

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2018

CORAM

THE HONOURABLE Mr. JUSTICE V.BHARATHIDASAN

W.P. No. 35142 of 2016
in
W.M.P. Nos.30274 & 30275 of 2016

Dr. N.P.C.Jesudian, B.E., Ph.d., ... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.
2. The Chennai Metropolitan Development Authority,
Rep. by Member Secretary, No.1, Gandhi-Irwin Road,
Chennai-600 008. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for records of the impugned order, viz., letter no. Reg-II/B5 (2)/10355/2002 dated 11.09.2016 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.A.N.Thambidurai,
Spl.GP, for R1

Mr.P.S. Ganesh, for R2

ORDER

This writ petition has been filed challenging the notice issued to the petitioner to produce necessary evidence to establish that the additional construction put up by the petitioner was prior to 28.02.1999.

2. According to the petitioner, the property under dispute consists of ground plus two floors and the building was constructed in the year 1970. The property originally belongs to the petitioner's mother, after her death, the property has been divided between her three children, the petitioner and two of his sisters. One Hema Subha Singh, the sister of the petitioner was allotted the second floor, and after partition, she has constructed an additional room in the second floor before 1999, subsequently, she has applied for regularization before the respondent on 31.12.2001. She has also paid necessary regularization fees. Thereafter, the respondent issued the impugned notice directing the petitioner to produce evidence to show that the petitioner has constructed the additional construction prior to the cut off date for regularization of any construction, namely, 28.02.1999. According to the petitioner, the sister of the petitioner has only made some additional construction in the second floor in the existing building and that construction was made much prior to the cut off date, namely, 28.02.1999 and she has filed the application for regularization in the year 2001. Without considering the same, the respondent has mechanically issued the notice.

3. The learned counsel for the second respondent, C.M.D.A, contended that it is only a notice issued to the petitioner to produce materials to establish that the additional construction was made prior to the cut off date. If any materials are available with the petitioner, it is always open to him to produce the same before the authorities. Instead of that, the petitioner cannot maintain the present writ petition.

4. I have considered the rival submissions.

5. As rightly contended by the learned counsel for the second respondent, it is only a notice issued to the petitioner to produce materials to establish that the additional construction was made prior to the cut off date for regularization of unauthorized construction. If the petitioner has any material to establish that the construction was made prior to the cut off date, it is always open to him to approach the second respondent and submit the evidence to establish his case.

6. In the said circumstances, the petitioner is directed to submit the materials whatever available with him to establish that the additional construction was made before 28.02.1999 before the 2nd respondent. In the event of any such material is placed before the second respondent, the second respondent is directed to consider the same and pass suitable orders for regularization. Till such order is passed, the second respondent is directed not to take any coercive action against the petitioner.

7. With the above observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True copy//

mm/mrp Sub Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai-600 009.
2. The Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road,
Chennai-600 008.

+1cc to Mr.S. Ilamvaludhi, Advocate SR.No.55795

+1cc to Mr.P.S. Ganesh, Advocate SR.No.56018

+1cc to Government Pleader SR.No.56111

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GMV (07/09/2018)

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