

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.11141 of 2018
and Writ Miscellaneous Petition No.13064 of 2018

Orders reserved on 17.09.2018	Orders pronounced on 08.10.2018
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M/s.Ferdous Estate Pvt. Ltd.,
Rep., by Authorized Signatory,
M.H.Ershad Ahmed, Marina Square A-Block,
5th Floor, No.26-27, Santhome High Road,
Mylapore, Chennai-600 004. ... Petitioner

-vs-

- 1.The Government of Tamil Nadu,
Rep., by its Secretary,
Housing and Urban Department,
Fort St. George, Chennai-9.
- 2.Additional Chief Secretary to Government,
Transport Department,
Fort St. George, Chennai-9.
- 3.Chennai Metropolitan Development Authority,
Rep., by its Member Secretary,
1, Gandhi Irvin Road, Egmore, Chennai.
- 4.M/s.Marina Square Flat Owners Association,
53, Santhome High Road, Chennai-4. .. Respondents

[Respondent-4: Impleaded as per order dated 03.05.2018
in W.M.P.No.13374 of 2018 in W.P.No.11141 of 2018]

Petition filed under Section 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in G.O. (Ms) 20, dated 07.02.2018, on the file of 2nd respondent and quash the same as illegal, incompetent and without justification and further direct the respondents to regularize the 4th, 5th and 6th floors as per Amendment Act 58 of 1998.

For Petitioner : Mr.V.Raghavachari

For RR1 and 2 : Mr.V.Kadhirvelu,
Special Government Pleader

For R3 : Mr.S.Thiruvengadam
Standing Counsel for CMDA

For R4 : Mr.T.Mohan,
For M/s.K.Sumathy

ORDER

[Order of the Court was made by T.S.Sivagnanam, J.]

The challenge in this Writ Petition is to a Government Order in G.O. (Ms) No.20, Housing and Urban Development (UD1) Department dated 07.02.2018 by which, the appeal filed by the petitioner-company under Section 113-A(6) of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as "the Act") for regularization of Basement Floor (Kids School and other commercial activities) + Ground Floor + 5 Floors + 6 Floor (Part) Residential Building construction at Door Nos.26 and 27, Santhome High Road, Chennai, has been rejected.

2. The case before us has had a chequered history and it would be relevant to take note of the following facts:-

2.1 The property on which the subject building has been constructed formed part of larger extent together with a bungalow constructed thereon was purchased by the petitioner-company by Sale Deed dated 9th July, 1980.

2.2 An application was made by the petitioner for grant of planning permission for construction of Basement Floor + Ground Floor + 3 Floors Residential Building in part of the property and it is stated that the owner of the property retained 5 grounds and applied for planning permission for the remaining extent, vide application dated 27.09.1986.

2.3 The Madras Metropolitan Development Authority, presently the Chennai Metropolitan Development Authority (CMDA), by proceedings dated 11.07.1989, granted approval subject to certain conditions and the planning permit was valid from 11.07.1989 to 10.07.1992. Admittedly, the petitioner did not construct the building in accordance with the permission granted apart from putting up additional 2 floors viz., 4th and 5th floors and also effected certain change of user.

2.4 The petitioner filed an application for regularization of the deviated/unauthorized construction, vide application

dated 29.05.1999. This application was not disposed of but, kept pending for several years and one Mr.M.Althaf Ahmed, stated to be representing the petitioner, filed a Writ Petition before this Court in W.P.No.29637 of 2012 to direct CMDA to consider their application for regularization dated 29.05.1999 followed by another application dated 30.06.2002 and the representation dated 24.09.2012.

2.5 The First Bench of this Court, to which one of us (TSSJ) was a party, by order dated 06.11.2012, opined that the Court cannot issue a Mandamus to direct the CMDA to regularize the construction illegally and unauthorizedly made by the petitioner. However, if the representation or regularization has been filed, and the same has been entertained by the CMDA, they were directed to pass appropriate orders in accordance with law.

2.6 The CMDA, addressed a letter dated 07.02.2014 to Mr.M.H.Altaf Ahmed, Director of the petitioner-company to produce evidence to show that the construction was completed prior to 28.02.1999. This date was fixed pursuant to the decision by the Hon'ble First Bench declaring amendments to Section 113-A of the Act, vide Amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 as ultra vires and rejected all the applications filed under the extended schemes of regularization and quashed all the orders regularizing buildings constructed after 28.02.1999. Evidence has to be produced such as date of planning permission and proof of completion; electricity and water connection; and registration of Sale Deed conveying constructed area/plot that construction was completed before 28.02.1999.

2.7 It appears that the petitioner failed to produce all the documents as directed by the Court to be produced essentially to establish that the construction was before the cut-off date and appropriate area was conveyed to the purchasers. Consequently, the application for regularization was rejected, vide order dated 13.03.2015, for non-furnishing of required particulars as directed by the Hon'ble First Bench. As a consequence of the said rejection, CMDA issued a notice dated 17.03.2015 locking, sealing and demolition. The petitioner being aggrieved by such orders, viz., the order rejecting the planning permission and the consequential locking, sealing and demolition notice, filed two appeal petitions under Section 113-A(6) and Section 80 of the Act respectively, before the Secretary, Housing and Urban Development Department, Government of Tamil Nadu. Roughly about the same time, the petitioner filed W.P.No.12949 of 2015 to quash the de-occupation notice on the ground that statutory appeal is pending before the appellate authority. A Division Bench of this Court, by order dated 28.04.2015, disposed of the

writ petition, directing the appellate authority to dispose of the appeal and ordered status quo to be maintained in respect of the building. Some of the occupants, who received de-occupation notice, filed writ petitions before this Court in W.P.Nos.12983 to 12985 of 2015, 13452 and 13590 of 2015 wherein, they were granted thirty days time to remove the unauthorizedly constructed portion and to vacate and handover the possession within thirty days.

2.8 The Flat Owners Association has filed contempt petitions for disobedience of the order. It appears that the Flat Owners Association wanted to intervene in the appeal petitions pending before the Government and they came to know that the appellate authority has remanded the matter to the CMDA to grant the builders another chance regarding application of Coastal Regulation Zone (CRZ) Rules to the building and that it is only the CMDA and Monitoring committee that can take a decision on the same.

2.9 The Monitoring Committee in its 54th Meeting held on 21.08.2015, rejected the regularization proposal. Once again, the petitioner approached the appellate authority, who had once again remanded the matter to the CMDA, vide order dated 18.11.2015. In the meantime, there were interim orders/directions passed by the Hon'ble First Bench. Ultimately, the Court directed that the Monitoring Committee will hear the petitioner as well as the association on 03.02.2016 and a report shall be sent to the Government within a time frame.

2.10 The Convener of the meeting was the Vice Chairman, CMDA, who had passed the earlier orders of remand in the capacity of an appellate authority. Ultimately, the Monitoring Committee took a decision on 03.02.2016 that the application for regularization cannot be accepted. The convener of the Monitoring Committee, in the capacity of Secretary to Government, passed an order on 05.04.2016 referring the matter back to the CMDA with regard to the road width by referring to a resolution passed by the Greater Chennai Corporation about the proposal to widen the Santhome High Road.

2.11 The Flat Owners Association filed Writ Petition No.14022 of 2016 challenging the orders passed by the Secretary to Government and the Hon'ble First Bench of this Court, by order dated 02.02.2017, held that the appellate authority, at the second stage of the matter being remitted to the Monitoring Committee, participated in the proceedings and signed the minutes and the same officer cannot be a party to the Monitoring Committee recommendations, which are in favour of the view of the association and then, sit as an appellate authority to remit

the matter to CMDA. This factual position was not disputed by the parties before the Hon'ble First Bench. Accordingly, the order dated 05.04.2016, and any steps which may have been taken in pursuance thereto, were set aside and the matter was remanded for fresh consideration by the appellate authority post the stage of the second report of the Monitoring Committee dated 03.02.2016. The Chief Secretary was directed to nominate an Officer, who can hear the appeal with a direction to conclude the hearing.

2.12 Further, it was made clear that the appellate authority has to re-hear the matter will not amount to a licence to the occupants to carry on non-residential activity, since the regularization has been claimed on the basis that the flats will be used for residential purpose. An Officer, accordingly, was appointed by the Government, who has heard the appeal and passed the impugned order.

3. Mr.V.Raghavachari, learned counsel appearing for the petitioner submitted that the notice of hearing, which was issued to the petitioner pursuant to the two appeal petitions, was on the appeal petition filed against the locking and sealing notice under Section 80 of the Act whereas, the impugned order has been passed in the appeal petition filed against the rejection of the application for regularization filed under Section 113-A(6) of the Act. It is further submitted that the construction of the 4th, 5th and 6th floors were completed as early as 1999 and the regulations which governed the construction at the relevant point of time, ought to be taken into consideration.

4. It is further submitted that the amendment to the Act, which introduced Section 113-A applies to the case of the petitioner and subsequent guidelines or legislation will not have retrospective operation. Further, it is submitted that at no earlier point of time, the issue relating to the alleged violation of Coastal Regulation Zone (CRZ) was taken up and it was for the first time raised by the owners association and the respondent has passed an erroneous order based on the said CRZ, which has no application to the case of the petitioner.

5. Further, it is submitted that the petitioner had conveyed about 981 square feet of un-divided share in the land to each of the purchasers of the plots out of which, the total extent of 1,32,000 square feet retaining 69,000 square feet for themselves to be utilized for construction of 4th, 5th and 6th floors. It is submitted that sufficient set back has been given and there is no violation of the set back norms and the construction having been completed before 1999 and an application for regularization having been filed in May 1999 ought to have been granted. Further, it is submitted that the application for regularization having been filed in the year 1999 should have been considered

based on the Regulations, which are prevalent at the relevant time.

6. To buttress the submission that the loop road in existence will be a definite factor to be taken note of for the applicability of CRZ, reliance was placed on the decisions of the High Court of Kerala in

(i) Institute of Social Welfare vs. State of Kerala and Others [1997 (2) K.L.J. 153]; and

(ii) Citizens Interest Agency vs. Lakeshore Hospital & Research Centre Pvt. Ltd. [2003 (3) KLT 424];

and on the decision of the Division Bench of this Court in the case of Citizen, Consumer and Civil Action Group vs. Union of India and Others [2002 - 3 - L.W. 393].

7. It is further submitted that even as per the notification issued by the Ministry of Environment and Forests, the construction put up by the petitioner is capable of being regularized, which was not dealt with by the appellate authority while passing the impugned order. In this regard, reference was made to Clause No.6 of the Coastal Area Classification and Development Regulations.

8. Further, by referring to the Regularization Scheme, which was passed by the Government, vide G.O.(Ms) No.76 (Housing and Urban Development Department (UD.I) Department, dated 27.02.1999, it is submitted that the petitioner's building will fall within Clause 6(1) Category I(d) and should have been regularized by taking note of the application filed by the petitioner. Alternatively, it is submitted that the petitioner still retained 5 grounds of land behind the constructed area which the petitioner is willing to offer for the construction being regularized and therefore, there should be an objective assessment of all the issues.

9. Mr.S.Thiruvengadam, learned Standing Counsel for the CMDA produced the original files and submitted that proper procedure was followed and referred to all the relevant documents much of which were pointed out by the learned counsel for the petitioner and stated that adequate opportunity was given by the CMDA as well as by the appellate authority and there is no error in the impugned order or in the decision taken by the Monitoring Committee earlier.

10. Mr.V.Kadhirvelu, learned Special Government Pleader reiterated the submission made by the learned Standing Counsel for the CMDA.

11. Mr.T.Mohan, learned counsel appearing for M/s.K.Sumathy, learned counsel for the Flat Owners Association, submitted that

the regularization application cannot be approved, as it is in violation of the CRZ. In this regard, the learned counsel referred to various Clauses in the notification of the Ministry of Environment and Forests dated 19.02.1991. Therefore, it is submitted that the appellate authority rightly rejected the application for regularization.

12. It is submitted that in terms of the Special Rules for Multi-storeyed Building (MSB) framed under Rule 17(a) of the Development Control Rules (DCR), the height of an MSB shall be regulated with reference to the extent of the side and the width of the abutting road or public road and if the minimum extent of site is 2500 square meters, the minimum road width should be above 27 meters. It is submitted that in the instant case, as per the application given by the petitioner for regularization, it is more than 4000 square meters and accordingly, the building, which is now put up, being an MSB cannot be regularized.

13. Reliance was placed on the decision of the Hon'ble First Bench of this Court in Consumer Action Group vs. The State of Tamil Nadu and Others [W.P.Nos.18898 of 2000 and etc., batch: Dated 23.08.2006], more particularly, the observations made in paragraphs 30 and 31 and the directions issued in paragraph 32 of the said order. It is submitted that the building for which originally planning permission was granted, viz., Basement (Non-FSI) Floor + Ground Floor + 3 Floors is a special building, which is permissible under CRZ II and no MSB is permissible, as the CRZ states that it has to comply with the 1991 Rules.

14. Reliance was placed on the decision of the High Court of Bombay in the case of Overseas Chinese Cuisine (India) Pvt. Ltd. & another vs. The Municipal Corporation of Greater Bombay & others [MANU/MH/0064/2000 and the decision of the Hon'ble Supreme Court in Piedade Filomena Gonslves vs. State of Goa and Ors. [2004 (3) SCC 445].

15. It is further submitted that the argument of the learned counsel for the petitioner that it is the owners association which had brought forth the issue regarding CRZ is incorrect, since the application for regularization was rejected for non-furnishing of records.

16. The learned counsel referred to the counter affidavit filed by the CMDA in the writ petition filed by the association in W.P.No.14022 of 2016 wherein, they accept that the petitioner did not furnish proof of completion of unauthorized portion.

17. Further, by referring to certain paragraphs in the impugned order, it is submitted that a detailed exercise was done and this Court is not an appellate court over the order passed by the Government. It is further submitted that pursuant to the order passed by the Hon'ble First Bench in W.P.No.14022 of 2016 dated 02.02.2017, none of the orders or direction of the appellate authority, which had occurred prior to the said order, can be relied on by the respondent - CMDA or for that matter the writ petitioner. Further, it is submitted that the Court should examine the conduct of the petitioner, the manner in which they had conducted themselves, which would show that no indulgence should be granted to the petitioner.

18. The learned counsel referred to the order passed in W.P.No.13452 of 2015 filed by one M/s.Isometrix, who was a tenant in respect of flat in Block No.B, 5th Floor, Santhome High Road. The said writ petition was filed challenging the de-occupation notice dated 21.04.2015 and at the request made by the said person, 30 days time was granted to them to de-occupy the premises. It is submitted that the said petitioner vacated the premises. However, presently it is occupied by a law firm under the name and style "Legal Bricks Law Firm Office" and the name finds place in the de-occupation notice dated 24.04.2018, which shows that the law firm is functioning in Flat No.511 in the 5th floor, 'B' Block.

19. It is submitted that one of the partners of the firm is none other than the petitioner in W.P.No.13590 of 2015, who also challenged a de-occupation notice and the said writ petition was disposed of, by order dated 03.04.2016, granting 30 days time to de-occupy the premises but, till date, the said petitioner continues to occupy the same and a law firm is being run by the petitioner in the said writ petition along with the counsel, who appeared for him in the said writ petition. Therefore, it is submitted that there is blatant violation of the Court orders and prayed that the writ petition may be dismissed.

20. Mr.V.Raghavachari, by way of reply, reiterated the submission that the loop road, which is in existence, is a factor which ought to have been taken into consideration owing to which the CRZ would have no application. Therefore, it is submitted that the authorities should be directed to make an objective assessment in all issues and take a decision in the matter.

21. Heard the learned counsels for the parties and carefully perused the materials placed on record.

22. During the year 1988, the Government of Tamil Nadu

passed 73 orders granting exemption from the applicability of the building regulations in respect of buildings in Chennai city which were challenged by the Consumer Action Group before the Hon'ble Supreme Court in W.P.(C) No.926 of 1998 seeking a declaration that Section 113 of the Act was ultra vires Articles 14 and 21 of the Constitution and for quashing 62 Government Orders granting exemption. While the matter was pending before the Hon'ble Supreme Court, the State of Tamil Nadu amended the Tamil Nadu Town and Country Planning Act, 1971 by the Amending Act, 1998 (Tamil Nadu Act 58 of 1998) by inserting Section 113-A to the Act. The Consumer Action Group filed writ petition before the Hon'ble Supreme Court in W.P.(C) No.237 of 1999 challenging the vires of Section 113-A of the Act and the Supreme Court, vide common order dated 18.08.2000 in W.P.(C) No.926 of 1998, upheld the validity of Sections 113 and 113-A. However, set aside the 62 Government Orders granting exemption under Section 113 but, left it open to them to apply afresh under Section 113-A of the Act.

23. While upholding the validity of Section 113-A, the Hon'ble Supreme Court clearly stated that it is a 'one-time measure' and also pointed out the need for taking effective steps to check at the root level, at the very nascent stage of violations/deviations. In spite of such a direction issued by the Hon'ble Supreme Court, the State of Tamil Nadu promulgated Tamil Nadu Ordinance No.7 of 2000 to amend Section 113-A of the Act by which, all the buildings constructed on or before 31.08.2000 were made eligible to be considered for regularization and such application for regularization to be made on or before 31.10.2000. Subsequently, a decision was taken by the Government to reduce the fee for regularization, as the rates were high and there was a poor response to the regularization scheme. Section 113-A of the Act was further amended by Tamil Nadu Act 17 of 2001 by which, all buildings on or before 31.07.2001 became eligible to be considered for regularization and such application for regularization to be made on or before 30.11.2001. Subsequently, the cut off date for regularization was once again extended to 31.03.2002 by Tamil Nadu Act 7 of 2002. The Consumer Action Group challenged the constitutional validity of the amended provision of Section 113-A by filing a batch of writ petitions, which were heard by the Hon'ble First Bench.

24. The CMDA and the Corporation of Chennai had produced records from which, the Hon'ble First Bench noted that the provisions of the Act and Rules have been grossly violated by the builders and buildings have been constructed in total violation of the Rules. They have been either constructed without any permission or additional floors have been raised in violation of FSI Regulations, none of the mandatory safeguards were provided, no car parking facility, fire safety measures

were not observed, etc. Accordingly, the Court appointed a Monitoring Committee to oversee the demolition of unauthorized construction put up in violation of the planning permit, master plan, CRZ and other laws. Further, the Court directed that the owners of such premises must be directed to demolish the unauthorized construction and provide parking area and fire safety measures. The following observations in paragraph 31 of the order would be relevant.

"31. We are inclined to appoint a Monitoring Committee with sufficient staff and infrastructure to oversee the demolition of unauthorised construction put up in violation of the planning permit, master plan CRZ and other laws.

.....
It is also high time that the CMDA and the Corporation should identify the officers responsible for the failure to enforce the FSI laws and to initiate disciplinary action against them.

.....
Owners of such premises must be directed to demolish the unauthorised construction and provide parking area and fire safety measures within the premises. Similarly, violations in FSI potentially impact the larger community and must not be condoned particularly in commercial complexes. Violation in FSI result in a massive strain on the existing infrastructure facilities like road network, drainage, water etc. and also impact the neighbourhood. Similarly, the violations in Open Space Reservation (OSR) or illegal buildings put up on lake-beds, water catchments, flood plains, CRZ areas, etc. have ecological repercussions and must not be condoned and violations in such cases must be demolished."

25. In paragraph 32 of the order, the Court constituted a Monitoring Committee and the official members of the committee were by designation and the other members by name and 15 directions were issued wherein the following would be relevant.

"(iii) The Monitoring Committee shall be provided with sufficient staff and infrastructure and all files pertaining to illegal constructions to be placed before it.

(iv) The Committee shall first take up the multi-storied commercial complexes for consideration. This should cover all buildings which are more than four floors in height. Where

the construction of the entire building is illegal, the building has to be demolished. Where an extra floor has been put up illegally, the same should be demolished. Necessary modifications/demolitions must be done for satisfying the norms for fire safety and car parking facilities within the building premises.

(v) Special buildings should be categorized as those with actual construction of ground plus three floors. In the case of commercial special buildings, the same measures that apply to multi-storied buildings as above should be followed. In the case of residential multi-storied buildings and special buildings, the monitoring committee may suggest less stringent measures, bearing in mind the impact of retaining the buildings.

(vi) The professional buildings of illegal multi-storied and special buildings should be identified for imposition of heavy penalties. This amount should be used to compensate the unwary purchasers and to take remedial measures for alleviating the harm caused to the society.

(vii) The Committee shall identify the officers at the CMDA and the Corporation, who are responsible for the failure to enforce the planning laws and make appropriate recommendation for prosecution and/or disciplinary action."

26. In terms of the above referred order, the applications for regularization of construction are maintainable only in respect of constructions completed on or before 28.02.1999 and all other constructions and regularization beyond the said date were held to be illegal and orders of regularization were declared as ultra vires. In the petitioner's case, though they had purchased a larger extent of land, only an extent of 16 grounds were put to development into an apartment complex and an application for planning was submitted to put up a construction consisting of Basement Floor + Ground Floor + 5 Floors entirely residential.

27. We are informed that the basement floor will be categorized as a non-FSI area and that cannot be used for inhabitation purposes but, can be used as an electrical room or a storage space. The application was submitted under the category of special building which admittedly is permissible in the area in question and with the given road width. Accordingly, the planning permission was granted on 11.07.1989. The petitioner violated the planning permission, made a change

of user in the basement area and put up three additional floors. The petitioner claimed that the constructions were completed before 28.02.1999, and hence, eligible to apply for regularization in terms of the directions in Consumer Action Group case and accordingly, made an application on 28.09.1999. This application was kept pending for several years and partially not due to reasons directly attributable to the writ petitioner, on account of the various developments which took place and the challenges made before the Court by way of Public Interest Litigations etc.

28. Nevertheless, the petitioner came to Court by filing a writ petition in the name of M.F.Althaf Ahmed in W.P.No.29637 of 2012 directing the petitioner's regularization application dated 29.05.1999 to be disposed of. However, in the interregnum, that is, after 1999, the petitioner had given another application for regularization in 2002 which presumably was based upon the amendment by Tamil Nadu Act, 7 of 2002.

29. The First Bench of this Court, while disposing of the writ petition, vide order dated 06.11.2012, made it clear that the Court cannot direct the CMDA to regularize the petitioner's construction but, observed that if a representation for regularization is pending, the authority was directed to consider the said representation and pass orders in accordance with law. After the application was taken up for consideration, documents were called for to prove that the construction was completed prior to 28.02.1999 and since the petitioner failed to produce the entire set of documents, the application for regularization was rejected by order dated 13.03.2015.

30. It may not be necessary for us to refer to the various litigations and correspondences, which had occurred in the interregnum, as the fact remains that the petitioner failed to produce records to the satisfaction of the authority that the construction was completed prior to 28.02.1999. Consequent upon the rejection of the application for regularization, a notice for locking, sealing and demolition was issued on 17.03.2015. The petitioner filed two appeals before the Government both dated 10.04.2015. One of the appeals was under Section 113-A (6) of the Act against the rejection of regularization application and other appeal under Section 80 of the Act against the locking, sealing and demolition notice. Though it may be true that the Secretary to Government, Thiru Dharmendra Pratap Yadav, I.A.S., has referred to the appeal under Section 80 in the subject column of the notices dated 12.05.2015 and 28.05.2015 essentially, the Government was considering appeals filed by the petitioner against the order of rejection of the application for regularization.

31. To be noted that the said Secretary to Government was a Convener of the Monitoring Committee and though the Monitoring Committee took a decision to reject the application while exercising its powers as an appellate authority/Government, the matter was remanded to the CMDA not once, but on several occasions for certain reasons stated in each of those orders. These orders are said to have irked the owners association and they approached the Hon'ble First Bench of this Court by filing W.P.No.14022 of 2016 stating that the said Secretary to Government cannot act in both capacities as a Convener of the Monitoring Committee take a particular decision and as a Secretary to Government take a contrary decision. The factual position was not disputed before the Hon'ble First Bench, as recorded in the order dated 02.02.2017. The Court was convinced that the said Secretary to Government could not have acted in the manner done by him. Consequently, impugned orders passed prior to the said date were set aside and the matter was remitted for fresh consideration post the stage of the second report of the Monitoring Committee dated 03.02.2016. While passing the order, the Court pointed out that merely because the matter has been sent for re-hearing will not amount to a licence to the occupants to carry on non-residential activities, since the regularization has been claimed on the basis that the flats will be used for residential purpose.

32. The compliant before us is that there is certain non-residential activity but, we do not wish to go into the said aspect at this juncture, as it is for the authorities to take note of the directions issued by the First Bench more particularly, when we are testing the correctness of the impugned Government Order in G.O.(Ms) No.20. Upon remand, the matter was re-heard and the appeal has been rejected.

33. The sheet anchor of the case of the petitioner is based upon the loop road which commences from the Light House at Kamaraj Salai and joins Foreshore Estate. This according to the petitioner will be a factor to state that the CRZ will not be applicable to the petitioner. To support such contention, the decision of the Kerala High Court in Institute of Social Welfare (supra) and the decision of the Division Bench of this Court Citizen, Consumer and Civil Action Group (supra) were referred to.

34. We are of the view that the said decisions would in no manner render any assistance to the case of the petitioner and we support such conclusion with the following reasons.

35. The Government of India, Ministry of Environment and Forests has issued a notification dated 19.02.1991 under which, certain activities have been prescribed and there are also a

list of permissible activities. Annexure 1 of the notification is the Coastal Area Classification and Development Regulation, which categorized the CRZ into four categories. The norms for regulation of activities are spelt out in Clause 6(2) of the notification. Since the petitioner's property falls within CRZ II, the following would be relevant:-

"Norms for Regulation of activities:

6 (2) CRZ II

(i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing Local Town and Country Planning Regulations, including the existing norms of FSI/FAR."

36. The Government of Tamil Nadu in exercise of its powers conferred under Section 122(2)(cc) of the Act framed the Application, Assessment and Collection of Regularization Fee (Chennai Metropolitan Area) Rules, 1999, which came into effect from 01.03.1999. In terms of Rule 9(1)(a) of the said Rules, any application under the said Rules shall be in conformity with the Coastal Zone Regulations of the Ministry of Environment and Forests under the Environment (Protection) Act, 1986. Therefore, the contention raised by the petitioner that Coastal Zone Regulations are inapplicable, is an argument to be rejected. Admittedly, the petitioner seeks for regularization of the unauthorized construction under the relevant Rules and therefore, the petitioner is bound by the terms and conditions stipulated under the Rules and one such condition being the application should be in conformity with the Coastal Zone Regulations.

37. The Monitoring Committee in its 54th Meeting held on 21.08.2015, examined the evidence furnished by the petitioner to the Government along with the appeal petitions and resolved to reject the regularization of Basement Floor + Ground Floor + 6 Floors (pt.) of commercial-cum-residential building, as the application violates Rules 9(1)(a) of the said Rules in respect of minimum road width, FSI, height of the building and land use permitted in the Development Control Rules existing at the time of notification of the Coastal Zone Regulations of the Ministry of Environment and Forests. Therefore, the Monitoring Committee as early as in August 2015 resolved to reject the application of the petitioner on the aforesaid grounds with reference to the CRZ Regulations.

38. On a perusal of the material papers placed before this Court as well as the impugned order, it is seen that the authorities have verified the petitioner's property and have recorded that it attracts the CRZ Regulations as notified by the Ministry of Environment and Forests dated 19.02.1991, which was in force at the time when the regularization scheme was introduced. Therefore, to be entitled for being considered for regularization, the petitioner has to essentially meet the requirements and stipulation mentioned in the Coastal Zone Regulations and the application under the Town and Country Planning Act/Rule/Regulations cannot violate or substitute the notification issued by the Ministry of Environment and Forests, since the Rule itself says that the application should comply with the said CRZ Regulations.

39. Furthermore, the Government has pointed out that the Floor Space Index (FSI) for construction qualifying under CRZ norms should be kept as per 1991 level, which is 1.5 for construction in the location of the petitioner's property wherein, the road width is less than 60 feet, which is the qualifying width for an MSB. After taking note of the FSI available in the building viz., 2.67, it has been held that it is more than the FSI permissible, which is 1.5 as per the norms of the Development Control Regulations (DCR). One more contention advanced by the petitioner is with regard to the road width stating that it is not uniform.

40. We find from the impugned order that the Road Width Committee held a meeting on 20.04.2016 to ascertain the width of the Santhome High Road abutting the petitioner's property and the minutes show that the length of 250 meters on either side of the petitioner's property taken at 10 meter interval varies from 11.50 meters to 14.06 meters. The Road Register Map for the same stretch attested by the Executive Engineer, Zone IX was also placed, which shows the width as 10.5 meters for a total length of 780 meters in the said location. Further, the Deputy Inspector of Survey, Mylapure Taluk, has certified the true extract of the concerned Revenue Block indicates that the road width in front of the petitioner's site varies from 8 meters (24 feet) to 9 meters (27 feet). Therefore, it was placed on record that the road width varies between 8 meters to 9 meters abutting the petitioner's site. The petitioner cannot dispute the fact that Rule 19 of Annexure IX of the Development Control Rules which provide for Special Rules for MSB, the minimum road width should be 18 meters and above upto 21 meters.

41. We are satisfied that a thorough exercise has been done by the authorities concerned before assessing the road width. Thus, the contention raised by the petitioner regarding the

variance of the road width etc., does not render any assistance to the case of the petitioner, as the assessment made by the authorities concerned clearly shows the road width is between 8 to 9 meters, which is inadequate for an MSB and the application for regularization for an MSB is not permissible.

42. Furthermore, in the impugned order, it is noted that commercial activities are being carried on in the basement area and Fire Service Department has submitted a report even the year 2010 to the said effect. Thus, we find that there is no error in the decision making process. Admittedly, while exercising jurisdiction under Article 226 of the Constitution of India, we cannot examine the order passed by the Government on the appeal petitions filed by the petitioner as if being a second appellate authority and the scope of interference is limited to examine as to whether any gross errors committed in the decision making process, whether the findings rendered by the Government are utterly perverse or there is a violation of the principles of natural justice. We find none of these exceptions, which have been carved out for exercising jurisdiction under Article 226 of the Constitution of India, have been made out in the petitioner's case for us to step in and interfere with the impugned order.

43. The Hon'ble Supreme Court in *Piedade Filomena Gonslves* (supra) while noting that the appellant before them had raised a construction without permission pointed out that assuming that on demarcation and fresh measurement afresh on the High Tied Line being determined, is found to be beyond 200 meters High Tied Line, the appellant having indulged in mis-adventuring of raising of construction without securing permission from the competent authorities would not be entitled for relief. It was further pointed out that Coastal Regulation Zone notifications have been issued in the interest of protecting environment and ecology in the Coastal Zones and construction raised in violation of such Regulations cannot be lightly condoned.

44. As pointed earlier, the Hon'ble First Bench in the case of *Consumer Action Group* had issued pointed directions in paragraph 32 of the order and in our view, if the petitioner's interpretation is to be accepted, it would be mis-reading of paragraph 32(5), since the Court observed that in case of residential Multi-storeyed Buildings and Special buildings, the Monitoring Committee may suggest less stringent norms bearing in mind the impact of retaining the building. Obviously, the Court did not mean that the Monitoring Committee, should ignore the Rules under which the application for regularization is made especially Rule 9(1)(a), which mandates that the application should be in conformity with the Coastal Zone Regulations. Therefore, in our considered view, the correct interpretation

would be that if a residential MSB is put up in a non-CRZ area, the Monitoring Committee may suggest less stringent measures. However, before doing so, the Monitoring Committee should bear in mind the impact of retaining the building. Thus, in our considered view, in the absence of any error in the decision making process, we decline to interfere with the order passed by the second respondent in G.O.(Ms) No.20 dated 07.02.2018 for the reasons assigned above.

45. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Department,
Fort St. George, Chennai-9.
- 2.The Additional Chief Secretary to Government,
Transport Department,
Fort St. George, Chennai-9.
- 3.The Chennai Metropolitan Development Authority,
Rep., by its Member Secretary,
1, Gandhi Irvin Road, Egmore, Chennai.
- 4.M/s.Marina Square Flat Owners Association,
53, Santhome High Road, Chennai-4.
- 5.The Authorized Signatory,
M/s.Ferdous Estate Pvt. Ltd.,
M.H.Ershad Ahmed, Marina Square A-Block,
5th Floor, No.26-27, Santhome High Road,
Mylapore, Chennai-600 004.

+3cc to Mr.K.Sumathi, Advocate, S.R.No.69023

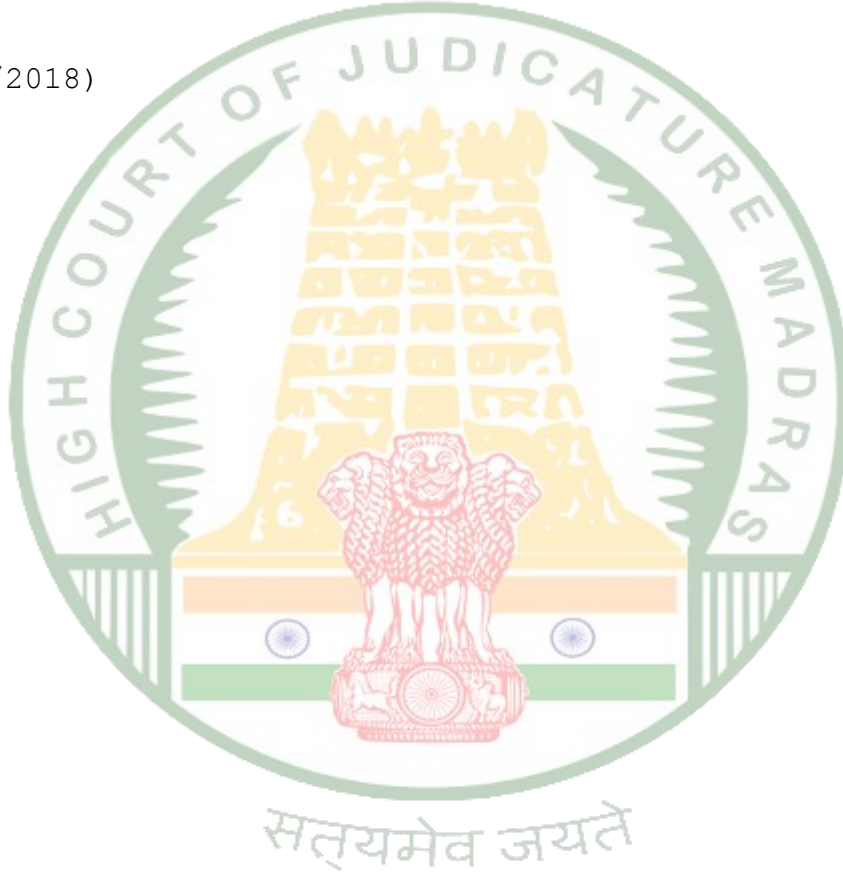
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.69096

+1cc to Mr.S.Thiruvengadam, Advocate, S.R.No.69301

+1cc to the Government Pleader, S.R.No.69453

W.P.No.11141 of 2018

JP (CO)
GSP (13/11/2018)



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