

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.8907 of 2017

and

W.M.P.No.9824 of 2017

Mehul S.Parekh ... Petitioner

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authorities,
Chennai-600 008.
- 3.The Commissioner,
Greater Chennai Corporation,
Chennai-600 003.
- 4.The Executive Engineer,
Zone-V Corporation of Chennai,
No.153, Dr.Ambedkar Colony,
Pulianthope,
Chennai-600 002.
- 5.A.D.Jain

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records culminating in the order communicated vide letter No.4877/UB/VI(2)/2017-3 of the first respondent dated 24.3.2017, confirming the order dated 13.2.2015 of the fourth respondent vide Z-O V-C No.(2)/0646/2014 and quash the same.

For Petitioner : Mr.K.Shakespeare

For Respondents: Mr.T.N.Rajagopalan, Spl.G.P. For R-1
Mr.C.Johnson for R-2
Mr.V.C.Selvasekaran for RR3 and 4

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ORDER

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

This writ petition has been filed with a prayer for issue of a writ of certiorari to call for the records and quash an order made by the first respondent dated 24.3.2017 bearing reference No.4877/UD-VI(2)/2017-3. We refer to this order made by the first respondent, which has been called in question before us, as 'impugned order' for the sake of convenience and clarity.

2 By the above impugned order, the first respondent before us has confirmed the order dated 13.2.2015 made by the fourth respondent bearing reference Z.O.V.C No.E2/0646/2014.

3 We notice that the impugned order has been passed by the first respondent in an appeal / revision filed before him by the writ petitioner under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as "TCP Act" for brevity).

4 The first contention that was raised before us is that the hearing was held by the Deputy Secretary one Mr.Durai, but the order has been passed by the Secretary one Mr.Dharmentra Pratap Yadav.

5 A perusal of the typed set of papers of the writ petitioner as well as records produced before us by the learned Special Government Pleader Mr.T.N.Rajagopalan would reveal that the Deputy Secretary has merely communicated the date and venue of the hearing to the writ petitioner by letter bearing reference No.4877/UD-VI(2)/2017-2 dated 06.03.2017. A perusal of the letter would also reveal that the venue for the personal hearing is the Chamber of the Secretary to Government.

6 Records produced by the learned Special Government Pleader also reveal that the Secretary has heard the matter and has signed it making a noting to that effect.

7 The second point that was raised by the writ petitioner before us is that a copy of the complaint given by one Mr.A.D.Jain, which is the trigger factor for these proceedings, has not been furnished to him. It is also urged by the writ

petitioner in the memorandum of appeal / revision that they have specifically asked for a copy of the complaint / representation of Mr.A.D.Jain dated 1.3.2017, but the same has not been furnished to them.

8 It is seen that the only complaint, even de hors the complaint of A.D.Jain, is that car parks have been converted into commercial shops, which is impermissible. The writ petitioner has filed a title deed, being the Deed of absolute sale dated 8.12.2010. A perusal of the covenants reveal that the writ petitioner has purchased Garage No.5, which is now being used as shop. The relevant portion of the covenant in the sale deed reads as follows :

"WHEREAS the "VENDOR" is owner of the Garage No.5, which is now being used as shop and assessed commercially for property tax admeasuring about 140 sq.ft.,"

9 We put this to the petitioner.

10 Faced with the above situation, the writ petitioner stated that he has filed an application under Section 49 of the TCP Act, seeking permission for conversion of such Garage into commercial shop.

11 Mr.V.C.Selvasekaran, learned Standing Counsel for the Chennai Corporation, submits that they are not in a position to confirm from their files that any application under Section 49 of the TCP Act has been filed by the petitioner on 11.1.2016 as contended by the petitioner.

12 From all that have been stated supra, we find no infirmity or illegality in the impugned order. We find no reason to interfere. We refuse to interfere mainly on the ground that conversion of garages into commercial shops abutting a road is not in dispute on facts.

13 We make it clear that this order or the contents of this order will not preclude the appropriate authorities under the TCP Act from processing the application for approval said to have been made by the petitioner under Section 49 of the TCP Act on 11.1.2016. If the authorities choose to do so, they shall do so untrammelled by this order and without being swayed by the contents of this order. We further make it clear that the issue of considering the application under Section 49 of TCP Act said to have been filed on 11.1.2016 will arise only if it is pending as of today. To make it abundantly clear, the issue will not arise if it has either not been filed or if it has been filed and disposed of.

14 We also make it clear that this order will not enable the writ petitioner to file a fresh application under section 49 of TCP Act if it has not been already filed on 11.01.2016 as claimed by the writ petitioner.

15 As stated supra, we are not inclined to interfere with the impugned order. The writ petition is dismissed with the above observations. In the circumstances, the parties are left to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Asst.Registrar

/true copy/

Sub Asst. Registrar

vvk
To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
Chennai-600 009.
- 2.The Member Secretary,
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Chennai-600 008.
- 3.The Commissioner,
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- 4.The Executive Engineer,
Zone-V Corporation of Chennai,
No.153, Dr.Ambedkar Colony,
Pulianthope,
Chennai-600 002.

+1cc to Mr.C.Johnson,Advocate sr.39960
+1cc to Mr.K.Shakespeare,Advocate sr.40358

W.P.No.8907 of 2017

ss(13/6/2017)