

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.19186 of 2007
MP No.1 of 2007 and MP.2 of 2007

M.Sainathan

...Petitioner

Versus

1. The Chairman cum Managing Director,
Chennai Metropolitan
Development Authority,
Thala Muthu Natarajan Building,
Egmore, Chennai 600 008.
2. The Commissioner,
Ambattur Municipality.
3. The Division Engineer/O&M/TNEB,
CEDC/West, Ambattur, Chennai - 53.
4. Vaibhav Constructions,
rep. By S.C.Agarwal,
Sole Prop. Having office at
AC224/124 Santhi Colony Main Road,
Anna Nagar, 600 040

5. Murugan

6. Ravi

7. Dr.C.Krsihnamurthy

..Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus or Direction in the form of Writ forbearing the first respondent from regularization of the revised plan submitted by fourth respondent in respect of the premises bearing No.415/388 (Plot No.52) Secretariat Colony, MTH Road, Comprised in S.No.594/3 situated at Ambattur Village in pursuance to regularization application in reference Lr.No.REGII/85/182/03 dated 09.06.2003 of the fourth respondent on the file of the 1st respondent.

For Petitioner :Mr.J.R.K. Bhavananatham

For Respondents :Mr.N.Sampath for R1

Mr.A.Nagarajan for R2

Mr.S. Thanga Sivam for R4

No appearance for RR3,5,6 & 7

ORDER

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

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

2 The petitioner in the affidavit filed in support of this writ petition, would aver among other things that the legal heirs of the deceased namely A.Munusamy namely the petitioner's mother Tmt.Jayalakshmi, the legal heirs of the pre-deceased son Ranganathan, Tvl.Dillibabu, Dr.Thilagavathi, Lakshminarayanan and Raghuraman and other legal heirs, are the co-owners of the property bearing Door No.415, MTH Road, Ambattur O.T, Chennai 600 053 on the Plot No.52, which is an approved layout admeasuring to an extent of 8700 Sq.ft and entered into a Joint Development Agreement dated 25.01.2000 with the 4th respondent for developing and promoting residential flats and as per the said Agreement between the 4th respondent and the legal heirs, the 4th respondent had agreed to develop the said site by constructing Ground + 3 floors with a built up area of 12,925.62 Sq.ft and the Agreement also contemplates the undivided interest and the above said land shall be shared in the ratio of 65% and 35% between the 4th respondent and the legal heirs of the deceased A.Munusamy. The 4th respondent had agreed to allot the residential flats marked as G1, G2 F5, S3, S5, T1 and T2 in their favour. The grievance expressed by the petitioner is that the 4th respondent in the deviation of the sanctioned plan, had put up construction with deviation in the side set back portions, terrace space and common area. It is further averred that the 4th respondent has applied for regularization of the deviated portion, vide Registration No.28322 dated 29.06.2006 and the 1st respondent has also accepted the advance sum of Rs.12,220/- and further a sum of Rs.60,620/- toward regularization and the petitioner had also objected with regard to the regularization of the deviated construction.

3. The petitioner has expressed his grievance that the private respondents are also constructed residential premises / commercial premises and as a consequence, the other residents of the flats have been put to grave hardship and in this regard, the petitioner had submitted representations to the concerned

official respondents and he is yet to be favoured with any kind of response and hence, came forward to file this writ petition.

4. Mr.J.R.K.Bhavanatham, the learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that since the 4th respondent has put up construction in violation of Joint Development Agreement as well as the approved sanctioned plan, the official respondents have to take appropriate action and despite of very many representations, they failed to take any action and hence, the petitioner is constrained to approach this Court by filing this writ petition.

5. Mr.A.Nagarajan, learned standing counsel appearing for the 2nd respondent has invited the attention of this Court to the counter affidavit and would submit that the 4th respondent has applied for regularization vide regularization application No.REGII/85/182/03 dated 09.06.2003 and the same is pending with the 1st respondent and upon disposal of the same, the Corporation of Chennai will take further action.

6. Mr.N.Sampath, learned standing Counsel appearing for 1st respondent has drawn the attention of this Court to the counter affidavit and would submit that the regularization application submitted by the 4th respondent along with prescribed fee has been accepted and in the light of the order passed by this Court on 23.08.2006, the prescribed fee was received after 28.02.1999 for regularization and admittedly, the construction has been put up after the said date and as such the construction put up by the 4th respondent is not acceptable under 1999 regularization scheme and on instructions would further submit that the very same case of the petitioner may be considered for regularization under Section 113C of the Tamil Nadu Town and Country Planning Act, 197 read with G.O.Ms.Nos.110 & 111, Housing and Urban Development [UD-4[3]] Department, dated 22.06.2017.

7. Mr.S.Thanka Sivan, learned counsel appearing for the 4th respondent has invited the attention of this Court to the counter affidavit and typed set of documents and would submit that the 4th respondent ws issued with Completion Certificate by the 1st respondent on 23.06.2003 and the petitioner himself, vide letter dated 25.06.2005 has admitted that the possession of 35% of the share towards the family share have been taken as per Joint Development Agreement on 25.01.2000 and also acknowledged that the terms of the said agreement have been fully complied with and no action from either side remains to be taken. It is the further submission of the learned counsel appearing for the 4th respondent would submit that in the light of Section 113C of the Tamil Nadu Town and Country Planning Act read with GO

Ms.Nos.110 & 111 Housing and Urban Development [UD-4[3]] Department, dated 22.06.2017, the 4th respondent is entitled to get a regularization and the deviations are only minimal in nature and the petitioner, with an oblige motive, has instituted the present legal proceedings with a malafide intention and prays for dismissal of this writ petition with exemplary cost.

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

9. It is an admitted fact that the 1st respondent has granted completion certificate on 23.06.2006 and the stand taken by them in the counter affidavit that in the light of the order passed by the Division Bench of this Court dated 23.08.2006, the construction is not eligible for regularization under the 1999 Scheme.

10. It is also the submission of the learned standing counsel appearing for the 1st respondent that the 4th respondent may be eligible to apply for regularisation under Section 113C of Tamil Nadu Town and Country Planning Act, 1971 and also G.O.Ms.No.110 & 111, Housing and Urban Development [UD-4[3]] Department, dated 22.06.2017. It is also pertinent to point out at this juncture that the petitioner himself has addressed a letter dated 15.06.2005 to the 4th respondent admitting that the terms of the joint development agreement dated 25.01.2000 have been fully complied with and no action from either side remains to be taken.

11. In the light of the same, this Court is of the view that the writ petitioner lacks merit and is dismissed. No Costs. Consequently, the Connected Miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman cum Managing Director,
Chennai Metropolitan Development Authority,
Thala Muthu Natarajan Building,
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2. The Commissioner,
Ambattur Municipality.

3. The Division Engineer/O&M/TNEB,
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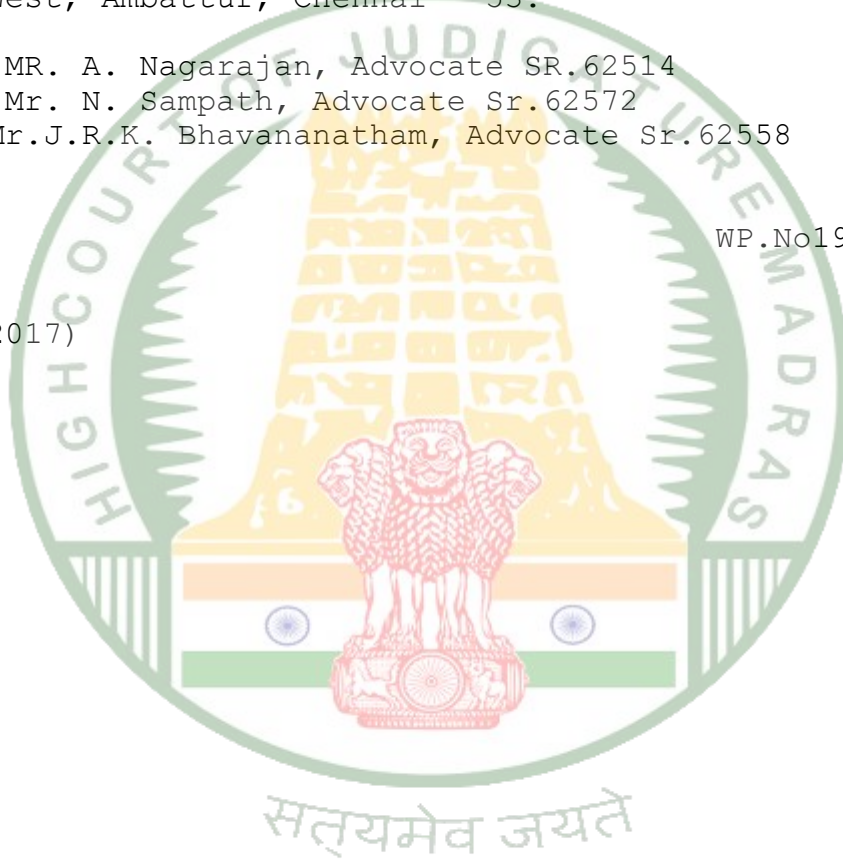
+ 1 cc to MR. A. Nagarajan, Advocate SR.62514

+ 1 cc to Mr. N. Sampath, Advocate Sr.62572

+ 1cc to Mr.J.R.K. Bhavananatham, Advocate Sr.62558

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PVS (CO)
EU (27/10/2017)



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