

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.28170 of 2014

Multivista Global Limited
rep. by its Chairman and
Managing Director, R.S.Mani
"Rajam Towers"
No.45, K.B.Dasan Road
Teynampet, Chennai - 600 018.

... Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Secretary
Housing and Urban Development Department
Fort St. George, Chennai - 600 009.

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

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling upon the records of the first respondent in G.O.(3D) No.47, dated 8.10.2014 in rejecting appeal petition so far as demand of regularization fee and other charges imposed by the first respondent in confirming the order dated 20.12.2012 in Lr.No.Reg/C6/21507/1999 of the second respondent so far as regularization of building put up at No.44, K.B.Dasan Road, Teynampet, Chennai - 600 018 comprised in R.S.No.3781/12 (part), Block No.74 of Mylapore Village by quashing the same and consequently direct the second respondent to regularize the building put up in the aforementioned property on the basis of the amount and charges already paid by the petitioner towards regularization fee without additional payment.

For Petitioner

: Mr.R.Mohan

For Respondents

: Mr.R.Muthukumarasamy
Advocate General
assisted by
Mr.C.Johnson
for respondents 1 and 2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner was granted planning permission by the CMDA/ second respondent on 2.9.1997 in respect of the property at No.44, K.B.Dasan Road, Teynampet, Chennai - 600 018 comprised in R.S.No.3781/12 (part), Block No.74 of Mylapore, Chennai.

2. The petitioner carried out the construction, but there were violations of planning permission. The petitioner made an application seeking regularization on 29.5.1999 and on the basis of the application, a demand letter was sent by the second respondent to the petitioner on 15.7.2002. This demand was confirmed by the first respondent by order dated 28.6.2005. The petitioner had deposited the total amount of Rs.33,51,085/- as per the demand.

3. The disputes have arisen on account of the further demand raised by the second respondent on 20.12.2012 of Rs.1,55,60,000/-, which was assailed by the petitioner by filing an appeal under Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971. This appeal was however dismissed on 10.6.2014. The petitioner assailed the same by filing W.P.No.18353 of 2014, which was allowed on 31.7.2014 and the impugned order was set aside as being a non-speaking order.

4. Thereafter, the matter has been examined afresh and the impugned order dated 8.10.2014 has been passed.

5. The contours of the controversy are limited which arise from the judgment of the Division Bench of this Court in Consumer Action Group v. The State of Tamil Nadu, 2006 (4) CTC 483, in terms whereof the endeavour to amend Section 113-A of the said Act by extending the cut-off date to cover violations beyond 28.2.1999 was struck down, but the extension of date for making applications for regularization till 30.6.2002 as also the reduction of charges was not interfered with. In order to appreciate the controversy, we reproduce the relevant paragraphs as under:

"29. Learned Advocate General submitted that pursuant to the scheme framed under Section 113-A,

not enough applications were received by the authorities as the fees were highly excessive and, therefore, the State Government with an intention to enable the people to apply for regularisation considered it necessary to extend the cut-off date from time to time. He submitted that since it was not possible for the authorities to ascertain the exact date of construction, having regard to the large number of applications, and also having regard to the fact that it was not possible for the authorities to ascertain as to whether the construction was before the cut-off date i.e., 28.02.1999, it was necessary to enact a law to cover all the violations up to the extended date/s as per the scheme. It is not possible to accept the submission of the learned Advocate General. If enough applications were not received by the State Government, then the State Government could have extended the date of making applications. But there was no justification for extending the cut-off date so as to cover the violations after 28.2.1999. This is especially so when the Supreme Court has up-held the validity of Section 113-A, as a one-time measure. We hasten to add that the extension of date for making applications for regularisation, as well as the reduction in fees cannot be said to be illegal and the construction made prior to 28.2.1999 may be regularised, provided the application for regularisation has been preferred before the extended date i.e. 30.06.2002.

...

32. In the result, in view of the foregoing discussion, we pass the following order:-

(i) The amendments to Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 by Amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999 as far as applicable to the constructions made after 22.2.1999 are hereby declared ultra vires Articles 14 and 21 of the Constitution. All orders for regularisation of such buildings (constructed after 28.2.99) passed pursuant to the amending provisions stand quashed."

6. It appears that the Monitoring Committee appointed by the same order of the Division Bench looked into the issue of applications which had been submitted before cut-off date of

30.6.2002 and resolved that the 1999 Scheme would be followed in toto, including norms as well as fees. This was as per Agenda Item No.3 of the Monitoring Committee meeting dated 10.1.2007. It appears that the impugned demand was triggered off by this decision.

7. On hearing learned counsel for parties, we are of the view that the role of the Monitoring Committee was for purposes as specified in paragraph 32(ii) of the aforesaid judgment and it certainly could not have altered the directions already made in the said judgment. The observations in paragraph (29) of the said judgment are quite unambiguous and clear and convey the intent, i.e., that the constructions made in violation of the planning permission after the cut-off date 28.2.1999, 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 30.6.2002 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.

8. It is not in issue in the present case that the petitioner has paid all the demands as raised and the chapter was closed in the year 2005. The Monitoring Committee, however, vide its minutes dated 10.1.2007 sought to restrict the relief already granted by the Court in this behalf, which it could not have so done. We are also surprised that this demand has arisen in the year 2012, five years even thereafter.

9. We are, thus, of the view that the impugned demand dated 20.12.2012 cannot be sustained and has to be quashed. Consequently, the order in appeal dated 8.10.2014 is also to be set aside. The writ petition is accordingly allowed, leaving the parties to bear their own costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS V)

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Sub Assistant Registrar

sasi

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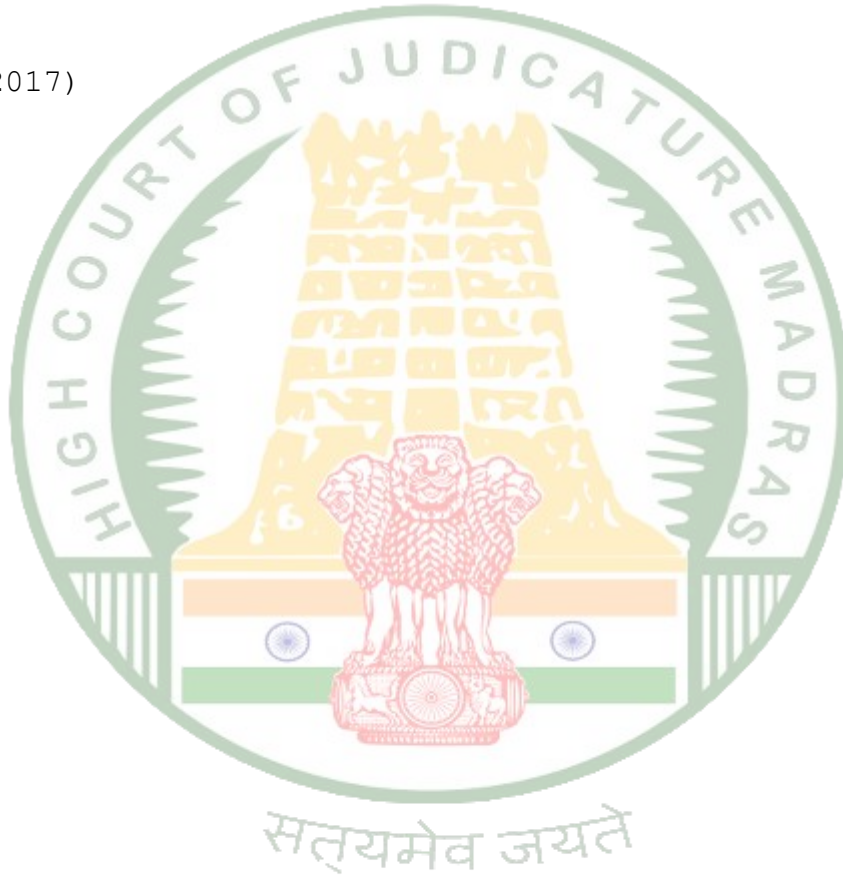
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+1cc to Mr.C.Johnson, Advocate, S.R.No.2976
+1cc to Mr.R.Mohan, Advocate, S.R.No.2696
+1cc to the Government Pleader, S.R.No.2941

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RSY(CO)
CA(23/01/2017)



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