

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 1.3.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P. No.7376 of 2016

M.Sulthan Mohideen ... petitioner

versus

- 1 The Secretary to Government  
Housing and Urban Development (UD1)  
Department Secretariat Chennai-9.
- 2 The Member Secretary  
Chennai Metropolitan  
Development Authority No.1  
Gandhi Irwin Road Egmore  
Chennai-8.
- 3 The Commissioner  
Corporation of Chennai  
Rippon Buildings  
Chennai-3. .... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records in G.O. 3(D) No.44 dated 3.2.2016 on the file of the 1st respondent herein and quash the same and further direct the respondent to regularize the building situated at 2/2 Station Road West Mambalam Chennai-600 033.

For petitioner : Mr.V.Lakshminarayanan  
for Mr.A.Amanullah

O R D E R

(made by K.K.SASIDHARAN, J.)

This Writ Petition is directed against the order dismissing the application for regularization of illegal construction.

2. The petitioner after obtaining planning permission, made additional construction over and above the sanctioned floors and area. Thereafter, regularization application was filed. The Chennai Metropolitan Development Authority (hereinafter referred to as CMAA), rejected the regularization application by order dated 19 November 2013. The order was challenged before the Government. The Government rejected the appeal primarily on the

ground that evidence was not produced to prove that the entire floors were constructed before the cut off date. Feeling aggrieved, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that the petitioner has produced the electricity Board Advice slip and bill issued for water charges. Those documents would show that the construction was completed before 28 February 1999. The order is therefore, liable to be set aside.

4. The application for regularization was rejected primarily on the ground that there was nothing on record to substantiate the contention with regard to completion of construction before 28 February 1999.

5. The petitioner placed reliance on the following two documents to prove that the construction was completed before the prescribed date.

(i) Copy of the electricity Board advice slip dated 19.11.1998 furnished by the appellant does not establish the number of floors and floor area in each floor that existed before 28.2.99;

(ii) Copy of Chennai Metropolitan Water Supply and Sewerage Board bill dated 16.8.2011 in receipt no.914745 furnished by the appellant does not prove the number of floors and floor area in each floor that existed before 28.2.99.

6. As rightly pointed out by the first respondent, none of those documents would show that the petitioner completed the GF + 3F + 4F, on or before 28 February 1999. It is worth mentioning here that planning permission was given only for construction of GF + MF + FF, office cum residential building. However, the petitioner constructed a lodge building with GF + 3F + 4F, in total violation of the plan and permit. There is no evidence before us to show that the construction was completed before 28 February 1999. The advice slip issued by the Electricity Department on 19 November 1999 would not prove that the entire construction was completed before the cut off-date. The receipt nowhere stated about the total number of floors put up by the petitioner. We therefore concur with the views expressed by the first respondent.

7. The petitioner now seeks judicial review of the order passed by the Government. The jurisdiction under Article 226 in a case of this nature is very limited.

8. The Supreme Court in Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357, expressed its concern with regard to large scale violation of Planning regulations. The Supreme Court said:

"In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

9. We do not find any error or illegality in the order passed by the first respondent so as to exercise the power of judicial review.

10. In the upshot, we dismiss the Writ Petition. No costs. Consequently, W.M.P.No.6583 of 2016 is also dismissed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Secretary to Government  
Housing and Urban Development (UD1)  
Department Secretariat Chennai-9.
- 2 The Member Secretary  
Chennai Metropolitan Development Authority  
No.1 Gandhi Irwin Road Egmore Chennai-8.
- 3 The Commissioner  
Corporation of Chennai Rippon Buildings  
Chennai-3.

+2ccs to Mr.A. Amanullah, Advocate, S.R.No.12880  
+1cc to Mr.. Sampath, Advocate, S.R.No.13792  
+1cc to the Government Pleader, S.R.No.14665

W.P. No.7376 of 2016