

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.03.2016

DATE OF DECISION: 23.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.10334 of 2016

and

W.M.P.No.9139 of 2016

Altaf Shoes Private Limited,
represented by its Factory Manager,
A.Venkatesan.
"Anugraha Apartments",
C-Block, 1st Floor-1A,
No.19, Nungambakkam High Road,
Chennai-600 034. .. Petitioner

Vs.

- 1.State of Tamil Nadu,
represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008. Respondents

Writ Petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the respondents, culminating in the impugned order dated 19.01.2016 bearing G.O. (3D)No.27 passed by the first respondent confirming the order dated 14.03.2014 bearing reference Letter No.Reg.I&I/C5/18253/99 passed by the second respondent and quash the same.

For Petitioners : Mr.M.Sundar
for M/s.K.Ashok Kumar

ORDER

SATISH K. AGNIHOTRI, J.

Feeling aggrieved by the proceedings in G.O.(3D)No.27, Housing and Urban Development Department, dated 19th January, 2016, the petitioner has filed the instant writ petition.

2 The first respondent, considering the appeal of the petitioner filed under Section 113A(6) of the Tamil Nadu Town and Country Planning Act, 1971 (herein-after referred to as "Act, 1971"), against the rejection order dated 14th March, 2014 passed by the second respondent, Member Secretary, Chennai Metropolitan Development Authority, dismissed the same, holding as under :

"7.The Government have examined the case along with the connected original records and remarks of Chennai Metropolitan Development Authority. After careful consideration, the Government have decided to reject the appeal of M/s.Althaf Shoes under section 113(A)(6) of the Act for regularization of unauthorized construction of Machinery Hall B&C - Ground Floor + Mezzanine Floor and incidental structures such as workers Dining, Dining hall, Generator Room, Office Block, Maintenance Room, Security Room, Securities Office and Rest Room as EB Room of Industrial building in S.Nos.395/1, 396/1B, 3B, 3C and 5 of Palanjur Village, Chennai as the entire building was not completed prior to 28.02.1999, without prejudice to his right to apply under section 113(C) once the rules are notified.

8.The orders issued in para 7 above are final and no further appeal shall lie with the Government and the Member Secretary, Chennai Metropolitan Development Authority is directed to pursue action accordingly."

3 The learned counsel appearing for the petitioner submits that according to the inspection report dated 3rd June, 2002, only a small portion of the said superstructure, being 171.56 square metre situated in one of the five survey numbers, i.e., S.No.396/5 alone was constructed after 28th February, 1999. It is further contended that 77 workers are employed, whose families are totally dependent on the petitioner company

for their livelihood. The petitioner Company is also generating foreign exchange. The subsequent developments have been completely ignored by the first respondent while considering the appeal. The first respondent ought to have exercised its power even in respect of the construction purported to be carried out after 28th February, 1999 and on or before 1st July, 2007. The completion which had taken place prior to 28th February, 1999 was completely ignored. It is further contended that several documents were produced, which were not examined by the first respondent while passing the order.

4 Heard the learned counsel for the petitioner, examined the pleadings and documents appended thereto.

5 The petitioner preferred an application for regularization of Machinery stall B&C - Ground Floor + MF and incidental structures, such as workers dining, dining hall, generator room, office block, maintenance room, security room, securities office and rest room and EB room of industrial building, which was received by the CMDA on 30th October, 2000. The petitioner was informed vide communication dated 11th May, 2010 to furnish information as to (i) date of planning permission and proof of completion, (ii) electricity service connection and water connection and (iii) registration of sale deed conveying constructed area / plot, which, it appears, was responded to by letter dated 22nd July 2010.

6 The second respondent examined the application and by letter dated 14th March, 2014 held as under :

"4. x x x x x x Further, you have put up additional construction such as office block-GF, Machinery Hall-C, GF+MF and Dining hall-9F which is after the cut off date i.e., 28.2.1999. Hence your regularization application is rejected. "

7 Thereagainst, the petitioner preferred an appeal under Section 113A(1) of the Act, 1971, enclosing a copy of the planning permission, electricity service connection and water connection and photo copies of six sale deeds. On 26th May, 2015, the petitioner was supplied with remarks of the second respondent and an opportunity was also given to make further representation on the said remarks, within a period of fifteen days. The petitioner has sought further extension of time for 10 days vide letter dated 12th June, 2015. Thereafter, vide communication dated 22nd June, 2015, the petitioner has stated that the CMDA has sent a letter dated 29th February, 2000, stating that the building falls under ordinary building category and the deviation in violation of the Development Control Rules falls under Category-I / Category-II /Category-III (under Rule 6(i) of the Application, Assessment and Collection of Regularisation Fee (CMA) Rules 1999 and the

petitioner was asked to pay regularisation fees and development charge. Thus, the petitioner has sought for regularisation by accepting the regularisation fee.

8 The first respondent examined the entire dispute at length and by impugned order dated 19th January, 2016, held as under :

"6.From the above, the following may be stated with regard to the above appeal.

- The land in which the factory is located comes under open space and recreational use zone. So the proposal needs land use zoning reclassification.
- As per Chennai Metropolitan Development Authority's inspection report dated 02.11.1999 the structures such as workers dining + toilet (Ground floor), maintenance room (Ground floor), Maintenance hall (Ground floor) + partly Ground floor + First Floor, EB room (Ground Floor), Security room (Ground floor) and Generator room (Ground floor) are covered. Again as per the inspection report dated 18.04.2001 structures in addition such as office block - Ground floor, Machinery hall - c - Ground Floor + Mezzanine Floor, Dining hall are constructed in S.No.396/5. Hence all the structure made as mentioned above are after cut-off date 28.02.1999."

9 Now, the question which arises for our consideration is as to whether the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, may go into the findings of facts when the petitioner has not pointed out any infirmity, perversity in the impugned order and also procedural irregularity or infirmity.

10 As we have stated herein-above, the petitioner was given opportunities time and again to produce relevant documents. The issue as to what documents are required to be submitted to establish the fact of construction made prior to 28th February, 1999, came up for consideration before a Division Bench of this Court in Consumer Action Group Vs. The State of Tamil Nadu¹, wherein it was observed as under :

"32.In the result, in view of the foregoing discussion, we pass the following order:-

x x x x x x x x x x x x x x x

1 2006 (4) CTC 483

xi)Where claims are made that the unauthorised/deviated constructions were eligible for protection under the 1999 scheme - to determine the veracity of claims and evolve criteria for such identification which may include the following:-

- a)Date of planning permission and proof of completion;
- b)Electricity service connection and water connection; and
- c)Registration of sale deed conveying constructed area."

11 The petitioner was directed firstly by the CMDA to produce relevant documents, which has not been produced. The petitioner has not produced any planning permission even before us, indicating that the entire construction was made prior to 28th February, 1999. Thus, we do not find any procedural infirmity or illegality or perversity in the order of the first respondent.

12 On the scope of the judicial review over the actions and decisions of the administrative authorities, the Supreme Court in State of Uttar Pradesh Vs. Rakesh Kumar Keshari², has observed as under :

"29. The Court in Johri Mal case also held that the decisions and actions which do not have adjudicative disposition would not strictly fall for consideration before a judicial review court. According to this Court the limited scope of judicial review is:

(i) Courts, while exercising the power of judicial review, do not sit in an appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds;

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be

2 (2011) 5 SCC 341

interfered in judicial review unless it is shown that exercise of discretion itself was perverse or illegal;

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review;

(v) The supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice; and

(vi) The Court shall not ordinarily interfere with a policy decision of the State."

13 Further, the Supreme Court in Kalinga Mining Corporation Vs. Union of India³, has observed that the judicial review over the administrative action / quasi judicial orders passed by the Government is limited and it was held as under :

"62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous.

63. This Court in *Tata Cellular v. Union of India* upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles: (SCC pp. 675 & 677-78, paras 70 & 77)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

* * *

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- (1) Whether a decision-making authority exceeded its powers?
- (2) committed an error of law,
- (3) committed a breach of the rules of natural justice,
- (4) reached a decision which no reasonable tribunal would have reached, or
- (5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

The aforesaid judgment has been followed again and again. It was clearly observed in the said judgment that where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court cannot function as an appellate authority substituting the judgment for that of the administrator."

14 Applying the well settled principle of law, as aforestated, in a case of judicial review of administrative decision, on examination, we do not find any perversity or also lack of procedural requirement, leading to irregularity. The petitioner was given full opportunity to produce documents, which he had failed. Accordingly, no interference is warranted. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

vvk

To

1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai-600 009.

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

+1cc to M/s. N. Sampath, Advocate, S.R.No.18463
+2ccs to Mr.K. Ashok Kumar, Advocate, S.R.No.18321

UG(CO)
EU(30/03/2015)

W.P.No.10334 of 2016



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