

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.09.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN
W.P.No.28005 of 2005

Sri Tirupurasundari Hotels Ltd.,
rep. By its Project Co-ordinator,
Mr.P.Srinivasalu Reddy,
having their office at
No,2, Club House Road,
Chennai - 2

... Petitioner

Vs

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

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified Mandamus calling for the records in Ref.Lr. No.F5/15101/2005 dated 01.08.2005 on the file of the second respondent and quash the said proceedings as the said proceeding is vitiated by an error apparent on the face of the record, further directing the second respondent to refund the bank guarantee of Rs.7,45,000/- to the petitioners.

For Petitioners : Mr.S.A.Rajan

For Respondents : Mrs. K.Bhuvaneswari,
A.G.P.,
for R1

: Mr.Tamilmani,
Standing counsel for R2

O R D E R

This writ petition has been filed challenging the order passed by the second respondent forfeiting the bank guarantee given by the petitioner for the deviation in the construction made by the petitioner.

2. The case of the petitioner , in brief, is as follows:

The petitioner company has applied for constructing of a hotel in the year 1992, and a building permission was granted by the Chennai Corporation and it was also approved by the second respondent herein and they have constructed the building as per the sanctioned plan. In the year 1996, an additional building plan was also approved by the second respondent . At the time of granting approval, the second respondent has received development charges, scrutiny charges and also a sum of Rs.7,45,000/- towards security deposit to ensure the construction in accordance to the plan. The security deposit is refundable provided that the building is constructed in accordance with the Approved Plan. Now, according to the second respondent, there were some deviation in the building, in respect of front set back, side set back, and rear set back. But, all those constructions were completed even before the year 1996. When the additional plan was sanctioned, there was an inspection and at that time, these deviations were not pointed out.

3. It is further stated that after receipt of the notice, the petitioner has applied for regularization and they have also paid necessary fees on 30.01.2004. But the petitioner's regularization application was not considered by the second respondent and the same has been kept pending. Pending application, a notice has been issued by the second respondent forfeiting the bank guarantee given by the petitioner on the ground that there was a deviation in the approved plan.

4. The learned counsel appearing for the petitioner would submit that when the application for regularization is pending, without processing the application, the respondents has passed the impugned order forfeiting the guarantee given by the petitioner. Apart from that, all those constructions were made even before 1991 and as per Section 113A of the Tamil Nadu Town and Country Planning Act, 1971, the petitioner is entitled for regularization and he has also made request for the same. When the regularization application is pending, respondent cannot pass the impugned order.

5. Per contra, the learned counsel appearing for the respondents, on instructions, submitted that the petitioner's application for regularization has already been rejected by the second respondent in and by his proceedings in Letter No.Reg.MSB/C6/31037/03, dated 23.01.2014 and the same was also intimated to the petitioner. But so far the petitioner has not taken any steps to challenge the order and as such, the order has become final. It is the admitted case that the petitioner has deviated from the sanctioned plan, as per the agreement, security deposit given by the petitioner is liable to be forfeiting. Hence, after giving notice to the petitioner the impugned order has been passed.

6. The contention of the petitioner is that the petitioner has already made an application for regularization and also paid the regularization fees as early as on 30.01.2004. Now, without passing any order on the regularization application, the impugned order has been passed. It is now submitted that the petitioner's application for regularization has been rejected by the respondents. But the petitioner has not challenged the said order till date. In the above circumstances, since the petitioner's application has already been rejected and it is an admitted case of deviation, as per the agreement, the respondents are entitled to forfeit the security deposit paid by the petitioner, I find no illegality or irregularity in the order passed by the respondents. However, if the petitioner has any grievance over the order rejecting the petitioner's application for regularization, it is always open to him to challenge the order, in the manner known to law without challenging the same, the petitioner is not entitled for any relief in this Writ Petition.

7. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary Housing and Urban Development Department,
Government of Tamil Nadu,
Chennai - 9
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Chennai- 600 008.

+1cc to Mr.S.A.Rajan, Advocate, S.R.No.66722
+1cc to Mr.P.Tamil Mani, Advocate, S.R.No.67622
+2ccs to the Government Pleader, S.R.No.67099 and 67470

W.P.No.28005 of 2005

ss (CO)

rrs 29/11/2018