

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

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

Writ Petition No.33420 of 2016
and W.M.P.Nos.28852 and 28853 of 2016

Sri Zalawad Jain Welfare Trust
"Sri Mathikundanben Ratilal
Shah Kapadia Bhavan - Lakhtar Wala"
rep. by its Trustee
No.15/16, Vepery Church Road
Vepery
Chennai-600 007.

...Petitioner
Vs.

1. The Member Secretary
C.M.D.A., Egmore
Chennai-600 008.
2. Corporation of Chennai
rep. by its Commissioner
Ripon Buildings
Chennai-600 003.
3. The Executive Engineer
Corporation of Chennai
Zonal Office-V
Chennai.
4. The Assistant Executive Engineer
Corporation of Chennai, U-14,
Chennai.
5. The Assistant Engineer
Corporation of Chennai
Division -58, Choolai
Chennai-600 112.

...Respondents.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st

respondent, dated 18.08.2016, in No.Reg.I&I/C7/50299/2000, and quash the same and to direct the 1st respondent to pass fresh orders by taking into consideration of the documents submitted by the petitioner along with their letter, dated 21.06.2016, and received by the 1st respondent on 22.06.2016.

For Petitioner : Mr.P.Sukumar

For Respondents : Mr.K.Raja Shrinivas for R.1

Mr.V.C.Selvasekaran
for R.2 to R.5

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Mr.K.Raja Shrinivas, learned counsel, accepts notice on behalf of the 1st respondent and Mr.V.C.Selvasekaran, learned counsel, accepts notice on behalf of the respondents 2 to 5. With the consent of both the parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

2. The brief facts of the case of the petitioner are as follows:-

(i) The case of the petitioner is that he is a Trustee of a registered Trust, viz., "Sri Zalawad Jain Welfare Trust. The petitioner's Trust had purchased undivided share of land under three sale deeds at premises bearing old Door Nos.12 & 12A, New Door Nos.15&16, Church Road, Vepery, Chennai-600 007, from the total extent of 5 grounds and 37 3/8 sq.ft. or thereabouts by sale deeds, dated 02.05.1994, 16.05.1994 and 16.05.1994 respectively from S.Ibrahim and Co., and others registered as Doc.Nos.1319, 1321 and 1327 of 1994 at Sub-Registrar Officer, Periamet, respectively. Subsequently, a building contractor was engaged for putting up a residential complex. After obtaining sanctioned plain in 1994 & 1996, construction of basement, ground floor and other floors were completed. On 22.05.1997, a Memorandum of Understanding was entered into between the purchasers of the undivided share allotting their respective constructed portions, in which, under Clause "O" the petitioner Trust, who are the purchasers of undivided share, have been allotted super plinth area of 12030 sq.ft. known as Dining Hall in the basement, the Community Hall in the ground floor and 9 rooms in the 1st floor. The petitioner Trust was also put in possession of the said portion. On 31.12.1999, the petitioner's property was assessed to property tax by the Corporation of Chennai.

(ii) The petitioner made an application under the Regularisation Scheme for the regularization of the basement area and paid the initial fee, to use it as a Hall & Dining Hall for functions. The petitioner has paid the balance regularization fee as per the demand made by the CMDA on 31.12.2000. Totally, the petitioner has paid a sum of Rs.2,02,500/- towards the regularization fee as per CMDA's demand. While so, the 2nd respondent has sent a notice, dated 03.09.2014, asking the petitioner to stop the work. The petitioner sent a reply, dated 18.11.2014, stating that the entire construction was completed in the year 1997 itself, therefore, as per the Regularizing Scheme any unauthorized construction done prior to 1999 can be regularized if an application is made to CMDA. Since, his reply was not accepted, the petitioner preferred an appeal to the Government of Tamil Nadu under Tamil Nadu Town and Country Planning Act, 1971, in 2014. On 19.11.2014, the respondents 1 to 4 have sent another notice to the petitioner under Sections 56, 57 and 85 of Tamil Nadu Town and Country Planning Act, to restore the building to its original condition, within a time frame. The petitioner had challenged the lock and sealing and demolition notice, dated 19.11.2014, by filing an appeal under Section 80(A) of Tamil Nadu Town and Country Planning Act. Apprehending that the respondents may take action to seal and lock the premises, the petitioner has preferred W.P.No.33518 of 2014, which was disposed of, by order dated 19.12.2014, directing the Housing Secretary to dispose of the appeal filed by the petitioner within a time frame. Subsequently, the appeal was not entertained as it is a premature one. Once again, the respondents 2 to 4 have sent a notice for lock & seal and demolition. Challenging the same, the petitioner has preferred an appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971. On 02.02.2016, the Secretary to Government Housing & Urban Development Department has passed an order, wherein, he has mentioned that the construction of the building was completed in the year 1997 itself as evidenced by the Memorandum of Understanding and hence, the petitioner Trust is eligible for regularization of the areas under Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, and granted status quo till the disposal of the application for regularization.

(iii) On 02.06.2016, the 1st respondent has sent a letter requesting the petitioner Trust to furnish certain documents. According to the petitioner, on 21.06.2016, the petitioner's Trust submitted the required documents and paid the scrutiny

charges to the 1st respondent. However, the 1st respondent, by impugned order, dated 18.08.2016, rejected the petitioner's regularization stating that the petitioner Trust has not furnished the relevant particulars as sought for by the CMDA. Seeking to quash the order of the 1st respondent, dated 18.08.2016, and to direct the 1st respondent to pass fresh orders by taking into consideration of the documents submitted by the petitioner along with the letter, dated 21.06.2016, the present Writ Petition is filed.

3. The learned counsel appearing for the petitioner would submit that as per the Regularizing Scheme, any unauthorized construction done prior to 1999 can be regularized, if an application is made to CMDA. He would further add that since the construction of the petitioner's building was completed as early as in the year 1997 itself as per the sanctioned plan, and only the usage of the basement is sought to be converted as a hall to use it for functions, for which, a revised plan for regularization was submitted to the 1st respondent in 1999 and he has also paid the initial charges and the amount demanded by the 1st respondent for regularization, he is automatically entitled for regularization, provided an application is made by him, but, without looking into these details and taking into consideration the application and the documents submitted by the petitioner in a proper perspective, the impugned order was passed by the 1st respondent, which shows only non-application of mind on his part.

4. The learned counsel appearing for the respondents would submit that the petitioner was asked to furnish certain particulars within 30 days through a public notice notified through newspapers, dated 02.12.2006. Having not furnished the particulars as sought for, the petitioner's application seeking regularization was rightly rejected and hence, the impugned order needs no interference at the hands of this Court.

5. Having regard to the submissions made by the learned counsel on either side, in my considered opinion, it is suffice to state that it is for the petitioner to furnish the particulars sought for by the 1st respondent within a period of 15 days from the date of receipt of a copy of this order and on receipt of the same, it is for the 1st respondent to consider the same and pass necessary orders, in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of three months thereafter. It is made clear that it is left open to the petitioner to urge all the contentions raised before this Court.

6. The Writ Petition is disposed of with the above direction. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

paa

To

- 1 The Member Secretary
C.M.D.A., Egmore
Chennai-600 008.
2. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai-600 003.
3. The Executive Engineer
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Corporation of Chennai
Division -58, Choolai
Chennai-600 112.

+1cc to M/S.P.Sukumar, Advocate Sr.54251

W.P.No.33420 of 2016

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srg 01/11/2016