

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No. 25641 of 2004
and
W.M.P.No.31157 of 2004

Mrs.Bama Gajapathy,
W/o. Mr. Gajapathy,
New No.16, Old No.89,
Collectorate Colony Main Road,
Aminjikarai, Chennai 600 029

... Petitioner

Vs

1. State of Tamil Nadu,
rep. by its Secretary,
Housing & Urban Development VI Department,
Fort St. George, Chennai 600 009
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Buildings,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.
3. The Chennai Corporation,
Building Plan Division,
Ripon Buildings, Corporation Buildings,
Chennai 600 003

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarirified Mandamus to call for the records pertaining to the impugned order of the first respondent under appeal in the order dated 20.07.2004 made in G.O.(D) No.447, which is confirming the impugned order of the 2nd respondent dated 11.09.2003 made under Ref No.RG.I/B4(BC1)/4060/2002/ and quash the same consequently direct the 2nd respondent to receive the actual balance regularization fee of Rs.44,275.85 and approve the plan as submitted by the petitioner.

For Petitioners : Mr.M.S.Mani

For Respondents : Mr.Veena Suresh,
for R1 ,

Mr.N.Sampath,
for R2

Mr.R.Kannan,
for R3

O R D E R

This writ petition has been filed challenging the order passed by the respondents 1 and 2 directing the petitioner to pay a sum of Rs.3,70,384/- along with interest towards the Regularisation fees.

2. According to the petitioner, the petitioner has constructed a ground and first floor building in the year 1990 after obtaining sanction from the competent authority, namely, Corporation of Chennai. Thereafter, the petitioner has constructed a second floor without obtaining approval from the authorities concerned. Hence, the petitioner applied for regularization of the same as per G.O.Ms.No.369 dated 31.08.2001 and G.O.Ms.No.121 dated 24.04.2002. On receipt of the above application, the second respondent passed an order levying regularization fee of Rs.3,77,994/- instead of Rs.51,885.85/-, which is only payable by the petitioner for regularization of the second floor. Challenging the said order, the petitioner had filed an appeal before the first respondent. The first respondent dismissed the appeal directing the petitioner to pay the amount levied by the second respondent. Challenging the same, the present writ petition has been filed.

3. Even though the writ petition is pending from the year 2004, despite several adjournments, the respondent did not file any counter affidavit.

4. The learned counsel appearing for the petitioner would submit that already the petitioner got approval for ground and first floor and there is no deviation in the construction. Now, he has constructed the second floor only unauthorisedly and for which, he sought for regularization. The respondents without conducting any enquiry and without issuing any notice to the petitioner has arbitrarily come to a conclusion that there is a deviation and directed the petitioner to pay regularization fee for the entire building. The petitioner is only liable to pay the regularization for the second floor, which comes to Rs.51,885.85/- alone.

5. I have heard the learned counsel for petitioner and the learned counsel for the respondents and perused the materials available on record.

6. From the perusal of the records, it could be seen that, the petitioner has applied for regularization for the second floor, whereas, in the impugned order, the second respondent has pointed out that there are some deviation in the original construction, namely, ground and first floor and hence, the petitioner was directed to pay the regularization fees not only second floor but also for the alleged deviation. However, before passing the order, no notice was issued, and no enquiry was conducted and without affording any opportunity to the petitioner, the first respondent has passed the Order. The first respondent appellate authority also without considering the appeal in a proper perspective, dismissed the appeal. In the above circumstances, as the order has been passed in violation of principles of natural justice, I am inclined to set aside the order passed by the respondents 1 and 2 .

7. Accordingly, the writ petition is allowed and the order passed by the first respondent confirming the order passed by the second respondent is set aside, and the matter is remanded back to the second respondent and the second respondent is directed to issue notice to the petitioner and pass orders on merits after giving an opportunity to the petitioner. The above exercise should be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. State of Tamil Nadu,
rep. by its Secretary,
Housing & Urban Development VI Department,
Fort St. George, Chennai 600 009
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Buildings,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

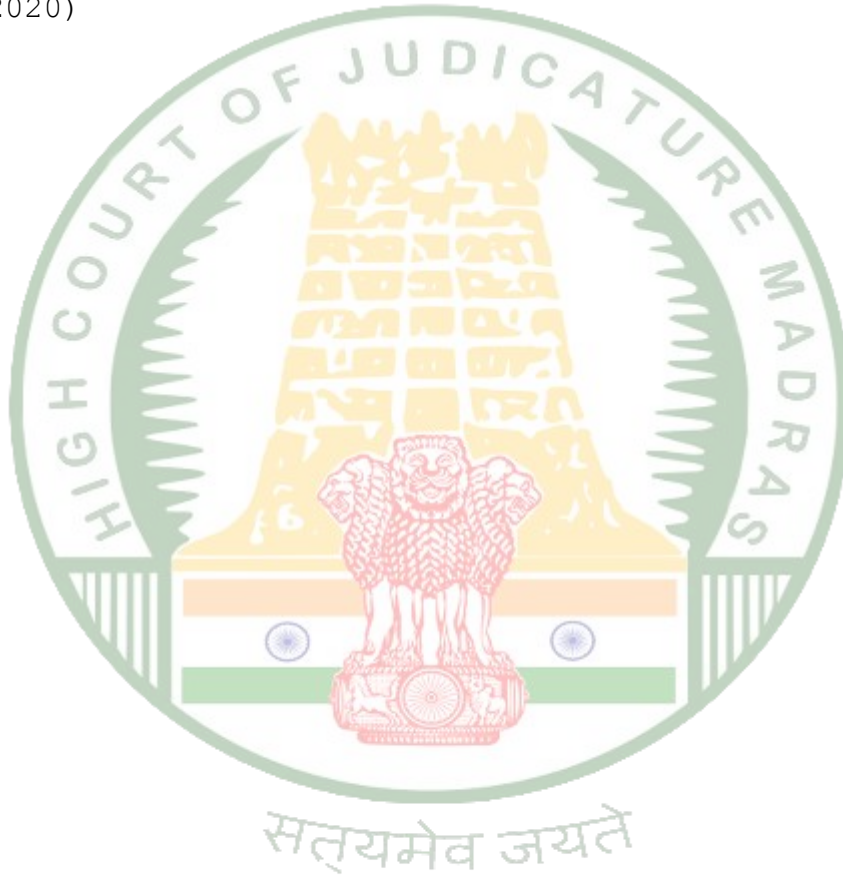
3. The Chennai Corporation,
Building Plan Division,
Ripon Buildings, Corporation Buildings,
Chennai 600 003.

+1cc to Mr.M.S.Mani, Advocate SR.85990/19

+1cc to M/s.P.Venna Suresh, Advocate SR.85892/19

W.P. No.25641 of 2004

RJI (CO)
CB(06/01/2020)



WEB COPY