

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.22398 of 2016
and WMP.No.19111 of 2016

1. Dr.B.Keshav Singh
2. B.Inderjit Singh ...Petitioners

Vs.

1 Government of Tamil Nadu
Rep. by its Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai-9

2 Chennai Metropolitan Development Authority
Rep. by its Member Secretary
No.1, Gandhi-Irwin Road
Egmore, Chennai-8 ...Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent as well as the 2nd respondent insofar as rejecting the regularisation Application for the building under occupation of the petitioners put up at New No.14(Old No.50), K.B.Dasan Road, Alwarpet, Chennai-18 issued under Town and Country Planning Act vide proceedings G.O (3D) No.45 dated 03.02.2016 confirming C.M.D.A letter No.Reg.MSB/ C6/51028/2000 dated 27.01.2015 by quashing the same and consequently direct the respondents to regularise the building put up.

For Petitioners: Mr.R.Mohan

For Respondents: Mrs.A.Sri Jayanthi,
Spl.Govt.Pleader for R1
Mr.C.Johnson for R2

O R D E R
(Order of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel for the petitioner, Mrs.A.Srijayanthi, learned Special Government Pleader, who has taken notice for the 1st respondent and Mr.C.Johnson, learned Standing counsel, who has taken notice for the 2nd respondent.

2. This Writ Petition is filed praying to call for the records of the 1st respondent as well as the 2nd respondent insofar as rejecting the regularisation Application for the building under occupation of the petitioners put up at New No.14 (Old No.50), K.B.Dasan Road, Alwarpet, Chennai-18 issued under Town and Country Planning Act vide proceedings G.O(3D) No.45 dated 03.02.2016 confirming C.M.D.A letter No.Reg.MSB/C6/51028/2000 dated 27.01.2015, by quashing the same and consequently to direct the respondents to regularise the building put up.

3. On a perusal of the averments made in the Writ Petition, it is seen that on account of deviations and violations in the constructions put up by the Builder in the building situated at No.14/50, K.B.Dasan Road, Alwarpet, Chennai-18, who was the Power of Attorney Holder of the petitioners herein, an Application for regularization was submitted to the 2nd respondent on 31.10.2000. The C.M.D.A., also called upon the builder to submit all documents to prove the fact that the construction was prior to cut off date 28.02.1999. An order was passed by CMDA on 27.01.2015 rejecting the application for regularisation. According to the petitioners, they have so many other documents to claim regularisation and they are entitled to seek exemptions and thus filed appeal to the Government/1st respondent under Section 113-A(6) of the Town and Country Planning Act on 06.02.2015. However, the said appeal was rejected by the first respondent by G.O.(3D).No.45, Housing and Urban Development (UD1) Department, dated 03.02.2016, stating that the petitioners have not furnished any credible evidence to prove that the above building was in existence on or before 28.02.1999. Paragraph 5 of the rejection order by the 1st respondent also states that the order is final and no further appeal shall lie with the Government.

4. The learned counsel appearing for the petitioners relied upon the decision of this court dated 31.07.2014 passed in W.P.No.18353 of 2014 [M/s.Multivista Global Limited Vs. The Government of Tamil Nadu and another] and submitted that no independent reasoning is given by the appellate authority and the decision of this court cited above squarely covers the present Writ Petition also. The learned counsel also submitted that in the present case, before passing the impugned rejection

order, the 1st respondent has not followed the principles of natural justice.

5. We have gone through the averments made in the Writ Petition, impugned order and the submissions made by the learned counsel for the petitioner.

6. It is seen that one of the reasonings given by the 1st respondent for rejecting the appeal filed by the petitioners is that no credible evidence have been furnished to prove the building was in existence on or before 28.02.1999. However, it is the contention of the petitioners that they are in possession of documents to prove that the building was in existence on or before 28.02.1999 and if they are given a sufficient opportunity, they can prove the same.

7. Taking into consideration all the above aspects, following the order of this court dated 31.07.2014, W.P.No.18353 of 2014 [M/s.Multivista Global Limited Vs. The Government of Tamil Nadu and another], we are of the considered view that the 1st respondent has not given any independent reasoning in the appeal filed by the petitioners. Accordingly, we set aside the order passed by the first respondent/Government dated 03.02.2016 and remand the matter to the first respondent to consider the matter afresh and pass orders after affording an opportunity of personal hearing to the petitioners and calling upon to submit relevant documents relied on by the petitioners. This exercise shall be done by the 1st respondent within two months from the date of receipt of a copy of this order. Till such orders are passed by the first respondent, the parties are directed to maintain status quo.

8. The Writ Petition is disposed of accordingly. No costs. Consequently connected MP is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

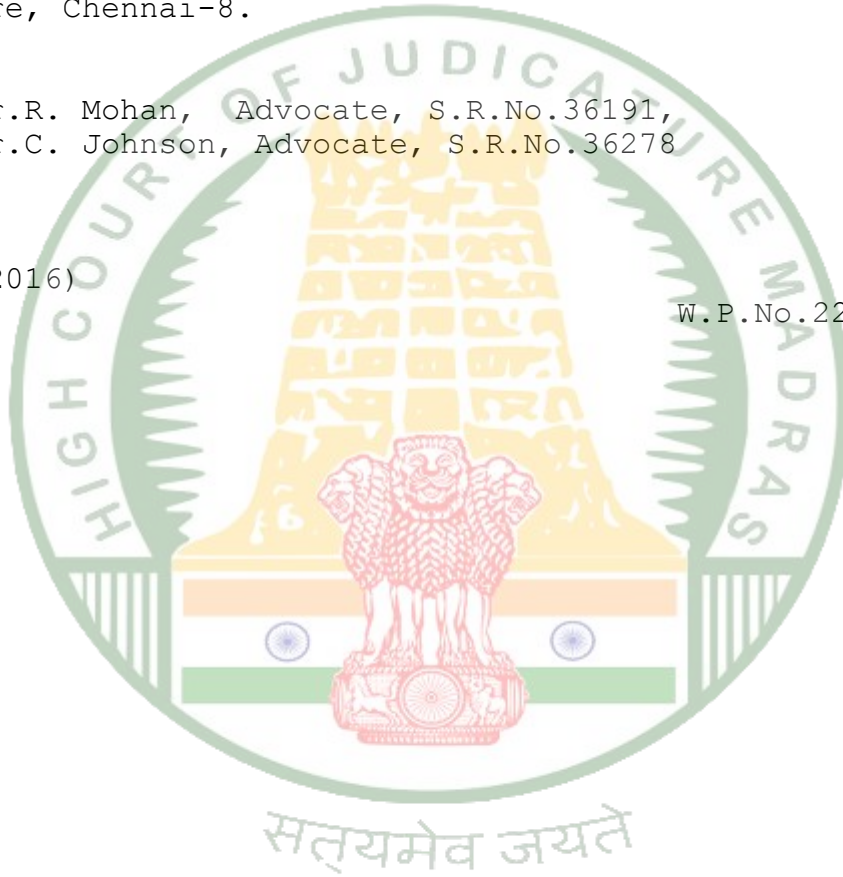
To

- 1 Government of Tamil Nadu
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Housing and Urban Development Department
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Rep. by its Member Secretary
No.1, Gandhi-Irwin Road
Egmore, Chennai-8.

+1cc to Mr.R. Mohan, Advocate, S.R.No.36191,
+1cc to Mr.C. Johnson, Advocate, S.R.No.36278

GJ(CO)
EU(29/07/2016)

W.P.No.22398 of 2016



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