

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

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The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.10449 of 2017

and

W.M.P.No.11326 of 2017

Ghiasunnisa Begum ... Petitioner

vs.

1. The Secretary to Government of Tamil Nadu,
Tamil Nadu Housing and Urban Development Department,
Secretariat,
Chennai - 09.
 2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
 3. The Executive Engineer,
Town Planning Enforcement,
Office of Regional Joint Commissioner,
Corporation of Chennai, Zone XIII,
No.115, Dr.Muthulakshmi Salai,
L.B.Road, Adyar,
Chennai-600 020.
 4. Assistant Executive Engineer,
Unit 40, Town Planning Enforcement,
Corporation of Chennai.
 5. Assistant Engineer,
Division No.171, Zone 13,
Corporation of Chennai.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records in Letter No.24024/UD-VI(1)/2016-5, dated 31.03.2017 on the file of the first respondent and quash the same and consequently

directing the 2nd to 5th respondents to recognize the grant of approval the petitioner's hospital buildings.

For Petitioner : Dr.G.Krishnamurthy

For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader
for respondent No.1

Mr.V.C.Selvasekaran
for respondents 2 to 5

ORDER

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

This writ petition has been filed by the petitioner assailing the order dated 31.03.2017 bearing reference Letter No.24024/UD-VI(1)/2016-5 passed by the first respondent. This is the certiorari limb of the writ petition. The mandamus limb of the writ petition is to direct respondents 2 to 5 to recognize and grant approval for the petitioner's hospital building at No.786, Anna Salai, Nandanam, Chennai-35.

2. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice for respondent No.1. Mr.V.C.Selvasekaran, learned counsel accepts notice on behalf of respondent Nos.2 to 5.

3. We have perused the impugned order passed by the first respondent.

4. We have heard Dr.G.Krishnamurthy, learned counsel appearing on behalf of the petitioner. We have also heard Mr.R.Vijayakumar, learned Additional Government Pleader appearing on behalf of the first respondent and Mr.V.C.Selvasekaran, learned standing counsel appearing on behalf of respondents 2 to 5.

5. It becomes clear that the impugned order has been passed by the first respondent in an appeal made by the petitioner under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as "the said Act" for brevity).

6. It is seen from the impugned order that an opportunity of personal hearing has been afforded to the petitioner more than once.

7. It is also seen from the impugned order and not disputed at the Bar that it is not disputed by the petitioner's counsel that the original plan application was not for construction of a hospital building, but for putting up construction (with deviations/not in conformity with the plan), the petitioner has converted the same into as hospital.

8. We are informed by the learned counsel for the petitioner that it is a fifty bed hospital.

9. The deviations that have been made have been extracted in a tabular column in paragraph 2 of the impugned order and we deem it appropriate to extract the same as infra:-

Sl.No .	Description	As per plan	As per site	Deviation
1.	Ground Floor	651.24m ²	576.18m ²	(-) 75.06m ²
2.	First Floor	184.80m ²	576.18m ²	391.38m ²
3.	Second Floor	184.80m ²	576.18m ²	391.38m ²
4.	Third Floor	184.80m ²	576.18m ²	391.38m ²

10. The petitioner does not dispute that the above deviations exist.

11. On the face of it, there appear to be serious large scale deviations not capable of being regularized and also not within the permissible limits. However, without delving much into the same, we may notice that in this regard the regularization application submitted by the petitioner was rejected vide Letter No.Reg-MSB/C6/26148/2003, dated 19.11.2013, as the petitioner did not furnish adequate proof to establish that the construction of the building was completed prior to 28.02.1999.

12. Besides deviations, we are of the view that the building is not intended to be a hospital as it would be extremely hazardous and it may not be appropriate to permit the same to continue.

13. The writ petitioner cannot claim any inherent right to run a hospital, that too with 50 beds with serious building violations, more so, when the original plan is not for construction of a hospital.

14. We notice that a building intended to be used as a hospital may have to have certain special provisions, keeping in mind the special needs of patients.

15. Besides all that have been stated supra, we find that there is no infirmity or illegality in the impugned order.

16. As stated supra, regularization application of the petitioner was also rejected as early as 19.11.2013, which means that the petitioner does not have any scope to get her building regularized.

17. Owing to all that have been stated supra, the writ petition fails and the same is dismissed. No costs. Consequently, W.M.P.No.11326 of 2017 is closed.

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

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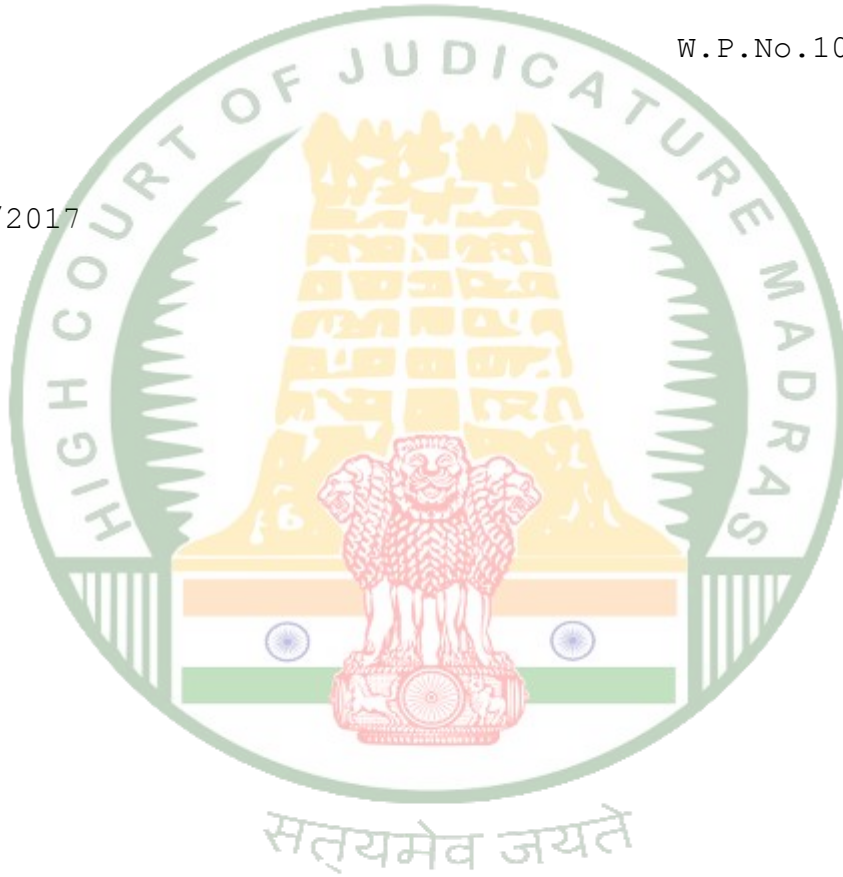
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+1cc to Dr.G.Krishnamurthy, Advocate Sr.24951
+1cc to the Government Pleader Sr.25221

W.P.No.10449 of 2017

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srg 03/05/2017



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