

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.33327/2017 & WMP.Nos.36769 & 36770/2017

Madras Medical Mission
rep.by its Secretary
No.4-A, Dr.J.Jayalalitha Nagar
Mogappair, Chennai 600 037.

.. Petitioner

Vs

1.The Government of Tamil Nadu
rep.by its Secretary, Housing and
Urban Development Department
Fort St George, Chennai-9.

2.The Chennai Metropolitan Development
Authority, rep.by its Member Secretary
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 in its order dated 12.05.2017 in Reference Lr.No.Reg.MSB/RA/C6/144/16 & C6/14605/1999, quash the sae and consequently direct the 2nd respondent to calcualte the regularisation fee by strictly following the provisions of Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, and the Application, Assessment and Collection of Regularisation Fee [Chennai Metropolitan Area] Rules, 1999 framed thereunder.

For Petitioner : Mr.R.Muthukumaraswamy, SC for
Mr.A.Jenasenan
For R1 : Mr.A.N.Thambidurai, Spl.GP
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. Mr.A.N.Thambidurai, learned Special 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 Secretary of the Petitioner-Society has sworn to the affidavit filed in support of this writ petition and he would aver among other things that the petitioner – Society was established with avowed purpose of providing quality health care facilities to the general public at reasonable cost and keeping that object in mind, had established the Madras Medical Mission Hospital in RS.No.299 and 300, Door No.4-A, Dr.J.Jayalalitha Nagar, Mogappair, Chennai, as a non-profit mission hospital and over the years, it became one of the best hospitals in the Country and rendering health care services in various complex pediatric and adult cardiac procedures/surgeries, kidney transplant, dialysis etc.

3 It is further averred that in order to put up / construct the hospital building, the petitioner – Society applied for and had obtained a building plan approval from the 2nd respondent on 09.09.1992 and there were certain deviations in the construction from the approved plan including the set back deviation in construction for additional floors for which, the 2nd respondent had initially issued the show cause notice dated 29.02.1996. In the interregnum, an Amendment was introduced in the Town and Country Planning [Amendment] Act, 1971, in the form of Section 113-A. The petitioner had also submitted an application under the said provision for which, the 2nd respondent has demanded an unreasonable sum of Rs.76,91,962/- under various heads including “land use” for which the petitioner has also submitted his response.

4 During the course of time, the rate prescribed for regularisation u/s.113-A was also decreased and the said Ordinance was also put to challenge in a batch of writ petitions in WP.No.18898/2000 etc., and all the writ petitions were taken up together and were disposed of by this Court vide Common order dated 23.08.2006 reported in **2006 [4] CTC 483 [Consumer Action Group vs State of Tamil Nadu represented by its Secretary to Government, Law Department, Chennai-9 and others]**, wherein,

it was held that the extension of date for making applications as well as reduction in fees cannot be said to be illegal and that the construction made prior to 28.02.1999 will be regularised, provided that the application for regularisation has been preferred before the extended date, ie., 30.06.2002. A direction was also issued for constitution of a Monitoring committee to consider the applications received for regularisation and the 2nd respondent has sent a communication dated 13.02.2007, calling upon the petitioner to submit evidences / materials to sustain their case that the constructions were made prior to 28.02.1999 for which, the petitioner has also submitted his response on 23.02.2007 submitting all the materials/evidences and the Committee has also accepted that the construction put up by the petitioner – Society was completed prior to 28.02.1999. The petitioner expresses his grievance that in spite the orders passed by the Monitoring Committee, the 2nd respondent did not pass any order, regularising the construction put up by the petitioner and the petitioner submitted one more representation to the 2nd respondent to pass orders on the application for regularisation submitted by the petitioner, based on which, the premises of the petitioner – Society /Hospital was inspected on 01.10.2015 and based on the inspection, the 2nd respondent has sent a letter dated 09.12.2015, stating that some additional constructions

had been observed in the premises of the petitioner and called upon the petitioner to remove the same for considering their request for regularisation application. The petitioner, challenging the legality of the communication, preferred an appeal dated 20.01.2016 to the 1st respondent u/s.113-A[6] of the Town and Country Planning Act, 1971, requesting the 2nd respondent to regularise the building without insisting for additional constructions. The 1st respondent, vide G.O.Ms.No.30, dated 16.02.2017 has considered the said appeal and allowed the same and also exempted the additional construction made to the Nursing Hostel Block and upon the ground floor of the drivers rest room therein for incidental use of the existing occupants since these facilities are in the form of toilet, store room and drivers rest room which are essential in nature of essential amenities and do not add to habitation density inside the premises and are not meant for any commercial exploitation. The 1st respondent also directed the 2nd respondent herein to regularise the hospital building of the Madras Medical Mission as per their appeal. The 2nd respondent has also received the said order and to the shock and surprise of the petitioner, the 2nd respondent has sent the impugned letter dated 12.05.2017, demanding a sum of Rs.1,314,65,000/- towards Regularisation Fee for land use violation and demanded the balance scrutiny fee, development charges for the

building, MIDC for CMWSSB ; Infra-structural Amenities charge and Flad Day charges and also indicated that the said amounts have not been paid within 90 days from the date of receipt of the Demand Notice, the Regularisation Fee of Rs.1,53,016/- already paid, shall be forfeited and the Regularisation Planning Permission shall be refused.

5 Mr.R.Muthukumaraswamy, learned Senior Counsel assisted by Mr.A.Jenasenan, learned counsel appearing for the petitioner on record, has drawn the attention of this Court to the typed set of documents and would submit that it is not in serious dispute that the building in question was completed prior to 28.02.1999 and the petitioner in the form of repeated representations has pointed out there is no land use violation at all and the land is strictly used for hospital purposes and the 2nd respondent without taking into consideration the representation and also the purport of G.O.Ms.No.30 dated 16.02.2017, passed by the 1st respondent, has made an unreasonable demand and also pointed out that since the building came into existence prior to 28.02.1999, the payment of infra-structural and amenity charges would not arise at all. The said amendment came into being at the later point of time and prays for appropriate orders.

6 The learned Standing counsel appearing for the 2nd respondent / CMDA would submit that the Hospital established by the petitioner – Society is going on making additional constructions and taking into consideration the above cited order passed by the 1st respondent, has raised the impugned demand in accordance with the relevant norms and regulations and the petitioner is not expected to make any complaint and prays for the dismissal of the writ petition.

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

8 A perusal of the application for regularisation dated 30.10.2000 would also disclose that according to the petitioner/Society, they did not commit any violation of the land use and in the subsequent appeal dated 20.01.2016 submitted to the 1st respondent, once again it was pointed out that there is no violation under the category "land use violation" and prayed for waiver of the same. It is also the submission of the learned Senior Counsel appearing for the petitioner-Society that despite submission of representations, those representations have not been considered in proper perspective and the break up details have also not been given and threat is being wielded out that if the amount

is not paid within the stipulated time, the regularisation application is likely to be refused.

9 It is the uniform stand of the petitioner-Society throughout that there is no land use violation and through the above said communication, it has also been repeatedly pointed out. The petitioner – Society in their representation / reply dated 22.05.2017 in response to the impugned notice dated 12.05.2017, has also drawn the attention of the 2nd respondent to the order dated 11.01.2017 made in WP.No.28170/2014 [*Multivista Global Ltd., rep. By its Chairman and Managing Director R.S.Mani, "Rajam Towers", No.45, K.B.Dasan Road, Teynampet, Chennai-18 Vs. The Govt. of Tamil Nadu, rep.by the Secretary to Government, Housing and Urban Development Department, Fort St George, Chennai-9 and another*], and prayed for waiver of the same.

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10 In the considered opinion of the Court, the 2nd respondent while issuing the impugned letter dated 12.05.2017 did not take into consideration the above stand of the petitioner.

11 In the light of the above facts and circumstances, this Court permits the petitioner – Society to submit a detailed representation along with a copy of this order as well as the copies of the earlier representation submitted in that regard to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent shall entertain the said representation and afford an opportunity of personal hearing to the authorised representative of the petitioner-Society / Hospital and thereafter, consider and dispose of the said representation on merits and in accordance with law and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioner-Society and till such time, the 2nd respondent shall defer further decision in terms of the impugned notice/letter dated 12.05.2017.

12 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are also closed.

[M.S.N.,J] [S.P.I., J]
20.12.2017

Internet : Yes
AP

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

AP

To

1.The Secretary,
Government of Tamil Nadu, Housing and
Urban Development Department
Fort St George, Chennai-9.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.



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