

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No.7334 of 2017

S.Edison

.. Petitioner

Vs.

- 1 The Secretary to Government
Housing and Urban Development Department
Fort St George, Chennai-09.
 - 2 The Member Secretary
Chennai Metropolitan Development Authority
Thalaimuthu Natarajan Maligai No.1
Gandhi Irwin Road, Chennai.
 - 3 The Commissioner
Corporation of Chennai
Park Town, Chennai.
 - 4 The Regional Deputy Commissioner (South)
Enforcement Cell
Adyar, Chennai-20.
 - 5 The Executive Engineer-I
Zone-13 Greater Chennai
Corporation Adyar
Chennai-20.
- सत्यमेव जयते.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for records relating to the proceedings of the 5th respondent in Lr. No.Z.O.13/C.No.7776/ 2016, dated 04.02.2017, quash the same and consequently direct the 1st Respondent to notify the rule framed under Sec. 113-C of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.D.Selvam

For Respondents : Mr.T.N.Rajagopalan
Spl. Government Pleader
for 1st respondent

Mr.K.Rajasrinivas
for 2nd respondent

Mr.A.Nagarajan
for respondents 3 to 5

ORDER

(Order of the Court was made by the Acting Chief Justice)

Mr.T.N.Rajagopalan, learned Special Government Pleader takes notice for the first respondent. Mr.K.Rajasrinivas, learned counsel takes notice for the second respondent and Mr.A.Nagarajan, learned counsel takes notice for respondents 3 to 5.

2. The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus calling for records relating to the proceedings of the 5th respondent in Lr. No.Z.O.13/C.No.7776/ 2016, dated 04.02.2017, quash the same and consequently direct the 1st Respondent to notify the rule framed under Sec. 113-C of the Tamil Nadu Town and Country Planning Act, 1971.

3. The petitioner purchased the shops bearing Nos.G1 to G4 in Guru Complex bearing Plot No.B9/A2, 2nd Main Road, Survey No.216 PT, Thiruvalluvar Nagar, Thiruvannamiyur, Chennai - 600 014. By proceedings dated 4.2.2017, the fifth respondent pursuant to re-measurement of the building, found that there are deviations and stated that further course of action will be taken as per law. On receipt of the said proceedings dated 4.2.2017, the petitioner sent a request for regularization of the building plan under Section 113-C of the said Act to the first respondent. The said provision reads as under:

"Section 113-C. Exemption in respect of development of certain buildings.- Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, by order, exempt any building or class of buildings developed on or before the 1st day of July 2007, from all or any of the provisions of this Act or

any Rule or Regulation made thereunder, subject to the guidelines made in this behalf, by collecting such amount, nor exceeding three times of the guideline value of the land, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the planning area."

Relying on the said provision, he pleads that the respondent authorities may be directed to regularize the building plan submitted by the petitioner taking into consideration the ecology and environment of the area and seeks to forbear the respondent authorities from taking any coercive action on the basis of the said proceedings dated 4.2.2017.

4. The learned counsel appearing for the CMDA and the Corporation submitted that the petitioner in response to the impugned notice ought to have submitted his reply to the Corporation, instead of sending a representation to the Government seeking regularization in terms of Section 113-C of the said Act.

5. We have heard the learned counsel for the parties. A perusal of the proceedings dated 4.2.2017 shows that it is in the form of a show cause notice and the petitioner ought to have submitted his reply to the same. The petitioner should have exhausted the remedy available to him under the provisions of the Act before seeking regularization under Section 113-C of the Act.

6. In the circumstances, it is for the petitioner to give a detailed reply to the respondent Corporation setting out all the defences available to him within one month from the date of receipt of a copy of this order and thereafter, the respondent authorities shall consider the same and pass appropriate orders in accordance with law within two months, if need be after according an opportunity of personal hearing to the petitioner. Till the disposal of the representation, the respondent authorities shall not take any coercive action against the petitioner.

The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.8003 of 2017 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

- 1 The Secretary to Government
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Chennai-20.

+ 2 ccs to M/s. D. Selvan, Advocate Sr.18869
+ 1 cc to Mr.K. Raja Srinivas, Advocate SR.18786
+ 1 cc to M/s. A. Nagarajan, Advocate SR.18839
+ 1 cc to Government Pleader Sr.19485

W.P.No.7334 of 2017

RSK(CO)
EU 10.4.17

सत्यमेव जयते

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