

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.30725 of 2016 and
WMP Nos.26622 and 26623 of 2016

M/s Gemini Pictures Circuit,
Private Limited, rep. By its
Director, A.Manohar Prasad
601, Annasalai, Chennai - 6 ...Petitioner

Vs.

1. The State of Tamil Nadu rep. By
Secretary to Government
Housing and Urban Development
Dept., Fort St. George,
Chennai - 600 009
2. The Member Secretary,
Chennai Metropolitan Devt., Authority
Thalamuthu Natarajan Maligai
Gandhi Irwin Road,
Egmore, Chennai - 600 008 ..Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in G.O.Ms.No.43 dated 03.07.2012 passed by the 1st Respondent, quash the same and direct the Respondents to issue Planning Permit based on the G.O.Ms.No.949, Housing and Urban Development Department, dated 16.11.1995.

For Petitioner : Mr.V.Sankaranarayanan

For Respondents : Mr.R.Udayakumar for R1
Additional Government Pleader

Mr.K.Raja Srinivas for R2

O R D E R

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

The petitioner has come forward with the aforementioned prayer.

2. Brief facts of case are as follows:-

(i) The petitioner, earlier, obtained planning permission from the CMDA for construction of a building in Mylapore Village, Revenue Survey Nos.3/1 Part, 3/10 Part, Annasalai, Chennai - 6, with regard to Block I: Basement, Ground floor, 4 floors shop and office requirement and in respect of Block H: Basement, Ground floor, 8 floors (with service floor) for running the eating house.

(ii) Thereafter, the petitioner had constructed the building without getting any planning permission for more floors to the extent of 5 to 8 floors in Block I and 9 and 10 floors in Block H. After constructing the same, the petitioner had sought for planning permission from the CMDA and the same was rejected, taking note of the following:-

- "(a) Height of the building
- (b) In all the sides gaps are required to be left
- (c) The distance between the blocks
- (d) Ground extent Code (as the planning permission granted earlier was violation it is in excess by 1.87)
- (e) Car parking
- (f) Platform width
- (g) The open space Reservation (OSR) as per the land and the space which was alleged to have been given by the petitioner to the corporation of Chennai as gift did not tally and in that area, the transformer is installed.
- (h) Encroachment is included (4' width - on the eastern side)
- (I) The No Objection Certificate, from the water supply department, Fire Rescue Services department CRAC, Chennai Regional Advisory Committee and the Civil Aviation were not obtained and submitted."

(iii) Against the rejection order, the petitioner had preferred an appeal to the Government and that the additional construction was allowed in Block I, subject to the following conditions, vide, G.O.Ms.No.949, Housing and Urban Development Department dated 16.11.1995

"(i) The appellant has to swear to the Chennai Metropolitan Development Authority, that except the area which was permitted in the above said government order, he had not constructed in excess in any of the place.

(ii) The building constructed in the open space reservation (OSR) area has to be removed.

(iii) Before getting the planning permission, the no

objection certificates have to be obtained from Water Supply Department, Fire Rescue services Department, Transport Department, CRAC & Civil Aviation Departments.

(iv) The elevation plan of Block I have to be submitted."

(iv). Since the petitioner has not fulfilled the above said conditions, planning permission was not granted. Thereafter, the petitioner was not given 'No Objection Certificate' from the Chennai Water Supply Department, Fire Rescue Services Department, Transport Department, CRAC and Civil Aviation Departments. Block-I was under the purview of DRT and Block-H alone comes under the Regularisation Scheme. Block-I could not maintain the distance that is required and the application was not received for the regularisation of Block I before the due date, i.e., 30.06.2002.

(v) As the petitioner did not give the required information to the authority, the application submitted for regularisation of Double Basement Floor, ground floor, 9 floors in Block H was rejected. The CMDA rejected the request of the Petitioner on 16.03.2017, pointing out various defects on the part of the petitioner's application, which are reflected here under:-

" (i) The conditions mentioned in the Government Order (Ms) No.949, Housing and Urban Development Department dated 16.11.1995 was not followed and without proper planning permission the construction in Block I, the basement, ground floor, 10 floors and in Block H, 9th and 10th floors were completed.

(ii) In the additional area, on the north western corner had constructed doubt height building without the approval.

(iii) The Open Space Reservation space already reserved at free of cost to the Corporation of Chennai and the road approach areas were encroached upon. The common passage to the OSR area was obstructed.

(iv) Block I and Block H were divided and sub-divided.

(v) The certificate along with the encumbrance certificate for the licensee was not submitted.

(vi) As the conditions in the government order dated 16.11.1995 was not followed, that order became useless.

(vii) As the plan showing as found in the land is not submitted, the violations could not be properly measured.

(viii) As mentioned in the order dated 27.10.2006 passed by the High Court, Madras in Writ Petition No.24139 of 2002, the application dated 09.09.1996 for the planning permission was not received.

(ix) The application for the regularization of Block H was rejected by the letter No.C6/9210/2008 of the Chennai Metropolitan Development Authority dated 9.12.2005."

(vi). Against the Rejection Order dated 09.12.2005, the petitioner filed W.P.No.16263 of 2008 and this Court on

21.10.2008 passed an order in the said writ petition and the petitioner appealed to the Government. When an opinion was sought for from the Member secretary of CMDA, he stated that the petitioner had not mentioned anything in his appeal dated 16.02.2007 as to whether he had rectified the violations that are mentioned in the rejection order and about the Open Space Reservation Land to be given as gift to the Corporation, which was shown in the earlier approved plan. Further, the Member Secretary of CMDA has given a detailed report, which is as follows:-

"i. As the appellant did not follow the conditions mentioned in the government order (* Ms) No.949, Housing and Urban Development Department, dated 16.11.1995, the planning permission was not granted.

ii. Through the Government Order (Ms) No.1729, Housing and Urban Development Department dated 16.11.1987 some violations were exempted in the multistoried buildings of basement + ground floor + 10 floors and the order was issued.

iii. As the required fee was not paid and also as the No Objection Certificates were not obtained from the Government Departments and submitted, the planning permission was not granted.

iv. The Appellant himself had accepted that he had violated the development control regulations and that trying to get more concessions without following the conditions ordered.

v. The area which was shown as the Sub Division of Block I was applied under the Regularization Scheme. Block I was already covered under the Debts Recovery Limit.

vi. The sub divisions which are made in two blocks without any permission in addition by way of violation of rules, could not be regularized. The common passage leading to the Open Space reservation land (OSR land) was blocked. The exemptions mentioned in the government order (Ms) No.949 Housing and Urban Development Department dated 16.11.1995 and the plan submitted are different.

Vii. Hence, the notice for the demolition of the building was sent. The deposit amount which was received for the grant of earlier permission was also forfeited.

Viii. Even through the High Court, Madras had directed to grant permission as per the government order, as the conditions of the government were not followed, the planning permission was not granted.

ix. In both the blocks, the violations already

indicated were not rectified and remaining in the same stage. In the entire building the sub division was made by the various land owners without proper permission.

x. As in the above said area, in some of the multistoried building, the minimum gap of 7 meteres space also was not left out it is not possible to move the fire extinguisher at emergency situation."

As there is no possibility of rectifying the same, the Member Secretary of CMDA rejected the appeal.

(vii). On the basis of the report of the Member Secretary, CMDA, additional details were sought for from the petitioner, which are as follows:

" (i) In order to regularize the additional construction of the building in the two blocks, Government Order (Ms) No.949, Housing and Urban Development Department, dated 16.11.1995 the order was issued. Further Block H was sole to M/s.Apeejay Surendra Part Hotels Limited). That company had applied for the regularization of the 9th and 10th floors to the Authority.

(ii) The above said company itself, had constructed the doubt height building on the north western corner of this Block and had requested the Authority to regularize the same.

(iii) Corporation of Chennai had demolished the compound wall area on 29.06.10, and had taken possession of the open space reservation area under its custody.

(iv) The Sub divisions made in the Block H as per the request of the purchaser company by the Revenue Department.

(v) All the documents in connection with the property were submitted.

(vi) None of the conditions issued in the Government Order were violated. If there is any violation, the same has to be condoned and the planning permission has to be granted. Ni the order issued by the High Court, Madras dated 09.09.1996, it had directed for the perusal of the application made for the planning approval. But the Chennai Metropolitan Development Authority had not perused various No Objection Certificates.

(vii) The plan as per the land was already submitted. However, if the plan of the land as of now is required will be submitted.

(viii) As the Authority said that they had not received the application dated 09.09.1996 for the planning permission, the copy of the same is re-

submitted.

(ix) The application which was made for the regularization of Block H was rejected on 09.12.2005 and thereafter the exemption was granted and at present regularized was understood through its purchaser."

(viii). Based on the aforesaid grounds, the petitioner requested the CMDA to accept his appeal and grant planning permission to him. On receipt of the additional information from the petitioner, the Member Secretary of CMDA had given his Report, which is as follows:-

(i) As the appellant had mentioned that the Block H was sold and conveyed, and that as the conditions of the government order were not followed, and that as the Block H comes under the regularization scheme as the sub division was made without the permission of the Corporation of Chennai (&) Chennai Metropolitan Development Authority, and as the title deed (&) encumbrance certificate were not submitted, the request of the appellant could not be accepted.

(ii) As the plan as per the land was not submitted, the violations could not be measured properly. Hence the averment made by the appellant could not be accepted.

(iii) In the letter dated 16.02.2007 of the Chennai Metropolitan Development Authority, the planning permission was rejected. The appeal was made against this.

(iv) In both the blocks the violations were not rectified. Further, the subdivision was made and sold. The rule for the multistoried building that 7 metres of minimum space to be given in all the sides were not provided. Hence, It is difficult to move the fire extinguisher at the emergency time.

(v) In the appeal a person called Director had signed and in the additional details letter another person had signed. Hence, it is not known whether both of them are the competent persons to sign. The proof of title of the land owner along with the encumbrance certificate was not submitted. As the violations are more and that there is no chance of rectifying them, the Member Secretary, Chennai Metropolitan Development Authority had requested to reject the appeal."

(ix) The Member Secretary, CMDA placed the matter before the Appeal Committee on 25.02.2011 and the Appeal Committee, having gone through various reasons given by the petitioner and

the report of the Member Committee, made it clear that there is no title in respect of ownership or authentication from the Revenue Records and that the Committee directed the petitioner to appear with necessary documents relating to ownership and title and personal hearing was also given, but the petitioner did not choose to appear. In the meanwhile, the petitioner preferred an Appeal under Section 79 of the Town and Country Planning Act, which was perused by the Committee and the appeal was placed once again in the Appeal Committee meeting convened on 05.01.2012.

(x). The Appeal Committee, after going through the records held that there is unauthorised construction up to 10 floors over and above the approved plans of basement, ground floor, 4 floors in Block I and 8th floor in Block-H and in view of the pendency of the proceedings before DRT with regard to Block I, the petitioner's application registered under registration scheme for regularisation of unauthorisedly constructed building in H Block had been rejected on 09.12.2005. The violation in respect of the FSI, coverage, set backs are deliberate and larger in extent and that the petitioner was given an opportunity of hearing, which the petitioner did not avail and the Appeal Committee has rejected the appeal.

3. The learned counsel for the petitioner contended that on account of undue haste and without application of mind, the 1st respondent has passed an order and that the petitioner could not be put to hardship, especially, when exemption is granted in G.O.No.1729, Housing and Urban Development Department, dated 16.11.1987 for construction of two multi storied building with basement, ground floor and 10 floors. The planning permission for the additional floors sanctioned in the Government Order is yet to be granted by CMDA and the building in Block I is standing tall as a shelf for the past two decades.

4. Further, the learned counsel appearing for the petitioner contended that when the Government Order is valid and binding on the parties, the petitioner has acted as per the Government Order by investing huge sums of money and any action taken by the Government or any limb of the Government is without authority of law, the same is liable to be condemned.

5. Apart from that, learned counsel representing on behalf of the petitioner contended that the action of the 2nd respondent is totally without application of mind, in contrary to the provisions of law. It is stated that the Corporation of Chennai has demolished certain portion of the compound walls on 29.06.2010 and taken over the OSR Land area gifted earlier by the petitioner to the Corporation of Chennai as per the Development Rules and hence the observation of the respondents that the OSR land has been encroached by the petitioner is not

true, that too when excess OSR land has already been gifted by the petitioner and a notice demanding reconveyance has been sent by the petitioner to the Respondents.

6. Besides the above, the learned counsel for the petitioner contended that earlier, this Court had set aside a batch of Government Orders including G.O.Ms.No.1729 dated 16.11.1987 and the Government, thereafter, passed G.O.Ms.No.949 dated 16.11.1995 and the 2nd Respondent must have no special reason for refusing planning permission to the Petitioner, when several multi storied buildings have been permitted in the locality within the same campus.

7. Admittedly, the contention of the petitioner is that the violations pointed out by CMDA have been exempted by the Government and CMDA is not adverting to the Government Order, and DRT proceedings is irrelevant. Moreover, the Appeal committee had taken note of various objections made by the petitioner, viz., that the petitioner had not availed the opportunity of being heard personally, that apart, there has been a specific identification with regard to violation and with regard to each and every point, which has got to be adhered to by the petitioner before constructing the building over and above the sanctioned plan. Therefore, under the premise that there will a sanction by the Government, will not entitle the petitioner to proceed with the construction.

8. This Court has already held in W.P.No.16263 of 2008 and it would amount putting a cart before the horse, as there are complete violations noticed not only by one authority, but authorities, who have gone into the question of constructions, which are made in violation of the sanctioned plan. However, the petitioner was given an opportunity to rectify the mistakes and bring the building in accordance with the Plan, but everything was thrown in the wind. Now, the petitioner is trying to take shelter on the ground of technicality that the authorities have not applied mind, which is not correct.

9. A detailed order has been passed by the 1st and 2nd respondents pointing out various violations / deviations made by the petitioner. Even the latest Government Order in G.O.No.234 dated 30.10.2012, which has been indicated in the typed set of papers by the petitioner would make it very clear that atleast 50% of the set back has to be maintained. The Government has passed the G.O.No.43, dated 03.07.2012, prior to G.O.No.234 dated 30.10.2012, but, the petitioner has not evinced any interest to question the same immediately and has taken his sweet time to challenge the same before this Court.

10. The petitioner being a violator, as pointed out by the concerned authorities, did not show any interest in appearing before the authorities, even though an opportunity was given and did not produce any document as requested by the authorities and proceeded to construct the building by ignoring the Plan and that prior permission is required for construction of the building, which has not been adhered to, by him. Therefore, this Court is of the view that the factual aspects, which have been dealt with by the authorities rejecting the request of the petitioner, cannot be looked into under Article 226 constitution of India, as this Court is not an Appellate Court or Revisional Court to interfere with the factual aspects, when more particularly, the 1st and 2nd respondents have dealt with the same in detail pointing out the violations.

11. In view of the same, this Court is of the considered view that the petitioner is not entitled to any relief sought for in the Writ petition and the Writ Petition is dismissed. However, it is made clear that if the authorities, who are responsible to take appropriate action against the violator is not initiating action, the said Officer shall be taken to task and the Member Secretary of CMDA and the 1st respondent, are directed to take disciplinary action against those persons and appropriate punishment to be imposed against the concerned officer, who are responsible for not bringing the violators to book and that the said major punishment shall be entered in the service record and that they are not posted in the sensitive post. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssd

To

1. The State of Tamil Nadu rep. By
Secretary to Government
Housing and Urban Development
Dept., Fort St. George,
Chennai - 600 009

WEB COPY

2. The Member Secretary,
Chennai Metropolitan Devt., Authority
Thalamuthu Natarajan Maligai
Gandhi Irwin Road,
Egmore, Chennai - 600 008

+1cc to the Government Pleader, S.R.No. 17426

W.P.No.30725 of 2016 and
WMP Nos.26622 and 26623 of 2016

TR(17/05/2018)



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