

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.32889/2017 & WMP.No.36255/2017

Dr.Y.Padmavathi

..

Petitioner

Vs

1.The Secretary

Government of Tamil Nadu
Housing & Urban Development
Department, Fort St George
Chennai 600 009.

2.The Member Secretary

Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Building, No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

..

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records of the 2nd respondent pertaining to the Demand Notice in Lr.No.Reg.III/B6/47197/2000 and RA/B6/2161/14, dated 04.08.2017 in so far as the demand for additional regularisation fee and other charges imposed by the 2nd respondent for regularisation of the building at Door No.18, East Coast Road, Sri Kapaleeswarar Nagar, Neelangarai, Chennai-41 and quash the same and consequently, direct the 2nd respondent to regularise the building situate at Door No.18, East Coast Road, Sri Kapaleeswarar Nagar, Neelangarai, Chennai-41 on the basis of the amount and charges already paid by the petitioner on 07.02.2005 towards the regularisation fee without any further demand.

For Petitioner : Mr.Krishna Ravindran
For R1 : Mrs.M.E.Rani Selvam, AGP
For R2 : Mr. A.Kumar

ORDER

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

By consent, the writ petition is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mr.A.Kumar, learned Standing Counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner claims that she is the owner of the and superstructure bearing Door No.18, East Coast Road, Sri Kapaleeswarar Nagar, Neelanagarai, Chennai-600041 and she is a practicing Medical Doctor, running a small Nursing Home in the above mentioned property. The petitioner was granted with the planning permission by the 2nd respondent vide No.A/20181/67/95 dated 01.03.1996 for the construction of a building consisting of Ground + First Floor in the said address. The petitioner would aver that due to professional compulsion and strenuous schedule, she started to run a Nursing Home in the building and also proceeded with the additional construction of 2nd and 3rd floors for Nursing home and residential purposes. The petitioner

was issued with the Stop Work Notice while she was construction second floor and she applied for revised planning permission to the Madras Metropolitan Development Authority [MMDA] and it was rejected and challenging the same, she filed an appeal dated 07.11.1997 u/s.79 of the Tamil Nadu Town and Country Planning Act, 1971, for considering the new plan and it was also rejected vide order dated 17.02.1999.

3 The petitioner was informed that the 1st respondent vide G.O.Ms.No.76, dated 27.02.1999 had issued orders to consider the request for regularisation of the constructions which came into being prior to 28.02.1999 and in terms of the said Government Order, the petitioner had applied for regularisation under the said regularisation scheme and also made part payment of Rs.1,60,495/- to the 2nd respondent and it was also processed and therefore, the petitioner was directed to pay the balance registration fee to the 2nd respondent vide communication dated 15.09.2003 and the balance amount with interest amounting to a sum of Rs.8,64,076/- was also paid by her on 07.02.2005 and it is the specific stand of the petitioner that beyond the cut off date, i.e., 28.02.1999, she has not put up any additional construction. The petitioner was issued with a communication dated

31.08.2012 by the 2nd respondent, stating that the applications for regularisation of buildings constructed after 28.02.1999 were quashed and however, the affected parties were granted opportunity to show the proof that the superstructures were put up prior to 28.02.1999 and the documents have also been sought for and the petitioner had sent a reply dated 17.09.2012 to the 2nd respondent to provide further detailed information. However, to her shock and surprise, she received a communication dated 26.11.2013 to furnish the documents to prove that the construction has not been made beyond 28.02.1999. However, the 2nd respondent reiterated the said stand in their communication dated 15.10.2015 and through a subsequent communication dated 09.02.2017, the 1st respondent has proposed to afford an opportunity of personal hearing and accordingly, she has sent a reply authorising her husband to attend the said hearing and her husband also attended the said hearing. The 1st respondent, thereafter passed a detailed order dated 21.03.2017, according approval and however, the 2nd respondent has issued the impugned letter dated 04.08.2017, demanding a sum of Rs.91,65,000/- towards the regularisation fees under the Category "1" and also indicated that the application for regularisation submitted by the petitioner is yet to be taken up for consideration subject to payment of the following amounts:-

[i]	<i>Balance Regularisation Fee [after adjusting the Regularisation Fee advance amount Rs.10,000/- vide CMDA receipt No.109054 dated 29.05.1999, Rs.85,000/- CMDA Receipt No.4041, dt.30.10.2000, Rs.75,495/- CMDA receipt No.A.1091, dt 26.12.2000 adn Rs.5,46,175/- vide CMDA Receipt No.C951, dt.07.02.2005]</i>	Rs.84,48,330/- [Rupees Eighty Four Lakhs Forty Eight Thousand three hundred and thirty only]
[ii]	Balance Development Charges	Rs.11,950/-
[iii]	Balance Scrutiny Fee	NIL
[iv]	I&A Charges	Rs.25,09,000/-
[v]	Flag Day Charges by cash	Rs.500/-

4 In paragraph No.5 of the said letter, it is also indicated that if the payment is not made within 90 days from the date of receipt of this demand notice as per Rule 7[2] of the Regularisation Fee Rules, the Regularisation Application Fee of Rs.7,16,670/- already paid, shall be forfeited and the regularisation/planning permission shall also be refused. Challenging the legality of the same, the petitioner came forward to file the present writ petition.

5 Mr.Krishna Ravindran, learned counsel appearing for the petitioner would submit that from the materials placed, there cannot be any difficulty in holding that the superstructure came into being prior to the cut-off date, viz., 28.02.1999 and though the fee required have already been paid, through the impugned notice, an unreasonable

demand has been raised and no break-up details have also been furnished/given. The learned counsel has also drawn the attention of this Court to the order dated 11.01.2017 made in WP.No.28170/2014 ***[Multivista Global Limited Vs. The Government of Tamil Nadu represented by the Secretary to Government, Housing and Urban Development Department, Chennai-9 and Another]*** reported in ***CDJ 2017 MHC 836*** and would submit that in paragraph No.7, this Court has observed that Paragraph 32[ii] of the Judgment rendered by a Division Bench reported in ***2006 [4] CTC 483 [Consumer Action Group Vs. State of Tamil Nadu and others]***, are quite unambiguous and clear and convey the intend, i.e., that the constructions made in violation of the planning permission after the cut-off date 28.02.1999, would not be getting the benefit of the amnesty scheme, but if they had completed construction before that cut-off date, but have not applied under the scheme, then their application under the subsequent scheme of 30.06.2002 cut-off date would be acceptable and the reduction of charges as an incentive to do so as per the subsequent scheme has also been upheld and without taking note of the said judgment, the 2nd respondent has erroneously sent the impugned letter and prays for interference.

6 *Per contra*, the learned Standing counsel appearing for the 2nd respondent would submit that the impugned demand has been strictly in accordance with the relevant norms and regulations and the petitioner having put up an unauthorised construction, is not entitled to challenge the said demand and prays for dismissal of the same.

7 The Court has considered the rival submissions and also perused the materials placed before it.

8 A perusal of the typed set of documents would *prima facie* disclose that the required fees for regularisation has been paid and materials have also been produced to show that the superstructure came into being prior to cut-off date on 28.02.1999. A perusal of the impugned notice would also disclose that the break-up details of the balance regularisation fee of Rs.84,48,330/- have not been given and it is also the case of the petitioner that the infra-structural amenity charges also cannot be levied for the reason that the provision enabling CMDA to levy such a charge is also prospective in nature as it was inserted by the Tamil Nadu Act 34/2007 with effect from 01.06.2007. It is also brought to the knowledge of this Court that after receipt of the

impugned letter, the petitioner had also submitted a detailed representation/response dated 31.08.2017.

9 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 2nd respondent to entertain the representation dated 31.08.2017 submitted by the petitioner in response to the impugned demand notice dated 04.08.2017 and after affording an opportunity of personal hearing either to the petitioner or to her authorised representative, shall consider and dispose of the said response on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till such time, the 2nd respondent shall defer further decision in terms of the impugned demand notice dated 04.08.2017.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

[M.S.N.,J] [S.P.I., J]
21.12.2017

Internet : Yes
AP

To

1.The Secretary

Government of Tamil Nadu
Housing & Urban Development
Department, Fort St George
Chennai 600 009.

2.The Member Secretary

Chennai Metropolitan Development
Authority, Thalamuthu Natarajan
Building, No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.



WEB COPY

M.SATHYANARAYANAN.,J.,
and
SATRUGHANA PUJAHARI.,J.,

AP



WP No.32889/2017

WEB COPY 21.12.2017