

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2017
CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.19675 of 2017
& W.M.P.No.21231 of 2017

M/s.Jamals

A partnership firm

Represented by its partnership

and Power of Attorney Holder

Mr.J.C.Shameem cassim

..Petitioner

Versus

- 1.The Secretary to Government,
Housing and Urban Development Authority,
Fort St. George,
Chennai 600 009.
- 2.The Chennai Metropolitan Development Authority,
Represented by Member Secretary,
No.1 Gandhi Erwin Road,
Egmore, Chennai 600 008.
- 3.The Commissioner,
Thiruverkadu Municipality,
Office of Thiruverkadu Municipality,
Chennai 600 077.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other writ or order or direction in the nature of writ calling for the records of the 3rd respondent vide his letter No.Na.Ka.No.338/2017/F1 dated 24.03.2017 and to quash the same and further directing the 3rd respondent to issue Renewal Building Permit to the petitioner's development situated at Survey No.61/2, 61/7A, 1A2, Noombal Village, Kavery Nagar Road, Velappan Chavadi, Consisting of Ground Floor Part + Stilt Floor Part + 3 Floor + 4th Floor Part, consisting of 158 dwelling units of residential building with Bank facing at Kavery Nagar Road, Chennai 600 077 pursuant to the renewed Planning Permit issued by Chennai Metropolitan Development Authority Vide their Permit No.11317 dated 14.03.2017 without insisting the petitioner to pay the demand of Rs.35,20,093/- (Rupees Thirty Five Twenty Thousand and Ninety Three) as raised in their letter dated 24.03.2017.

For Petitioner : Mr.S.Sundaresan
For R1 : Mr.S.Diwakar
Spl. Govt. Pleader
For R2 : Mr.Raja Shrinivas
For R3 : Mr.R.Mohandoss

O R D E R

The petitioner has come forward with this writ petition to call for the records of the 3rd respondent, vide his letter No.Na.Ka.No.338/2017/F1 dated 24.03.2017 and to quash the same and further direct the 3rd respondent to issue Renewal Building Permit to the petitioner's development situated at Survey No.61/2, 61/7A, 1A2, Noombal Village, Kavery Nagar Road, Velappan Chavadi, consisting of Ground Floor Part + Stilt Floor Part + 3 Floor + 4th Floor Part, consisting of 158 dwelling units of residential building with Bank facing at Kavery Nagar Road, Chennai 600 077, pursuant to the renewed Planning Permit issued by Chennai Metropolitan Development Authority, vide their Permit No.11317 dated 14.03.2017 without insisting the petitioner to pay the demand of Rs.35,20,093/- (Rupees Thirty Five Twenty Thousand and Ninety Three) as raised in their letter dated 24.03.2017.

2. According to the petitioner, he has applied for building permission in the year 2013 and that necessary charges have also been paid on 14.11.2013 and building permission was granted on 17.01.2014, which is valid for a period of 3 years. Before expiry of the permission on 16.01.2017, the petitioner has made an application for renewal on November 2016 in terms of Sections 49 and 50 of the Tamil Nadu Town and Country Planning Act and the Tamil Nadu District Municipalities Act, 1920, which are extracted below:

Sections 49 and 50 of the Tamil Nadu Town and Country Planning Act

"49 (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building or on after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26 shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority, shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

- (a) the purpose for which the permission is required;
- (b) the suitability of the place for such purpose;
- (c) the future development and maintenance of the planning area;

(3) When the appropriate planning authority

refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same.

50. Every permission for development granted under Section 49 shall remain in force for a period of three years from the date of such permission: Provided that the appropriate planning authority may, on application made in this behalf before the expiry of the aforesaid period, extend such period for such time as it may think proper; but such extended period shall in no case exceed three years: Provided further that any expiry of permission shall not bar any subsequent application for fresh permission under this Act."

Section 321 (9-A) and 11 of Tamil Nadu District Municipalities Act

321. General provisions regarding licences and permissions.-

.....
(9-A) Save as otherwise expressly provided in or may be prescribed under this Act, every application for a licence or permission or for registration of the renewal of a licence or permission or registration, shall be made not less than thirty and not more than ninety days before the commencement of the year or of such less period as is mentioned in the application.

.....
(11) The acceptance by the Municipal Council of the pre-payment of the fee for a licence or permission or for registration shall not entitle the person making such pre-ayment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration; but an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not received by the applicant within sixty days after the receipt of the application by the Executive Authority, the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules bylaws, regulations and all conditions ordinarily imposed."

3. The 3rd respondent is bound to renew the building permission without demanding any payment. But unfortunately, the request of the petitioner has been rejected by means of impugned proceedings of the 3rd respondent and he has been asked to pay a sum of Rs.35,20,093/-. When there is a provision, enabling the 3rd respondent to renew the building permission as the application is made within the period of 3 years, i.e., before expiry of the original building permit, demanding a huge amount is not only arbitrary, but it runs counter to the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and the Tamil Nadu District Municipalities Act, and the relevant Sections are extracted supra.

4. According to the 3rd respondent, the provisions of Section 50 of the Tamil Nadu Town and Country Planning Act had been amended by revising the validity period of planning permission to 5 years, and it has come into effect in the month of March 2017 and that enquiry has been made by the CMDA and CMDA, vide Communication dated 30.05.2017 directed the officials, as extracted below;

"In the Office Order 2nd read above, it has been directed that all concerned divisions should take the amendment made by Govt. in Section-50 of Town and Country Planning Act, 1971 by revising the validity period of the Planning Permission from 3 years to 5 years, on record and compliance.

Further, based on the Authority Resolution No.17/2017 dated 21.04.2017, the applicability of Town & Country Planning Act provision making the validity period from 3 to 5 years shall be extended for the following cases, and also has to be taken on record and compliance

- (i) All the Planning Permissions issued with the three years validity period, which will be expiring on or after 30.03.2017.
- (ii) Applications received for the renewal of Planning Permission and under examination by CMDA / Local Body as on 30.03.2017"

5. According to the 3rd respondent, in case of building permission which expires on or before 30.03.2017, the applicant could be granted the benefit of extension of time and amount need not be demanded. Apart from that, any application made by the petitioner will have to be treated as fresh application and that the amount demanded mistakenly by authority will have to be paid. The learned counsel for the 3rd respondent submitted that when there is a specific instruction to the 3rd respondent-Municipality by the 2nd respondent-CMDA for construction of multi storeyed building, necessary charges demanded by means of impugned proceedings, has got to be paid, and the same cannot be in violation of the provision of the said Acts.

6. It is not in dispute that the petitioner's planning permission was granted on 17.01.2014, which had expired on

16.01.2017 and that application for renewal was made in November 2016. On a reading of the provisions of the said Acts, it is very clear that the permission is valid for 3 years and that any application made within the expiry of 3 years automatically, will have to be renewed. The petitioner's case is not based on the amended provisions of Section 50 of the Tamil Nadu Town and Country Planning Act. Be it 3 years or 5 years, in the case on hand, the application for the renewal was within a period of 3 years. There is no need for the 3rd respondent to demand another amount treating the renewal as a fresh application.

7. If any application is made beyond the expiry of the original permission, certainly, it can be treated as fresh application. Admittedly, in this case, application has been made within 3 years, based on the provisions of Section 50 of the said Act, which was not amended when the application was made by the petitioner in November 2016.

8. Hence, I find much force in the contentions of the petitioner and the writ petition is allowed. No costs. The impugned order is set aside and the respondents are directed to grant renewal of building permission to the petitioner with effect from 17.01.2017. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

- 1.The Secretary to Government,
Housing and Urban Development Authority,
Fort St. George,
Chennai 600 009.
- 2.The Chennai Metropolitan Development Authority,
Represented by Member Secretary,
No.1 Gandhi Erwin Road,
Egmore, Chennai 600 008.
- 3.The Commissioner,
Thiruverkadu Municipality,
Office of Thiruverkadu Municipality,
Chennai 600 077.

+1cc to Mr.R.Mohan doss, Advocate SR.No.84885
+1cc to M/s.S.Vaitheeswari, Advocate Sr.No.84984
+1cc to Mr.K.Raja Shrinivas, Advocate Sr.No.84955
+1cc to Government Pleader SR.No.85415

sm:8.1.2018

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