IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.6139/1999

1.M.Venkatachalapathy
2.V.Samundeeswari .. Petitioners

Versus

The Member Secretary,
Chennai Metropolitan Development
Authority
Thalamuthu Natarajan Buildings,
Egmore, Chennai-600 028. .. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned notice of the respondent issued in EC3/12327/91 dated 21.06.1991 and Lr.No.ESI/12327/1991 dated 22.02.1999 and quash the same and consequently forbear the respondent, his men, agents, servants, subordinates from in any way interferring with the petitioners' peaceful possession and enjoyment of the property at No.54, Santhome High Road, Chennai-28.

For Petitioner : Mr.G.Masilamani
Assisted by Mr.D.Balaraman

For Respondents : Mr.N.Sampath for CMDA

ORDER

[Order of the Court was made by M.SATHYANARAYANAN.,J]

By consent, the writ petition is taken up for final disposal.

2 The 1st petitioner is a practicing Lawyer and the 2nd petitioner is his wife. It is admitted that both are the joint owners of the land and superstructure bearing Door No.54, Santhome High Road, Chennai-28 through registered Sale deed Document No.1329 of 1989 on the file of the Sub-Registrar Officer, Mylapore, Madras and at the time of purchase, the

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tenants were in occupation of the said premises and thereafter, the petitioner took eviction proceedings and obtained possession in the year 1991. The petitioner would further state that since he is a practicing lawyer, the superstructure was not conducive for his professional activities and as such, he applied for the sanctioned plan during the year 1991 and also occupied the building and carrying on repair / renovation activities. The 1st petitioner has received the letter / bare notice during the year 1991 from the respondent ordering him to stop the work on the pretext that additional construction of ground floor, is unauthorised and it has been further indicated that the petitioners also failed to produce the approved plan. The 1st petitioner sent a reply denying the receipt of earlier notice dated 12.06.1991 and stated about the factual details and however no response was forth coming. The respondent, after three years from the date of 1st notice, sent a fresh notice on 10.03.1999 under Section 56(2)(iii) of the Tamil Nadu Town and Country Planning Act, 1971, which came to be served on 10.03.1999 and the petitioners made a challenge to the said order by way of filing a writ petition and obtained an interim order on 12.04.1999. In the year 2000, the Government has promulgated regularisation scheme and the petitioner had also applied for regularization of construction along with advance fee on 30.10.2000.

3 The regularization was approved and a communication was sent directing the petitioner to pay a sum of Rs.2,19,379/- as regularization fee. The 1st petitioner sent a reply to the said claim and also made challenge to the said letter by filing W.P.No.42079/2002 which is pending and in the meanwhile, he has also preferred an appeal dated 16.10.2002. This Court vide order dated 26.06.2003, has disposed of the said writ petition directing the Government/ Appellate Authority to dispose of the appeal dated 16.10.2002 in accordance with law within the stipulated time and accordingly, the said appeal was disposed of on 07.04.2004 vide G.O.D.No.158 where in the payment of Rs.2,19,379/- has been reduced to a sum of Rs.1,14,593/-.

4 Mr.G.Masilamani, learned Senior counsel assisted by Mr.D.Balaraman, learned counsel appearing for the petitioners has drawn the attention of this Court to the additional affidavit dated 26.07.2017 and would submit that the petitioners have also paid the revised demand amount of Rs.1,14,593/- on 09.12.2003 and the final orders of regularization application could not be passed on account of pendency of this writ petition and in the light of the compliance of the order dated 07.04.2004 in G.O.D.No.158 of the Housing and Urban Development [UDVI] Department, nothing survives for adjudication in this writ petition and prays for closure of the writ petition and for a direction directing the respondents to consider and dispose of the regularization application submitted by the petitioner on

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merits within stipulated time.

5 This Court heard the submissions of Mr.N.Sampath, learned standing counsel appearing for the respondent and also perused the materials placed before it.

6 It is relevant to extract Paragraph 5 of the additional affidavit dated 21.07.2017:-

> "5. I state that the application of the petitioners for regularization was approved and consequently on 06.09.2002, the respondent herein sent a letter to the petitioner treating the petitioner's residential building as commercial building and directed the petitioner to pay a sum of Rs.2,19,379/- as regularization fee. The petitioner sent a reply refuting the claim of the respondent and challenged the Letter dated 06.09.2002 in W.P.No.42079/2002 and in the meantime the petitioner had also preferred an appeal dated 16.10.2002 before the Government. I state that this Court was pleased to dispose the W.P.No.42079/2002 on 26.06.2003 with a direction to the Government to dispose the appeal dated 16.10.2002 within a period of two weeks. Thereafter, the respondent herein had sent a revised Demand Notice on 14.11.2003, directing me to pay the regularization fee of Rs.1,14,583/- treating the occupation as residential with other charges, immediately on 09.12.2003, I have paid the regularization fee on 09.12.2003. I state that on 07.04.2004 the Housing and Urban Development Department in G.O.D.No.158 passed orders in the appeal of the petitioners. The portion of area used for professional work was treated as that of residential use and accordingly, issued a revised demand notice to pay Rs.1,14,593/-instead of Rs.2,19.379/-. Since I have already paid the revised demanded amount on 09.12.2003, the appeal was rejected. The fianl orders of regularization could not be made by the respondent in view of the pendency of this writ petition. It is a matter of record that regularization so far as one time regularization have been upheld by the Apex Court. The impugned order is liable to be set aside, in view of the subsequent event of regularization."

7 Since, the petitioner has complied with the order dated 07.04.2014 in G.O.No.158 of the Housing and Urban Development [UDVI] Department, by remitting the sum of Rs.1,14,593/- nothing survives for adjudication in this writ petition. The respondent on account of pendency of this writ petition, is not able to dispose of the regularization application bearing registration no.7462 dated 31.10.2000. In the light of the closure of the

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writ petition, there may not be any impediment on the part of respondent to dispose of the said regularization application.

8 Accordingly, the respondent is directed to dispose of the regularization application in Reg.No.7462 dated 30.10.2000 on merits and in accordance with law by taking note of G.O.D.No.158 dated 07.04.2004 as expeditiously as possible and not later than ten weeks from the date of receipt of copy of this order and communicate the decision taken, to the writ petitioner. The writ petition is closed with the above observation. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Member Secretary,
Chennai Metropolitan Development
Authority
Thalamuthu Natarajan Buildings,
Egmore, Chennai-600 028.

+1 CC to Mr.N. Sampath, advocate sr 52820
+1 Cc to Mr.D. Balaraman, Advocate sr 52929.

WP.No.6139/1999

SP(22/08/2017)

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