

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.6497 of 2016
and
WMP.No.5787 of 2016

V.Bakthavachalam

... Petitioner

V.

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

2.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Certiorarified Mandamus to call for the records of the second respondent in G.O.(3D) No.5, Housing and Urban Development [UD-VI(1)] Department dated 8.1.2016, quash the same and consequently direct the respondents to regularise the structure of the Petitioner in Door No.18, New No.4, Aranganathan Subway Road, Saidapet, Chennai 15.

For Petitioner : Mr.P.Srinivas

ORDER

(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 2nd Respondent in G.O.(3D)No.5, Housing and Urban Development [UD-VI(1)] Department dated 08.01.2016 and to quash the same. Further, he has sought for passing of a consequential order by this Court in directing the Respondents to regularise his structure at Door No.18, New No.4, Aranganathan Subway Road, Saidapet, Chennai.

2.The 2nd Respondent, while passing the impugned order in G.O. (3D)No.5, Housing and Urban Development [UD-VI(1)] Department, dated 08.01.2016, at paragraph 7, had observed the following:

"7.The Government after careful consideration of the appeal hereby reject the appeal of Thiru V.Bakthavatchalam under section 113(A)(6) against the rejection orders of Chennai Metropolitan Development Authority for regularization of unauthorised/ deviated construction of Commercial cum residential building Ground Floor + 2 Floors at D.No.18, New No.4, Plot No.31/A, Kavary Nagar, Aranganathan Sub way Road, Saidapet, Chennai - 15 in S.No.38 Part, 41 part and 48/5 part, Block NO.30 of Mambalam Village, since the building has aerial encroachment and the construction was under progress when the site was inspected and notice calling for approved plan dated 22.04.1999 was issued by Chennai Metropolitan Development Authority."

and rejected the Appeal filed by the Petitioner under Section 113-A of the Town and Country Planning Act, 1971.

3.According to the Petitioner, the impugned Government Order in G.O.(3D)No.5, Housing and Urban Development [UD-VI(1)] Department, dated 08.01.2016 passed by the 2nd Respondent suffers from total non-application of mind because of the reason that the relevant documents to show the existence of building prior to 1999 is available with the Respondents by means of 'Tax Receipts as well as the notice of the 1st Respondent' in regard to the unauthorised construction.

4.The Learned Counsel for the Petitioner urges before this Court that when once the building is completed and the same being assessed to property tax before the cut off date of 29.05.1999, the Petitioner is automatically entitled to the claim for regularisation.

5.The Learned Counsel for the Petitioner contends that the projection of 'Balcony' by one foot is merely an architectural feature and the same has no utility or bearing on the total area of the house.

6.The stand of the Petitioner is that the 1st Respondent had failed to appreciate that the building is in existence from the year 1998 itself and only on 29.05.1999, the application for

regularisation was submitted and therefore, the application is in time as per the 'First Scheme for regularisation'. Also, it is represented on behalf of the Petitioner that the very issue of the stop work and demolition notices is a significant proof that the building was already in existence from the year 1998 itself.

7.The Learned Counsel for the Petitioner projects an argument that the 2nd Respondent/Secretary to Government, Housing and Urban Development, Secretariat, Chennai had failed to provide an opportunity of hearing before passing orders on the 'Appeal Petition' of the Petitioner and the said violation is in negation of the Principles of Natural Justice. Moreover, when the request for personal hearing was specifically made and also this Court had directed the Appeal should be considered properly after obtaining the remarks regarding the decision of the Monitoring Committee based on which the previous decision was taken, the present decision, without providing an opportunity of hearing to the Petitioner, suffers from grave illegality in the eye of Law.

8.The Learned Counsel for the Petitioner proceeds to take a pivotal stand that when the Petitioner had specifically requested at the time of submitting his further representation that he should be given hearing in person or through Learned Counsel before passing orders, the 2nd Respondent had failed to grant any hearing and thus had failed to peruse the said further representation. Continuing further, if only the further representation was properly perused, then, the Petitioner would have got the opportunity of hearing and also his case would have been properly considered.

9.Finally, it is the submission of the Learned Counsel for the Petitioner that when the Appeal was filed before the 2nd Respondent, the same ought to have been considered only as per its merits and not as per any general proceedings of a policy nature.

10.It is to be noted that Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 dealing with 'Exemption in respect of development of certain lands or buildings' is an enabling provision by which the Government or the Authority after collecting regularisation fees at a rate not exceeding Rs.20,000/- per square meter, exempt any land or building developed on or before 31.03.2002. At this stage, it is to be relevantly pointed out by this Court that only deviations or unauthorised constructions made before the Amendment Act, 1998 can be regularised either by the Government or the Authority, but not an unauthorised constructions or deviations made after the commencement of the Amendment Act, 1998 as per decision Salahudeen Babu V. P.T. Prabhakar and others, 2006 (4) MLJ 22.

11. That apart, the Power of Exemption is not to be exercised freely and that the power to relax building rules, regulations or requirements is an exception to the rule and it is to be used with caution. As a matter of fact, the Town Planning, building rules, regulations and bye-laws are framed in public interest and therefore, a Court of Law has a duty to protect them.

12. It is to be remembered that the aim of the Tamil Nadu Town and Country Planning Act, 1971 is to promote 'Planned Development' in the city. It cannot be forgotten that time is ripe now that everyone should know that the building rules and bye-laws will be properly and strictly enforced by a Court of Law and any deviations made therefrom shall result in orders of demolition at once. The practice of firstly putting up an illegal construction and subsequently to seek for revocation or regularisation ought not to be encouraged by a Court of Law either as a matter of course or routine and in reality, such illegal constructions should be demolished and added further, no revocation/ regularisation must be given, in the considered opinion of this Court.

13. In the instant case, the stand of the 1st Respondent/CMDA before the 2nd Respondent was that the Appellant's site was inspected on 16.11.1999 and found that ground floor + 2 floor roof was completed, and in the 2nd floor roof was laid, partition was not made and there was a balcony projection to 1'0" on to the road side (aerial encroachment) and therefore, the regularisation application was rejected as per letter dated 16.02.2000.

14. Furthermore, the 1st Respondent/CMDA had also taken a plea that in terms of Rule 3(1) of Regularisation Scheme, 1999, any application made by any person for regularisation who does not have any right over the land or building, shall be summarily rejected and accordingly, the regularisation application was again rejected as per letter dated 27.07.2012.

15. Besides these, the 1st Respondent proceeds to take a stand that the Appellant had not encroached the public road and the subject was placed before the 41st Monitoring Committee Meeting that took place on 04.01.2013 wherein it was resolved for rejection of the Appeal to the Government.

16. As far as the present case is concerned, the Appellant had not established either through oral or documentary satisfactory proof to show that the building was constructed before 28.02.1999 and to disprove the fact that the building has aerial encroachment. At this juncture, this Court, on going through the impugned order in G.O.(3D)No.5, Housing and Urban

Development [UD-VI(1)] Department, dated 08.01.2016 in rejecting the Appeal of the Appellant to the Government under Section 113 (A)(6) of the Tamil Nadu Town and Country Planning Act, 1971 passed by the 2nd Respondent and also this Court taking note of the attendant facts and circumstances of the case in an integral manner, holds that the same does not suffer from any material irregularity or patent illegality in the eye of Law. Consequently, the Writ Petition fails.

17. In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
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No.1, Gandhi Irwin Road,
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2. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.11130
+1cc to Mr.N.Sampath, Advocate, S.R.No.11135
+1cc to the Government Pleader, S.R.No.11410

gr(CO)
srg(04/03/2016)

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