IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.9.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.32237 of 2016
and
W.M.P.No.27956 of 2016

A.M.Mohammed Ali Jinnah ... Petitioner

Versus

1 The Government of Tamil Nadu
rep. by the Secretary to the Government
Housing and Urban Development Department
Fort St. George Chennai-600 009

2 The Commissioner
Greater Chennai Corporation Chennai

3 The Member Secretary
Chennai Metropolitan Development Authority
Egmore Chennai-600 008 ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records in the impugned order dated 28.7.2016 in G.O.(3D) No.112 of the 1st respondent and quash the same and consequently direct the 1st respondent to reconsider afresh the merits of the appeal dated 10.1.2013 of the petitioner and regularize the construction in the light of various averments made.

For petitioner	:	Mr.M.Dhandapani for Mr.D.Ravindranathan
For R1	:	Mr.S.Pattabiraman, Govt. Advocate
For R2	:	Mr.A.Nagarajan
For R3	:	Mr.K.Raja Shrinivas

ORDER

(Order of the court was made by S.VAIDYANATHAN, J.)

The petitioner has approached this court challenging the order dated 28.7.2016 in G.O.(3D) No.112 on the file of the first respondent.

2. Aggrieved by the order of the CMDA for regularization of unauthorised and deviated construction, the petitioner has preferred an appeal under section 113 A(6) of Tamil Nadu Town and Country Planning Act, 1971 before the first respondent. This court, by order dated 23.8.2006, taking into consideration various amendments, had held that the construction made after 28.2.1999 are declared ultra vires. Therefore, all the applications received for regularization of plots, ordinary buildings, special buildings, multi storied buildings, etc., under the extended scheme 2000, 2001 and 2002 shall be deemed to be rejected and this court quashed the order with regard to regularization of such buildings constructed after 28.2.1999. Based on such a view, the petitioner was asked to produce various documents as could be seen from the original order of the authority and on examination of such particulars, the opportunity sought for by the petitioner for regularization was rejected as it was found that there is an encroachment upto one foot length, breaching the rule.

3. The case of the petitioner is that the building was constructed prior to the cut off date viz., 28.2.1999 and that his appeal has got to be entertained by the authority under section 113 A (6) of the Act and that the building came into existence prior to 28.2.1999 and even though he had undertaken to remove the structure alleged to be the deviation, the representation of the petitioner has not been considered. The grievance of the petitioner is that he has paid property tax during 1992-93 and 1993-94 and produced the following documents to prove that the building came into existence prior to 28.2.1999:-

a) 5 Nos. of Demand Notice of Property Tax and new Assessment of amendment and receipt of paying the tax.

b) 3 Nos. Water Tax receipt

c) 3 Nos. Electricity Receipt

d) 4 Nos Drainage Receipt

e) Telephone Bill showing the date of installation

f) Merchant Agreement with shop and Save Association

g) Approved Plan of the Building by Alandur Municipality

h) Marriage held notice

i) Marriage invitation which was held in the building

j) Advertisement given in "Dina Thanthi"

k) Opening Ceremony Invitation which was given to friends and relatives

l) Photo showing the front elevation and opening ceremony of the building.

4. The appellate authority found that the building could not have come into existence prior to 28.2.1999 and the petitioner has also not produced any document to prove that the said building could have been completed prior to 28.2.1999 and also found that as the building came into existence after 28.2.1999 the petitioners remedy is to approach the authority in terms of section 113(c) and appeal

under section 113 A(6) is not maintainable and rejected the appeal filed by the appellant by the impugned order.

5. For the reasons narrated above, we find that there is no error in the order of the Secretary to Government which is impugned in this writ petition. As the building came into existence only after the cut off date fixed by this court viz., 28.2.1999, we find much force in the contention of the learned Government Advocate and hence, we are not inclined to entertain the the writ petition. Since opportunity has been given to the petitioner in para 5 of the impugned order leaving open to the petitioner to approach the authority under section 113(c), we make it clear that it is for the petitioner to approach the authority invoking such provision within 15 days from the date of receipt of copy of this order and if any appeal or representation is made invoking such provision, it is open for the authority to decide the same within two months from thereafter, after affording an opportunity to the petitioner in writing as well as by personal hearing, if there is no legal impediment. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

ssk.

To:

1 The Government of Tamil Nadu
rep. by the Secretary to the Government
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Fort St. George Chennai-600 009

2 The Commissioner
Greater Chennai Corporation Chennai

3 The Member Secretary
Chennai Metropolitan Development Authority
Egmore Chennai-600 008

+1cc to M/S D.Ravindranathan, Advocate Sr.53376
+1cc to M/s K.Raja Shrinivas, Advocate Sr.53639
+1cc to Government Pleader Sr.53476

W.P.No.32237 of 2016

RK(CO)
RVR 24/10/2016