Adyar, Chennai vide Reg.No.88/99 and 6244, dated 25.10.2000.

18.The Learned counsel for the Second Respondent brings it to the notice of the Court that Petitioner had obtained approval for BF+GF+FF (Commercial cum Residential Building) vide PPA No.D10/6641/96, Building Approval No.D10/5530/96. Further, this building was inspected on 02.07.1999, 21.05.2001 & 15.04.2009. As a matter of fact, the regularisation application was processed and demand notices were sent on 29.05.2000 and 06.06.2002 respectively. Furthermore, the Petitioner has not remitted the charges against the demand notice, he had submitted an appeal to the Government

after obtaining the remarks from the Second Respondent and on due consideration, the First Respondent had passed orders in G.O.(D) No.660 dated 12.12.2005, rejecting the appeal and further directed the Petitioner to remit the charges.

19.The Learned counsel for the Second Respondent proceeds to add that the Petitioner filed W.P.744 of 2006 on earlier occasion before this Court as against the order passed by the Government in G.O.(D) No.660 dated 12.12.2005 and this Court on 10.12.2008, passed an order by remitting back the matter to the First Respondent, namely, Housing and Urban Development Department to pass fresh order in accordance with law. Continuing further, the Government as per G.O.(3D) No.124, dated 30.10.2009, had remitted back the appeal of the Petitioner against regularisation if claimed by the Second Respondent/Chennai Metropolitan Development Authority with a direction to it to take decision expeditiously and also pursue action accordingly.

20.Drawing the attention of this Court, the Learned counsel for the Second Respondent submits that pursuant to the orders of this Court in Regulation cases dated 23.08.2006, the regularisation application was placed before the Monitoring Committee (MC) Meeting that took place on 22.06.2007 and the Committee decided to accept the basement floor, ground floor, mezzanine floor, first floor to fifth floor and sixth floor part commercial building was completed before 28.02.1999.

21.Apart from that, the building was again inspected before issuing the demand notice on 15.04.1999 and it was found that there is some additional construction which are not mentioned in the regularisation plan while applied for regularisation. Therefore, the Reg/Petitioner requested to remove the additional construction made after 28.02.1999 by letter No.C6/8892/99 dated 05.05.2015 with a request to comply with Directorate of Fire and Rescue Services Department condition. सत्यमेव जयते

22.The Learned counsel for the Second Respondent contends that based on 43rd Monitoring Committee (MC) meeting that took place on 03.01.2012, a survey was conducted at L.B.Road by Enforcement Cell of the Second Respondent and Corporation of Chennai and after finding some deviations, Chennai Metropolitan Development Authority, Enforcement Cell issued Locking and Sealing and Demolition notice in letter No.ES2/11265/2014, dated 20.03.2015 to the building. As against this notice, the Petitioner had filed the present Writ Petition W.P.9865 of 2015 before this Court.

23.The Learned counsel for the Second Respondent submits that Petitioner was requested to remit the balance regularisation fee

and other charges amounting to Rs.35,15,000/- as per rules in force then and in fact, his regularisation application was processed only on the rules in force at that point of time, but he had not paid the said charges. Also that the First Respondent while passing order in G.O.(D) No.660, Housing & Urban Development Department, dated 12.12.2005 rejected the appeal and directed the Petitioner to remit the charges which he had filed to do so.

24.The Learned counsel for the Second Respondent contends that usage of building during the inspection dated 02.07.1999 was found to be as follows:

	Basement Floor	Office & Showroom
	Ground Floor	Pizza Corner
Floor	Mezzaine	Commercial
to Fifth Floor	First Floor	Offices

and therefore, the regularisation fee calculation based on commercial rate was correct. Also that the building under reference was completed before 28.02.1999 with certain condition and based on that, Petitioner has furnished NOC from DFRS. Before regularising the building under reference, the Second Respondent officials had inspected the building and found that there are additional construction after 28.02.1999 and the application was requested to remove the additional construction made on 28.02.1999 in office letter No.C6/8892/2015 dated 05.05.2015 with a request to comply with DFRS condition and also

"(i)to remove the remaining sixth floor part (terrace floor), which was constructed additionally after the regularisation plan submitted.

(ii)to demolish a toilet in the southern side setback.

(iii)steel fabricated spiral staircase from ground floor to fifth floor without providing door access to each floor on rear setback."

25.Later, a survey was conducted at L.B. Road by Enforcement Cell of Chennai Metropolitan Development Authority & Corporation of Chennai which found some deviations and the Second Respondent/Enforcement Cell issued Locking and Sealing and Demolition Notice in Letter No.ES2/11265/2014, dated 20.03.2015 to the building and against the said notice, Petitioner has filed the present Writ Petition.

26. During his last leg of his argument, the Learned counsel for the Second Respondent takes an emphatic view that this Court in its order dated 23.08.2006 ordered that the building constructed before 28.02.1999 alone are eligible for regularisation and based on that Court order, the Petitioner was requested to remove the additional structures made after 28.02.1999 which were not mentioned in regularisation plan applied in office Letter No.c6/8892/2015 dated 05.05.2015 with a request to comply etc.

27. At this stage, it is to be borne in mind that impugned Locking and Sealing and Demolition Notice dated 20.03.2015 was issued to Petitioner's brother K.R.Mohan Ram at No.11, Dr.Muthulakshmi Salai, Adyar, Chennai-20 and all the occupiers of the building whereby and whereunder it was mentioned that the entire building/construction at the site under reference is treated as an unauthorized one and being carried out without any statutory approval and as such, calling upon to restore the land to its condition before the said construction took place within 30 days from the date of receipt of notice. Significantly, the said notice was also served to all the owners/occupants of the building as required by the ingredients of Section 56 Sub-Section (2) and clause (iii) of the Tamil Nadu Town and Country Planning Act, 1971 with a request to discontinue the use of the respective portions of the buildings.

28. It is pertinently pointed out by this Court that impugned Locking and Sealing and Demolition Notice dated 20.03.2015 was in issue of the Petitioner but it was issued/addressed only to the Petitioner's brother K.R.Mohan Ram in the stated address mentioned in the notice and to all the occupants of the building. Inasmuch as the impugned letter Locking and Sealing and Demolition Notice dated 20.03.2015 was not issued to the proper/correct/right person namely, the Petitioner, inspite of the same, it was issued to Petitioner's brother who has nothing to do with the subject matter of property in question, this Court comes to an inevitable and inescapable conclusion that the impugned Locking and Sealing and Demolition Notice dated 20.03.2015 was issued by the Second Respondent without any proper application of mind. On this simple ground alone, this Court is perforced to interfere with the impugned notice dated 20.03.2015 and sets aside the same in furtherance of substantial cause of justice. Resultantly, the Writ Petition succeeds. Consequently, the Writ Petition is allowed with costs being made easy for the reasons assigned above. Connected Miscellaneous Petition is also closed.

29. It is abundant made clear that the order of allowing the present Writ Petition filed by the Petitioner before this Court will not preclude the Competent Authority to take further logical steps in the subject matter in issue, of course, by following the

due procedures and rules of Regulations in true letter and spirit without any deviation whatsoever.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

DP

To

1.The Secretary to Government,,
State of Tamil Nadu
Housing & Urban Development (UD-I)
Department,
Secretariat, Chennai-600 009.

2.The Member Secretary,
Chennai Metropolitan Development
Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai-600 008.

1 cc to Mr.M.Balasubramanian, Advocate, Sr. 30034

1 cc to Mr.K.Raja Srinivas, (CMDA), Sr. 30229

W.P.No.9865 of 2015
and M.P.No.1 of 2015

RJ (CO)
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