

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P No.22349 of 2017

and

W.M.P.Nos.23430 and 23431 of 2017

P.Anbuchelvi

..Petitioner

Vs

1.The State of Tamil Nadu

Represented by the Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort.St.George, Chennai - 600 009.

2.The Chennai Metropolitan Development Authority,

Represented by its Member Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 009.

3.The Corporation of Chennai,

Represented by its Commissioner,
Rippon Buildings, Chennai - 600 003.

4.The Assistant Executive Engineer (TP),

Office of the Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of writ of certiorarified mandamus, calling for the records relating to the impugned letter bearing No.WDC No.PPA/WDCN10/ 04042/2017, dated 22.06.2017, passed by the fourth respondent and quash the same and consequently direct the respondents 2, 3 and 4 to accord approval on the application submitted by the applicant vide Application No.PPA/WDCN10/ 04042/2017, dated 22.06.2017, if otherwise eligible.

For Petitioner : Mr.R.Sivakumar

for Mr.U.Karunakaran

For Respondents : Mr.V.Shanmuga Sundar

Special Government Pleader for R1

Mr.N.Sampath, Standing Counsel for R2

Mr.T.C.Gopalakrishnan

Standing Counsel for R3 and R4

O R D E R

This writ petition has been filed to quash the impugned order passed by the fourth respondent vide letter bearing No.WDC No.PPA/WDCN10/ 04042/2017, dated 22.06.2017 and consequently, direct the respondents 2 to 4 to consider the petitioner's application.

2. Heard the learned counsel for the petitioner and the learned counsels appearing for the respondents.

3.The case of the petitioner is that she is the absolute owner of the property comprised in S.No.188/3A and 189/2, situated at Door No.44, Arcot Road, Virugambakkam, Chennai, measuring an extent of 5844 sq.ft. The petitioner would further state that she obtained planning permission for demolition and reconstruction in the year 2008, but, due to financial constraint, she was unable to construct the building and hence, the building plan approval already given in her favour was cancelled. It is further stated that she has approached the respondents seeking new building plan approval and at that time, she was informed that she has to execute a gift deed in favour of the Corporation, for processing the application.

4.The learned counsel appearing for the petitioner would submit that the order of this Court in W.P.No.12675 of 2017 dated 12.6.2017, would squarely apply to the case on hand.

5.The learned counsels appearing for the respondents have not disputed the submission of the learned counsel for the petitioner.

6. In W.P.No12675 of 2017, this Court has held as follows:-

"Though a counter affidavit has been filed by the respondents, the learned counsel for the petitioner is not in a position to dispute the ratio laid down in the aforesaid Judgment which was become final. In the second Judgment rendered in W.P.No.15759 of 2014 dated 20.11.2015 after taking note of the earlier one, the following order was passed:

The said writ petitions were disposed of, by issuing following directions.

6. In the light of the above, this Court is of the view that it may be true that the interest of the Government should be protected, as there is a need for wider roads

and the need is in public interest. At the same time, the interest of the small land owners, who own the land abutting the existing road, cannot be forgotten. Therefore, this Court, in several writ petitions issued directions directing the owner of the land to file an affidavit of undertaking to handover the front portion to the maximum extent required and also undertaking to keep the area free from any construction and subject to such undertaking, the planning permission application was directed to be processed and if it satisfies the other conditions, planning permission to be granted subject to the endorsement that the approval is granted based on the undertaking given by the petitioner and in the event of requirement of the front portion of the land, the land owner or their successors in interest will hand over the land without any resistance.

7. Therefore, this court is of the view that the same direction should be issued in these cases also. Accordingly, the writ petitions are disposed of, directing the petitioners to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to their right to claim compensation. If such affidavit is filed, the respondents shall consider the same and process the application in accordance with the statutory provisions. No costs. Consequently, connected miscellaneous petitions are closed."

8. In the light of the above, this Writ Petition is also disposed of, by directing the petitioner to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to its right to claim compensation. If such affidavit is filed, the respondent shall consider the same and process the application in accordance with the statutory provisions. No costs."

7.This Court is of the considered opinion that the order passed in the earlier writ petition is squarely applicable to the facts of the present case and the writ petition stands disposed of, by making the decision aforesaid applicable to the case of the petitioner. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
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Represented by its Commissioner,
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4. The Assistant Executive Engineer (TP),
Office of the Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.29841

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.29814

W.P No.22349 of 2017

and

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SG(CO)
CS/30/05/18

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