

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No. 41084 of 2016
and W.M.P. No. 35074 of 2016

A.Meena

...Petitioner

Vs.

- 1.The Principal Secretary,
Government of Tamil Nadu,
Housing & Urban Development
Department, Fort St.George,
Chennai - 600 009.
- 2.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Park Town, Chennai - 600 003.
- 3.Chennai Metropolitan Development Authority (CMDA),
Rep by the Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 4.The Assistant Executive Engineer,
Town Planning Approval Section,
Regional Office South,
Greater Chennai Corporation,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.

...Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, to issue order or direction in the nature of a Writ of Certiorari or Mandamus to call for the records of the 4th respondent made in the impugned order dated 09.08.2016 in RDC(S).C.No.A17/PPA/6896/2015 and quash the same and consequently direct the respondents to approve the building plan and permission in favour of the petitioner on receipt of other charges except open space reservation (OSR) claimed by the 4th respondent in the demand advice dated 15.02.2016.

For Petitioners : Mr.B.Ramesh Babu
For Respondents : Mr.S.Diwakar-for R1,
Special Government Pleader.
Mr.P.V.Selvakumar - for R2&R4
Mr.Karthikeyan -for R3

O R D E R

Heard Mr.B.Ramesh Babu, learned counsel appearing for the petitioner, Mr.S.Diwakar, learned Special Government Pleader appearing for the first respondent, Mr.P.V.Selvakumar, learned counsel appearing for the respondents 2 and 4 and Mr.Karthikeyan, learned counsel appearing for the third respondent.

2.By the impugned order, the petitioner was advised to remit all the charges including open space reservation charges for considering the issuance of planning permit and building permit for plot No.26 (western portion) of Survey Nos.74/2A3B of Perungudi Village. From the record, it appears that the petitioner has already obtained a planning permit from the erstwhile Madras Metropolitan Development Authority as early as in the year 1983 in D.Dis.No.4782/83 A4 dated 01.06.1983 for the entire extent. The petitioner has submitted the planning permit issued by the Commissioner, St.Thomas Mount Panchayat Union which is inclusive of Plot No.26, (western plot) owned by the petitioner to an extent of 2400 sq ft.

3.The learned counsel appearing for the petitioner would submit that the impugned order cannot be sustained on two counts. Firstly, the land of the petitioner is only 2400 sq ft and secondly, such a demand for open space can only be demanded if the extent is more than 10,000 sq meters. Reliance has been made on the decision of this Court in W.P.No.33914 of 2014 dated 23.02.2015.

4.The learned counsel appearing for the respondents by placing reliance upon the counter affidavit filed seeks to sustain the impugned order for the reasons stated therein.

5.A perusal of the order passed by this Court referred supra would show that it has dealt with the very same issue. Not only that, this Court has taken into consideration the earlier order passed by this Court which has become final. Paragraph No.4 of the year passed by this Court in W.P.No.33914 of 2014 dated 23.02.2015 is as follows:-

"4.The question to be decided in this writ petition is, when the petitioner had earlier obtained the building plan approval from the

Maduravoyal Town Panchayat, who was the competent authority to grant such application at the relevant point of time on 20.06.1986 and the approved building plan was also sanctioned vide proceedings dated 21.06.1986, whether it would be open to the respondents now, to demand the open space reservation charges."

6.Paragraph 12 of the previous order passed in W.P.No.5317 of 2009 dated 03.08.2009 is as follows:-

"12.As rightly pointed by the learned counsel for the petitioner, the Corporation of Chennai has been delegated with the powers by the second respondent during the relevant point of time. It is an admitted fact that a valid planning permission was granted in the year 1987 to the erstwhile owner of the property. When it is not established before this Court that the grant of approval in the year 1987 is tainted with illegality, it is not open to the second respondent to assume and presume so many things in the year 2008 to question the grant of valid planning permission granted by the Corporation of Chennai. When the approval was granted in the year 1987, the legal presumption is that the same has been granted in accordance with the rules and regulations and after complying with all the formalities. To rebut that legal presumption, sufficient and cogent evidence should be produced, that too, within a reasonable period. In the present case, not only second respondent is questioning the approval granted by the Corporation of Chennai, the delegated authority, in the year 1987, after 21 years, but failed to establish their stand that all is not well in the grant of the approval in the year 1987. The second respondent cannot disassociate themselves from the granting of the Corporation in the year 1987 and contend that the Corporation is a necessary party to come before this Court to explain how it is granted the approval 21 years back.

7.Considering the same, the final conclusion has been rendered by this Court in W.P.No.33914 of 2014 in the following manner :-

11.For all the foregoing reasons, this writ petition is partly allowed and the impugned demand made in respect of open space reservation charges to the tune of Rs.10,85,000/- (Rupees ten

lakhs and eighty five thousand only) is quashed. However, all the other amounts, as demanded in the impugned proceedings dated 01.10.2014 are confirmed and the petitioner is directed to remit the same. It is also made clear that the remittance to be made by the petitioner towards workers welfare board shall be without prejudice to his rights to question the same at a later point of time. If the petitioner pays the amount as demanded excepting the open space reservation charges, the respondents are directed to consider his application for demolition and reconstruction within a period of four weeks from the date of receipt of a copy of this order. No costs."

8.As the facts involved in the present case are identical and similar coupled with the fact that the very same earlier planning permit was taken into consideration, the order impugned is set aside and the writ petition stands allowed on the same line as Paragraph No.11 of the order passed in W.P.No.33914 of 2014 (referred above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Housing & Urban Development
Department, Fort St.George,
Chennai - 600 009.
- 2.The Commissioner,
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- 3.The Member Secretary, Chennai Metropolitan Development
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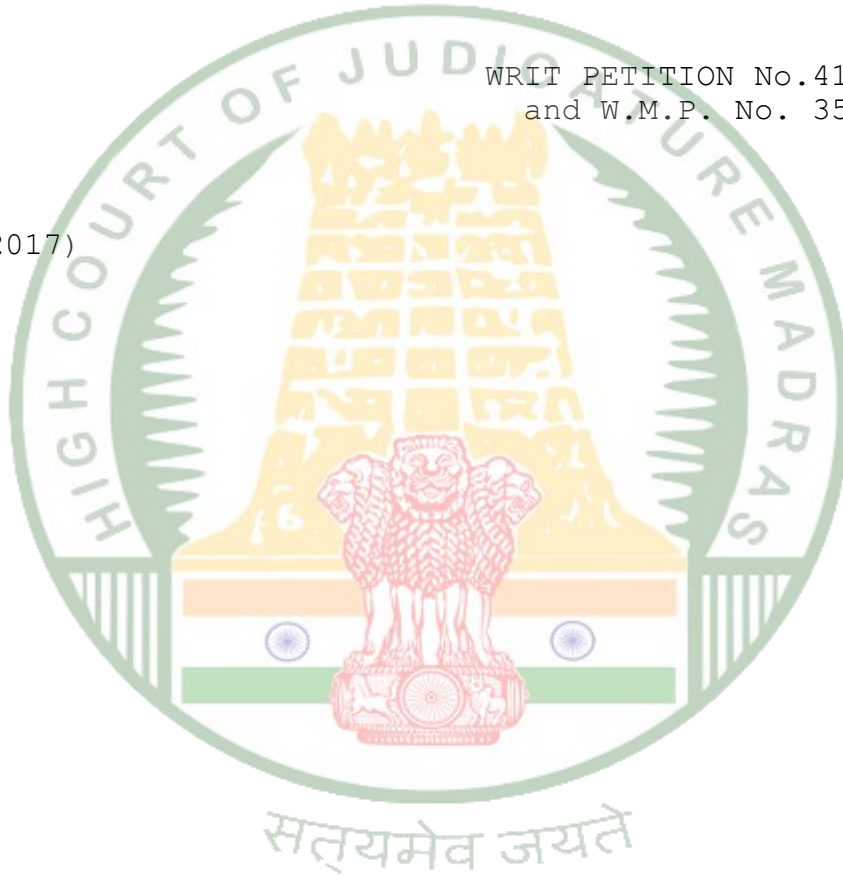
+1cc to the Government Pleader, High Court, Madras Sr. 21019

+1cc to P.V. Selvakumar, Advocate Sr. 20599

+2cc to Mr.K.P.S.Palanivel Rajan, Advocate sr.20736(21/04/2017)

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SS(CO)
VR(11/04/2017)



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