

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.25297 of 2018

D.Rani

.. Petitioner

Vs.

1.The State,
rep by the Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Town and Country Planning,
Chennai - 600 002.

3.The Kumbakonam Municipality,
rep by its Commissioner,
Kumbakonam.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 1st respondent pertaining to the impugned letter No.17076/UD4/(1)2017-3 dated 04.05.2018 and to quash the same and direct the 1st respondent to regularize the basement, ground plus three floors constructed by the petitioner long prior to the cut off date 28.02.1999.

For Petitioner : Mr.M.Balasubramanian

For Respondents: Mr.S.Kamalesh Kannan,
Government Advocate (R1 & R2)
Mr.P.Srinivas (R3)

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records of the 1st respondent pertaining to the impugned letter dated 04.05.2018 and to quash the same and to direct the 1st respondent to regularize the basement, ground plus three floors constructed by the petitioner long prior to the cut off date 28.02.1999.

2.Since the petitioner has put up unauthorized construction, the 2nd respondent issued a notice under Sections 56 & 57 of the Tamil Nadu Town and Country Planning Act to lock and seal the premises. As against the said notice, the petitioner preferred an appeal under Section 80-A of the Act before the 1st respondent.

3.By order dated 04.05.2018, the 1st respondent, considering the petitioner's representations dated 31.01.2018, 11.04.2018 and 18.04.2018 to rectify the violations in the building, allowed the request of the petitioner subject to certain conditions stated therein. Further, the 1st respondent called upon the petitioner to commence the rectification work within a month's time and also made it clear that the permission granted to the petitioner on 04.05.2018 shall be only for a period of six months. Challenging this order, the petitioner has filed the Writ Petition. In view of the said order, the building was de-sealed on 30.06.2018 and the petitioner was directed to rectify the defects.

4.The learned counsel appearing for the petitioner submitted that in due compliance of the order passed by the 1st respondent, the petitioner has demolished the 3rd and 4th Floors of the building and therefore, the 1st respondent should be directed to regularize the planning permission.

5.However, the learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent submitted that though the FSI at the time of construction of the petitioner's building was only "1", the petitioner has put up construction measuring an extent five times the extent of land. The learned counsel for the 3rd respondent - Municipality submitted that even after demolition of the 3rd and 4th Floors of the building, the building measures 3.3 times the extent of the land.

6.Since even after demolition of two Floors, the building put up by the petitioner measures 3.3 times of the extent of the land, the prayer sought for in the Writ Petition cannot be granted. It is settled position that regularization can be granted only if the construction is within the FSI limit. In the present case, since the construction is more than the FSI limit, we are not inclined to grant the relief sought for by the petitioner. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

1.The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Town and Country Planning,
Chennai - 600 002.

3.The Commissioner,
Kumbakonam Municipality,
Kumbakonam.

+lcc to Mr.P.Srinivas, Advocate, S.R.No. 87981
+lcc to Mr.M.Balasubramanian, Advocate, S.R.No.87610

W.P. No.25297 of 2018

GN(22/01/2019)



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