

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..10..2018
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.30663 of 2017
and
W.M.P.No.12455 of 2018

1.S.Regginald Abraham
2.R.Suresh Reginald
3.Mrs.Shanthi Deva Tilak

... Petitioners

-Versus-

1.The Commissioner,
Tambaram Municipality,
Tambaram.

2.The Member-Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maaligai
No.1, Gandhi Irwin Road,
Egmore, Chennai 600008.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari Mandamus calling for the records pertaining to the notice sent by the 1st respondent dated 06.07.2017 vide Na.Ka.No.4911/2016/F1 and to quash the same and for a consequential direction to the respondents to renew the Planning and Building Permissions in PPA No.234/12 and PPL No.566/12 in respect of land comprised in S.No.84-B/2A1 and Planning and Building Permissions in PPA No.342/12 and PPL No.567/12 in respect of land comprised in S.No.84-B/2A2 of Selaiyur Village, Tambaram Taluk, Kancheepuram District.

For Petitioners

: Mr.V.C.Janarthanan for
Mr.C.Prabakaran

For Respondents

: Mr.P.Srinivas, Standing
Counsel for R1

Mr.P.S.Ganesh for R2

ORDER

This writ petition has been filed challenging the validity of the notice issued by the 1st respondent dated 06.07.2017 in Na.Ka.No.4911/2016 F1 and for a consequential direction for renewal of Planning and Building Permissions.

2. According to the petitioners, they jointly own a landed property measuring an extent of 14 cents comprised in S.No.84-B/2A (Re survey No.84-B/2A2) in Selaiyur Village, Tambaram Taluk, Kancheepuram District. In the year 2012, they had obtained Planning Permission and Building Permission from the 1st respondent which was valid till 26.08.2015. After having obtained permission, they had commenced constructions and had completed 50% of construction work, but they were not able to complete the entire construction before the expiry of the permission. In the said circumstances on 21.07.15, the 1st petitioner made a request to the 1st respondent for renewal of permission, but the same was not considered. While so, Section 50 of the Town and Country Planning Act, 1971 [hereinafter referred to as 'the Act'] came to be amended and thereby duration of planning permission has been modified from three years to five years, therefore, as per the amended provision of the Act, the permission granted to the petitioners got expired only on 26.08.2017. In the mean time, the petitioners made another request in writing on 28.04.2017 to the 1st respondent seeking to renew the planning permission and building permission, but the same has been rejected by the 1st respondent stating that as per the Second Master Plan, he has got power only to grant permission for building where the proposed construction is less than 300 square meters, whereas the permission now sought for is for more than the ceiling limit, for which the 2nd respondent alone has the power. However, the 1st respondent, in and by his order, directed the 1st petitioner to submit their revised building permission restricting the plinth area to 300 square meters. Challenging the above said order, the present writ petition has been filed.

3. The 1st respondent has filed counter affidavit stating that the permission granted to the petitioners earlier got expired on 26.08.2017 and the 1st petitioner did not seek for renewal before the expiry of the period of permission. The 1st petitioner had made application for renewal only on 22.12.2016 and the same was however returned on 30.12.2016 for the purpose of representation along with Encumbrance Certificate. Thereafter, the application was represented on 21.02.2017. At that time, it was found that the building was a commercial building with a total estimated construction area of 641.5 square meters (6902 square feet). As the powers of the 1st respondent to grant planning and building permission have been

limited to 300 square meters as per the Development Control Regulations issued under the Tamil Nadu Country Planning Act, the 1st respondent had returned the application of the 1st petitioner for building permission. However, the 1st petitioner had represented the same stating that since the original permission was granted by the 1st respondent, the present application can also be considered by the 1st respondent and order can be passed on the same. The planning permission granted earlier to the petitioners was valid only for a period of three years as per Section 49 of the Act, which got expired on 26.08.2015 itself and the amended Act relied on by the petitioner has got no application to the case of the petitioners as the 1st respondent has no power to grant building permission for more than 300 square meters.

4. I have heard the learned counsel for the petitioners, the learned standing counsel for the 1st respondent and the learned counsel for the 2nd respondent and also perused the records carefully.

5. The learned counsel for the petitioners submitted that the order passed by the 1st respondent is totally illegal as the application of the 1st petitioner was not a fresh application and it was only for renewal of building and planning permission. However, when the 1st petitioner had approached the CMDA, the 2nd respondent herein, seeking planning permission, the CMDA, by order dated 12.10.2017, has returned the application on the ground that as the earlier planning permission was issued by the 1st respondent, renewal of the same can be done by the 1st respondent himself and the 2nd respondent cannot consider his application. He has also produced a copy of the order passed by the CMDA.

6. The learned counsel further submitted that as per the amended provision of Section 50 of the Act, the application of the 1st petitioner can be considered as fresh application for planning and building permission and an order can be passed by the 1st respondent municipality itself .

7. The learned standing counsel appearing for the 1st respondent would contend that as the validity period of the planning permission issued by the 1st respondent to the petitioners on 27.08.2012 had already been expired, as per Section 50 of the Act, the application of the 1st petitioner can be considered only as afresh application for that the 1st respondent has got no power.

8. I have considered the rival submissions carefully.

9. It is the admitted case that earlier planning permission

was granted to the petitioners by the 1st respondent municipality which got expired as early as on 26.08.2015. Even though the petitioners said to have made an application on 21.07.2015, according to the respondent municipality, that application is not available and the only application available with the municipality is dated 22.12.2016. Though the said application was filed after the expiration of the validity of planning permission, as per first proviso to Section 50 of the Act, if application for renewal is not made before the expiry of the validity of planning permission, the same cannot be considered. However, as per second proviso to Section 50 of the Act, petitioners can make application seeking permission afresh. As already discussed above, the 1st petitioner has made an application as early as on 22.12.2016 and the same has been pending with the 1st respondent. Now, the CMDA has taken a stand that the 1st respondent has got power to grant building permission. Under such circumstances, the 1st respondent municipality is directed to consider the application submitted by the 1st petitioner as if an application for fresh planning permission under Section 50 of The Tamil Nadu Town and Country Planning Act, 1971 and pass appropriate orders thereof granting permission within a period of six weeks from the date of receipt of a copy of this order.

10. In the result, the writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

kmk
To

- 1.The Commissioner,
Tambaram Municipality, Tambaram.
- 2.The Member-Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maaligai
No.1, Gandhi Irwin Road,
Egmore, Chennai 600008.

+1cc to Mr.P.Srinivas,, Advocate, S.R.No.73560
+1cc to Mr.P.S.Ganesh, Advocate, S.R.No.72768

W.P.No.30663 of 2017

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