

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.8028 of 2017

Mrs.Lekhaa Chandrasekar

Correspondent,

Bharani Swadhi Educational Trust,

VGP Babu Nagar, 3<sup>rd</sup> Main Road,

Medavakkam,

Chennai-600 100.

.. Petitioner

vs.

1.The State of Tamil Nadu,

Rep. by Secretary to Government,

Housing and Urban Development Department,

Fort St.George, Secretariat,

Chennai-600 009.

2.The Member Secretary,

Chennai Metropolitan Development Authority,

No.1, Gandhi Irwin Road,

Egmore, Chennai-600 008.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 20.07.2016 in letter No.REG.I & I/C7/5532/2002 of the 2<sup>nd</sup> respondent and quash the same and consequently, direct the 2<sup>nd</sup> respondent to regularize the building of the petitioner consisting of ground floor plus two floors in Survey Nos.356 Part, 357 Part, 358 Part, 359 Part and 437 Part of Medavakkam Village.

For Petitioner : Mrs.AR.L.Sundaresan,  
for M/s.AL.Gandhimathi

For Respondents : Mrs.M.E.Raniselvam,  
Additional Government Pleader for R1  
Mr.C.Johnson for R2

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner is the Correspondent of Bharani Swadhi Educational Trust, Medavakkam, Chennai and according to her,

the said Trust is running a Matriculation School under the name and style of B.S. Matriculation Higher Secondary School to run Classes for Standards I to 12. The petitioner Trust, in order to establish a school, had purchased lands in S.Nos.356 Part, 357 Part, 358 Part, 359 Part and 427 Part of Medavakkam Village through various Sale Deeds during 1993 and 1994. It is also the claim of the petitioner that they had obtained requisite approval for starting and running the school, which includes grant of permission by the Directorate of School Education and in the year 1995, the Director of School Education has accorded permission for running the school with Standards 1 to 10 and later, permission was granted to run classes for Standards upto 12. The petitioner would further state that building plan approval was obtained and while constructing the school building, some deviations took place to cater to the need and therefore, they have submitted regularization application dated 31.05.2001 to the second respondent along with prescribed fee and relevant documents for taking appropriate action and some clarification and documents were sought for by the second respondent to process the said application and according to the petitioner, all the particulars sought for by the second respondent had been furnished. However, to the shock and surprise of the petitioner, the application for regularization came to be rejected, vide impugned letter of the second respondent dated 20.07.2016 on the ground that the particulars sought for viz., date of planning permission and proof of completion, electricity service connection and water connection and registration of sale deed conveying constructed area/plot, have not been furnished and evidence furnished does not satisfy the conditions prescribed by this Court to prove that the construction completed prior to 28.02.1999 and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that there are documents of sterling quality to prove that the school building came into being before the cut off date viz., 28.02.1999 and whatever documents sought for by the second respondent have also been furnished and without proper application of mind, the regularization application came to be rejected. The learned Senior Counsel appearing for the petitioner made an alternative plea that the petitioner may be given one more opportunity to submit all the documents to the second respondent and the said official, in-turn, may be directed to pass appropriate orders at the earliest.

4. Heard the submissions of Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the first respondent and Mr.C.Johnson, learned Standing Counsel appearing for the second respondent/CMDA, who would submit that the remedy open to the petitioner is to file an appeal

under Section 113-A(c) of The Tamil Nadu Town and Country Planning Act, 1971 and therefore, this writ petition is not maintainable. The learned Standing Counsel appearing for the second respondent/CMDA, on the merits of the case, would contend that since the required particulars/documents sought for have not been furnished by the petitioner, the application for regularization has been rightly rejected and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. A perusal and consideration of the materials placed before this Court in the form of typed set of documents would prima facie indicate that necessary permission and approval has been accorded to the petitioner to start and run the school and it is also the categorical submission of the learned Senior Counsel appearing for the petitioner that all the required documents sought for have already been furnished to the second respondent. Attention of this Court has also been invited to the letters of the petitioner dated 28.07.2016, 21.09.2016 and 23.09.2016 addressed to the second respondent, wherein the particulars referred to in the impugned order have also been furnished.

7. Though the petitioner is having an effective alternative remedy by way of appeal under Section 113-A(c) of the Tamil Nadu Town and Country Planning Act, 1971, in the light of the stand taken by the petitioner coupled with the documents, this Court is of the view that one more opportunity may be afforded to the petitioner to furnish all the particulars sought for by the second respondent to process the application submitted by the petitioner for regularization.

8. In the result, this Writ Petition is partly allowed and the order dated 20.07.2016 in Letter No.REG.I & I/C7/5532/2002 passed by the second respondent is set aside and the matter is remanded to the second respondent for fresh consideration. The petitioner is at liberty to furnish all the particulars sought for in the form of documentary evidence to substantiate their stand that the construction of the school building came into being prior to 28.02.1999, within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent is directed to reconsider the same and pass orders on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

jvm

To

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

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

+1cc to Mr.A.L.Ganthimathi, Advocate SR.No.79240/2017

+1cc to Mr.C.Johnson, Advocate Sr.No.79578/2017

+1cc to Government Pleader Sr.No.79910/2017

W.P.No.8028 of 2017

sm:27.11.2017



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