

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.38165 of 2002

Sakunthala Vedachalam

.. Petitioner

vs.

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

2. The Chennai Metropolitan
Development Authority
rep. by its Member Secretary
Gandhi Irwin Road
Chennai - 600 009.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus directing the second respondent to call for the records relating in his proceeding letter dated 21.8.2002 vide letter No.REC/C6/45891/2000, quash the same by considering the regularization application afresh and also direct the respondent to refund the excess fee collected from the petitioner.

For Petitioner : Mr.S.L.Sudarsanam

For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader
for 1st respondent

Mr.N.Sampath
for 2nd respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner seeks to assail the order dated 21.8.2002 rejecting the request of the petitioner for regularization on

the basis of charges deposited, as according to the respondent authorities, there is a balance regularization fee chargeable of Rs.13,42,000/-.

2. The order itself required the petitioner to remit the amount within thirty days from the date of the receipt of the letter as also to furnish the documents set out therein. A note appended to the order states that a person aggrieved by this order may prefer an appeal to the Government within thirty days. The note reads as under:

"According to Section 113A(6) of the Town and Country Planning Act, 1971 (As amended by Act 58 of 1998, Act 31 of 2000 and Act 7 of 2002) and according to Rule 8 of the Application, Assessment and Collection of Regularization Fee (CMA) Rules, 1999 as amended upto 24.4.2002 any person aggrieved by any orders passed under Section 113A(1)/Rule 7 by any officer or Authority, may prefer an appeal to Government (at Housing and Urban Development Department) within 30 days from the date of receipt of the order along with satisfactory proof of the payment of the self assessed regularization fee advance."

3. The petitioner without exhausting the appellate remedy has rushed to this Court and obtained stay and thereafter the matter has been pending for 14 years.

4. The basic controversy is that, according to the petitioner, the amount has been wrongly calculated as he sought regularization of only a small space on the fourth floor measuring 150 Sq. Metres and that the remaining building was sanctioned. It is the say of the petitioner that regularization amount has to be calculated only in respect of this additional space.

5. The learned counsel for the second respondent rightly points out that this is the factual controversy which ought to be settled in appeal, which according to him is clearly provided for in view of the aforesaid note.

6. Normally, we would have been reluctant to remit the matter now after so many years, but considering the factual controversy, we are of the view that it would be appropriate that the petitioner should avail of the appellate remedy by filing an appeal within 30 days from today. On such appeal being filed before the competent authority, the same would be considered expeditiously, considering the time period already elapsed, and be decided within a maximum period of not later than three months from the date of filing of the appeal.

The petition, accordingly, stands disposed of. No costs.
Consequently, W.P.M.P.No.57159 of 2002 is closed.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To:

1. The Secretary to Government of Tamil Nadu
Housing and Urban Development
Fort St. George, Chennai - 600 009.
2. The Member Secretary
Chennai Metropolitan
Development Authority
Gandhi Irwin Road
Chennai - 600 009.

+1 cc to Mr.K.Viswanathan,advocate,sr.67250

+1 cc to Mr.N.Sampath,advocate,sr.66746.

rj(co)
krd 28/11

W.P.No.38165 of 2002

सत्यमेव जयते
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