

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.34897/2003

Tmt.T.A.Sithi Reyhana

..

Petitioner

Versus

The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road
Chennai 600008.

..

Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration, to declare Rule 7[3] of the Application Assessment and Collection of Regularisation Fee [Chennai Metropolitan Area] Rules, 1999, as amended upto 24.04.2002 is illegal and null and void insofar as claiming 18% interest for regularisation fees.

For Petitioner : Mr.S.Sundaresan

For Respondent : Mr.K.Raja Srinivas

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal.

2 The petitioner claims that she is the owner of the property situate at Door No.142, Greams Road, Nungambakkam, Chennai – 6, and she had applied for regularisation of the construction of commercial-cum-residential building of Ground+4+5 Part Floors with five dwelling units at Door Nos.4, 5, 7 and 8, Kumarappa Mudali Street, in RS.No.247/2, 3, 8 and 9, Block No.25, of Nungambakkam Village vide application dated 26.06.2002 under the Regularisation Scheme introduced by the Government in the year 1999, vide application bearing Registration No.26483.

3 The petitioner would further aver that the application was not processed on account of the pending litigations before the Hon'ble Supreme Court of India and ultimately, the Hon'ble Apex Court had upheld the validity of the section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, and thereafter, this Court has granted permission to

process the said application. The petitioner expressed her grievance that the respondent did not process the application within the reasonable time and finally sent a letter dated 21.11.2003, claiming a sum of Rs.24,63,074/- as regularisation charges after adjusting the initial sum of Rs.4 lakhs paid by the petitioner at the time of submitting the application. It is the stand of the petitioner that she is not at fault with regard to the delay in processing of the said application and in any event, a sum of Rs.24,63,074/- as regularisation charges, is totally unreasonable and therefore, the petitioner filed the present writ petition, praying for declaration to declare Rule 7[3] of the Application Assessment and Collection of Regularisation Fee [Chennai Metropolitan Area] Rules, 1999, as amended upto 24.04.2002 is illegal, null and void insofar as claiming 18% interest per annum for Regularisation fees.

4 The writ petition was admitted on 01.12.2003 and an order of ad-interim injunction was granted subject to the condition that the petitioner pays interest at the rate of 6% per annum from the date of application, i.e., 21.11.2003, till date, within a period of seven days from the date of receipt of a copy of the order. It was represented that the conditional order passed by this Court, has been complied with and

therefore, the order of injunction was made absolute by this Court on 01.03.2004.

5 The matter was listed before this Court on 25.07.2017 and this Court has directed the respondent to put the owner/occupier of the said premises on notice and thereafter, cause inspection of the building in question and file a status report. When the matter was listed on 22.08.2017, the learned standing counsel appearing for the respondent prayed for time to file the status report and accordingly, it was granted and on 04.09.2017, the status report was filed, pointing out the deviation, violation and unauthorized construction of multi-storeyed building. The learned counsel for the petitioner prayed for time to file his response and therefore, this Court has directed the Registry to list the above writ petition for orders on 11.09.2017.

6 When the matter is called today, the learned counsel for the petitioner would submit that he sent a communication dated 05.09.2017 to the petitioner about the said development and with a request to contact him at his office on 09.09.2017 with the relevant details. The notice sent by the learned counsel to the petitioner, had returned with an

endorsement "left". The learned counsel for the petitioner prayed for further time to get instructions from his client and however, this Court is not inclined to grant time for the reason that the matter is pending for nearly fourteen years.

7 The learned counsel for the petitioner would submit that though the petitioner in the affidavit filed in support of this writ petition did not aver as to the obtaining of the planning permission, the fact remains that the planning permission was obtained and it is also reflected in the communication of the respondent dated 21.11.2003 and would further add that in the light of section 113-A of the Town and Country Planning Act, 1971, the unauthorized / deviated construction is entitled to be regularised and since the demand of the interest at the rate of 18% per annum is exorbitant and unreasonable, the petitioner is constrained to make a challenge to the relevant provision.

8 *Per contra*, Mr.K.Raja Srinivas, learned standing counsel appearing for the respondent would submit that the petitioner, having submitted his application by invoking the relevant provisions, cannot turn around and make a challenge to a particular provision which demands

interest @ 18% per annum and would further submit that in the light of the pendency of the litigation pertains to section 113-A of the Town and Country Planning Act, 1971, there was a delay in processing the same and after the vires of the said provision has been upheld by the Hon'ble Apex Court and in pursuant of the liberty granted by this Court, the application submitted by the petitioner was processed and a sum of Rs.24,63,074/- has been demanded by way of regularisation charges and the regularisation application submitted by the petitioner was considered and vide communication dated 21.11.2003, the petitioner was called upon to furnish the particulars, viz., [1]No objection certificate from the Director of Fire Service and [2] 5 sets of revised plan as on site condition and admittedly, the petitioner did not submit the same and as such, further process could not be made on the application submitted by the petitioner for regularisation and in the light of the interim orders passed by this Court, no further action could be taken with regard to the unauthorized construction.

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9 This Court has considered the rival submissions and also perused the materials placed before it.

10 In pursuant to the order dated 25.07.2017, the respondent has filed the status report dated 01.09.2017 and it is relevant to extract the violations in the building with reference to the Development Regulations:-

Sl.No	Parameter	As per DR requirement	As on site	Deviation to DR requirement
1	No.of Floors	GF+FF [or] Stilt + 2F	GF+FF+5F [pt] [MSB]	Unauthorised construction [approved plan has not been furnished by the petitioner]
2	Road width	12m	8.84m	Less by 3.16m
3	Plot Extent	1200 sq.m.	539.49 sq.m.	Less by 660.51 sq.m
4	Frontage	25m	9.14m	Less by 15.86 m
5	FSI	1.50 [809.24 sq.m.]	3.71 [1999.45 sq.m]	Excess by 2.21 [1190.21 sq.m]
6	Coverage	30%	65.27%	Excess by 35.27%
7	FSB	7.0m	Nil	Less by 7.0m
		7.0m	4.30 m	Less by 2.7 m
8	SSB[N]	7.0m	Nil	Less by 7.0m
		7.0m	0.84 m	Less by 6.16 m
9	SSB[S]	7.0m	Nil	Less by 7.0m
		7.0m	0.9 m	Less by 6.10 m
10	RSB	7.0 m	2.8 m	Less by 4.2 m
11	Parking			
	Car	17 Nos	Not feasible	Less by 17 Nos
	TW	66 Nos	10 Nos	Less by 56 Nos
12	NOC from DF&RS and Police [Traffic] has not been furnished.			

11 The Hon'ble Supreme Court of India, in the decision reported in **2004 [8] SCC 733** [*Friends Colony Development Committee Vs. State of Orissa and others*], has dealt with the issue relating to the unauthorized constructions/deviations from the sanctioned plan and it is relevant to extract the following:-

"25 Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be

dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

12 A perusal of the status report dated 01.09.2017 filed by the respondent transpires a very sorry state of affairs and if periodical follow up was done by the officials of the respondent, such a huge unauthorized construction would not have come into existence.

13 As rightly pointed out by the learned counsel for the respondent, the petitioner having failed to avail the benefit of the Application Assessment and Collection of Regularisation Fee [Chennai Metropolitan Area] Rules, 1999, as amended up to 24.04.2002 and submitted an application, cannot turn around and make a challenge to the part of the provision, as regards interest. In the considered opinion of the Court, the petitioner in utter violation and deviation of the relevant norms

and with absolute impunity, has put up a huge unauthorized construction, which is also used for commercial purposes and in the light of the above said judgment, the petitioner is not entitled to any indulgence.

14 This Court is of the considered view that the respondent was not able to process the application on account of the pendency of the litigation pertaining to section 113-A of the Town and Country Planning Act, 1971, and after the litigations are over, wherein the Hon'ble Apex Court has upheld the vires of Section 113-A and pursuant to the orders passed by this Court, the respondent started processing the application and as such, the demand of the interest at the rate of 18% per annum, in terms of the above said rules is perfectly in order.

15 This Court upon careful consideration of the submission of the learned counsel for the petitioner and appreciation of the materials placed before it, is of the view that the writ petition lacks merit and substance and therefore, the same is dismissed No costs.

16 The respondent along with the Corporation of Chennai, shall

take further action with regard to the unauthorized / deviated construction in accordance with law, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner herein. Consequently, the interim order stands vacated and the miscellaneous petition is closed.

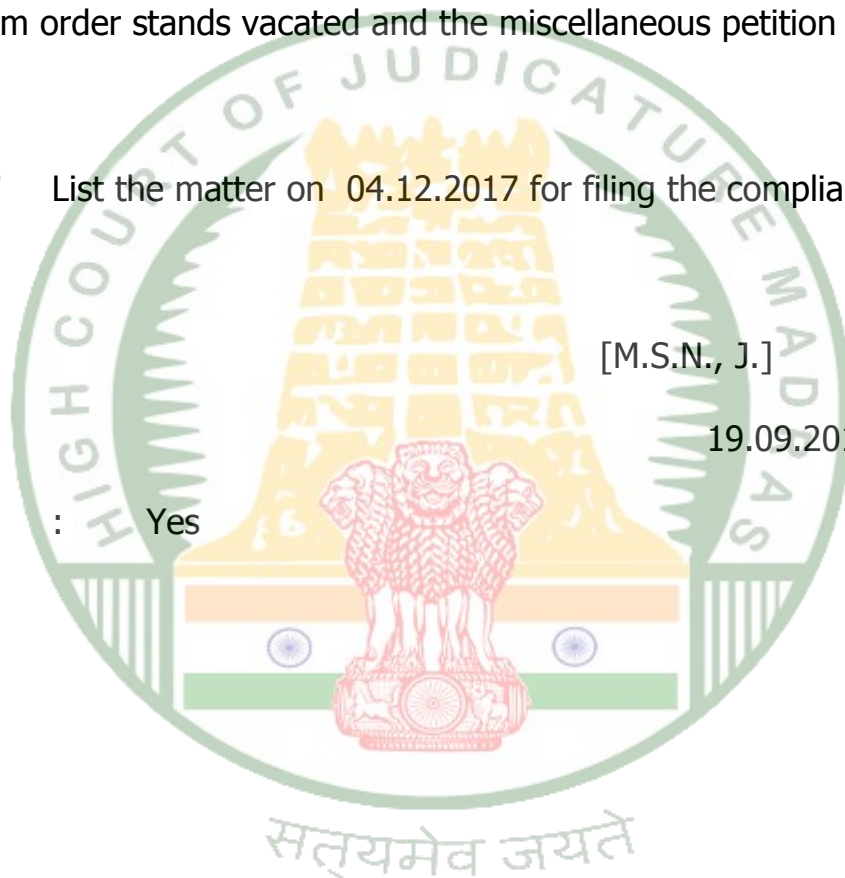
17 List the matter on 04.12.2017 for filing the compliance report.

[M.S.N., J.] [N.S.S., J.]

19.09.2017

Internet : Yes

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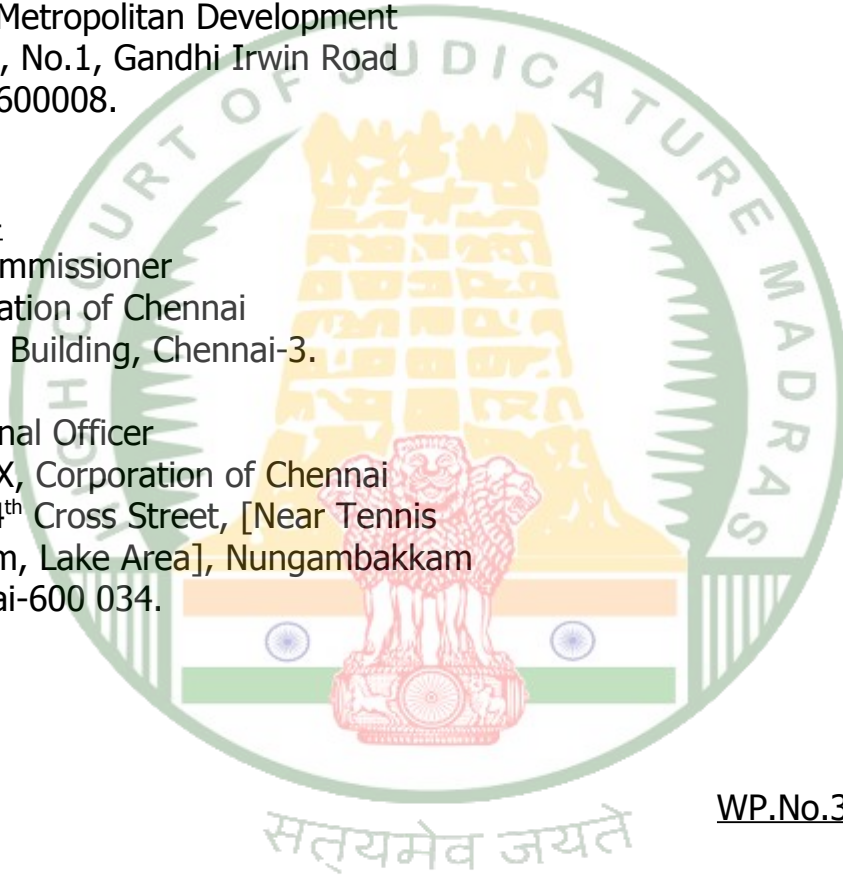
M.SATHYANARAYANAN, J.
AND
N.SESHASAYEE, J.
AP

To

The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road
Chennai 600008.

Copy to:-

- 1.The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3.
- 2.The Zonal Officer
Zone-IX, Corporation of Chennai
No.1, 4th Cross Street, [Near Tennis
Stadium, Lake Area], Nungambakkam
Chennai-600 034.



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M.SATHYANARAYANAN,J
and
N.SESHASAYEE, J

[Order of the Court was made by **M.SATHYANARAYANAN, J.,**]

Today the matter is listed today under the caption "For Being Mentioned" on the pretext that the compliance report has not been filed.

2. The learned counsel appearing for the respondent/CMDA would submit that in compliance of the earlier order of this Court dated 19.09.2017, the respondent had filed an affidavit dated 18.12.2017, which would disclose that the building will be locked and sealed immediately, in case the petitioner had not rectified the deviation and violation found in the building as per the notice dated 07.12.2017.

3. It is the submission of the learned counsel appearing for the petitioner that whatever be the offending construction, the same has been demolished and he also submitted that he has invoked the provisions of the Town and Country Planning Act, 1971 to workout her remedy.

4. The compliance report in the form of affidavit dated 18.12.2017 is accepted and hence, no further orders are necessary. If the petitioner is so advised, she is at liberty to workout her further remedy, in accordance with law, under the provisions of the Town and Country Planning Act, 1971.

5. The subject matter is clarified accordingly.

[M.S.N.J.,] [N.S.S.J.,]
07.06.2018

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