

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.03.2017

CORAM

THE HONOURABLE MR. HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P. NO. 4499 OF 2017
AND
W.M.P. NO. 4726 OF 2017

The Childs Trust
rep. By its Chief Executive Officer
S.Chandramohan
12-A, Nageswara Road
Nungambakkam, Chennai. ... Petitioner

- Vs -

The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 8. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records on the file of the respondent in proceedings Letter No.Reg.I/MSB/C3/14169/1999 dated 31.05.2016 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr. R.Yashod Varadhan, SC, for
Mr. S.Sithirai Anandam

For Respondent : Mr. K.Raja Srinivas for CMDA

ORDER
(DELIVERED BY THE HON'BLE ACTING CHIEF JUSTICE)

This writ petition has been filed by the petitioner for quashing the proceedings of the respondent as illegal, incompetent and without jurisdiction.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. It is the contention of the petitioner that it sought regularisation of unauthorised deviated construction. The respondent, vide the impugned proceedings directed the

petitioner to furnish some details within 15 days and requested them to remit a sum of Rs.64.08 Lakhs towards infrastructure and amenities charges. It is the contention of the petitioner that they have already paid a sum of Rs.93.30 Lakhs towards regularisation fee. Though the petitioner has been approaching the respondent for regularisation since 1999, no order having been passed by the respondent, the petitioner is constrained to move this petition against the impugned order demanding payment of a sum of Rs.64.08 Lakhs.

4. From the submission of the learned counsel for the parties, it is evident that the petitioner had submitted plan for regularisation in the year 1999 itself and, therefore, the petitioner is covered by the Government Order issued in respect of regularisation in the year 1999. Based on the said regularisation scheme proposed by the Government, the petitioner had also paid a sum of Rs.93.30 Lakhs towards infrastructure and amenities charges. However, a present demand is made for a sum of Rs.64.08 Lakhs under the very same head. It is the further stand of the petitioner that the construction had been completed before 28.2.1999 and, therefore, is covered by the Government Order and, therefore, the further demand as made by the respondent is unsustainable. Further, any amount to be levied by the respondent, the respondent authority is supposed to clarify the necessity for such a levy. It is not the case of the respondent that the construction was not completed before 28.2.99. That being the case, once the construction is completed before 28.2.99, the crucial date, the question of further demand, as raised by the respondent, does not arise. In this regard, reliance has been placed on the judgment of this Court in W.P. No.28170 of 2014 dated 11.1.2017, wherein in similar circumstances, this Court had set aside the demand raised on the petitioners therein.

5. In the above circumstances, this Court is of the considered view that the construction having been completed before 28.2.1999, and the amount towards infrastructure and amenities charges having been paid, it is not open to the respondent authority to demand a further amount of Rs.64.08 lakhs, without clarifying as to what the said amount is demanded. Unless the respondent authority is able to sustain its claim for demand of the amount as found in the impugned order by clarifying the necessity for raising such a demand, the demand as made cannot be sustained and, the respondent authority is bound to issue a completion certificate, if it is otherwise in order.

6. In the above circumstances, this writ petition is disposed of with a direction to the respondent authority to regularise the construction of the petitioner in accordance with the Government Order, if the same had been completed prior to the cut-off dated of 28.2.1999, without insisting on further demand, subject to the condition that the petitioner submits all

the necessary details and materials before the respondent authority with regard to the payment already made towards infrastructure and amenities charges and other particulars as may be needed by the respondent authority for the purpose of granting regularisation. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 8.

+1cc to Mr.S.Sithirai Anandam, Advocate, S.R.No.14413
+1cc to Mr.K.Raja Srinivas, Advocate, S.R.No.14352

W.P. NO.4499 OF 2017

RSI (CO)
CA(04/04/2017)

सत्यमेव जयते

WEB COPY