

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.15290 of 2010

M.P.No.1 of 2010

Dr.D.P.Prakash

... Petitioner

vs

1. The Commissioner
Corporation of Chennai,
Chennai-600 003.
2. The Zonal Officer
Corporation of Chennai,
Zone-5,
183, E.V.R.Periyar Road,
Kilpauk,
Chennai-600 010.
3. The Member Secretary,
Chennai Metropolitan Development Authority
Egmore,
Chennai-600 008.
4. Loka Aloka Owners Welfare Association
(Regd.No.56/2006),
Rep.by its Secretary K.Ganapathy,
566(New No.920), E.V.R.Periyar Road,
Arumbakkam,
Chennai-600 106.

... Respondents

Prayer in W.P.No.15290 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Z.O.V.C.No.6684/2009 dated 10.06.2010 and quash the same and forbear the respondents from any way interfering with the consultancy services of the petitioner of the petitioner at Flat No.G1, Ground Floor, Door No.566(New No.920), E.V.R.Periyar Road, Arumbakkam, Chennai-600 106.

For Petitioner : Mr.N.Sathiyamurthy
For Respondents : Mr.Dr.C.Ravichandran
for R1 and R2.
Mr.S.Thiruvengadam
for CMDA

O R D E R

The petitioner has filed a writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Z.O.V.C.No.6684/2009 dated 10.06.2010 and quash the same and forbear the respondents from any way interfering with the consultancy services of the petitioner of the petitioner at Flat No.G1, Ground Floor, Door No.566(New No.920), E.V.R.Periyar Road, Arumbakkam, Chennai-600 106.

2. The case of the petitioner is that he is the owner of the Flat No.G1 having an extent of 1050 square feet in the ground floor of the Apartment building bearing Door No.566(New No.920) E.V.R.Periyar Road, Chennai-600 106. The petitioner is an eye doctor and he was working as Medical Director in Dr.Agarwal's Eye Hospital. In the evening hours from 4 p.m to 8 p.m, the petitioner has consulting the patients in the portion of the above premises which is permissible under the Development Control Rules.

3. The petitioner stated in the affidavit that immediately after the purchase of the said flat during the year 2004-2005 an association was formed and the petitioner was elected as the President of the association and one Mr.Ganapathy was elected as the Secretary of the association unanimously. The petitioner further stated that due to certain misunderstanding regarding the maintenance and administration of the apartment, the above said Mr.Ganapathy filed a representation on 03.01.2007 before the first respondent and third respondent alleging that the petitioner has using the apartment for commercial activities.

4. On 30.11.2009, the petitioner has received the notice from the first respondent for a personal hearing on 30.11.2009. The petitioner has explained to the Commissioner that the petitioner has using the portion only as a consultancy room and not using the flat for any commercial purposes and requested the Commissioner to drop the proceedings.

5. On 21.06.2010, the petitioner has received a communication from the Zonal Officer, Corporation of Chennai, the second respondent herein, stating that the petitioner was directed to convert the usage of the flat G-1 in the ground Floor of No.566, (New No.920) E.V.R.Periyar Road, Chennai-600

106 from commercial use to residential purpose within 15 days from the receipt of this letter, failing which further action will be taken to close the trade. Challenging the impugned order, the present writ petition is filed.

6. The learned counsel for the petitioner would submit that the petitioner has not used the flat for any commercial purposes and that it has been used only for providing consultancy service to the people in and around that area. The learned counsel has referred to the decision of the Hon'ble Supreme Court reported in (2009) 7SCC 283 in the case of (M.P.ELECTRICITY BOARD AND OTHERS vs. SHIV NARAYAN AND ANOTHER), the relevant paragraph No.14 is extracted hereunder:

14. A Professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character. Considering a similar question in the background of Section 2(4) of the Bombay Shops and Establishments Act, 1948 (79 of 1948), it was held by this Court in Devendra M.Surti(Dr.) v.State of Gujarat that a doctor's establishment is not covered by the expression "commercial establishment".

7. The learned counsel for the respondents would submit that the fourth respondent has filed a writ petition in W.P.No.20395 of 2003 before this Court on 26.08.2009 and this Court has directed the first respondent to take further action and pass final order in pursuance to the order dated 22.03.2007 within a period of 12 weeks from the date of receipt of the order. As per the order of this Court, the first respondent conducted a personnel hearing of the petitioner on 30.11.2009. Based on the enquiry, the second respondent has issued a letter to the petitioner on 21.06.2010 vide letter No.Z.O.V.C.No.6684/2009 dated 10.06.2010.

8. A perusal of the records clearly shows that there was a dispute between the petitioner and the said Ganapathy/fourth respondent. The fourth respondent has filed the writ petition in W.P.No.1943 of 2007 before this Court, seeking for a writ of Mandamus directing the third respondent herein to take appropriate action on his representation dated 03.01.2007, in which, the petitioner was not impleaded as a respondent. Once again, the fourth respondent has filed another writ petition in W.P.No.20395 of 2008 before this Court, directing the Commissioner, Corporation of Chennai, to take appropriate action as directed by the CMDA in letter No.ENI/15333/06 dated 26.03.2007 against the petitioner and one Mr.Thomas George for allegedly running commercial activities illegally at the above

premises and only in this petition, the petitioner has been made as a party. This Court, by order dated 26.08.2009, directed the first respondent to take further action and pass final orders pursuant to the order dated 22.03.2007 within a period of 12 weeks from the date of receipt of a copy of this Order. The first respondent has conducted an enquiry on 30.11.2009 and the petitioner has also explained that he was working as medical director in Dr.Agarwal's Eye Hospital and has been consulting the patients in the above premises which is permissible under the Development Control Rules and not for any commercial purposes. After conducting the enquiry, the second respondent without issuing any show cause notice to the petitioner, has passed an impugned order dated 10.06.2010, directing the petitioner to convert the usage of the flat G-1 in the ground Floor of No.566, (New No.920) E.V.R.Periyar Road, Chennai-600 106 from commercial use to residential purpose within 15 days from the receipt of the said letter, failing which further action will be taken to close the trade, which is not sustainable. The Judgment of a Division Bench of the Hon'ble Supreme Court(cited supra) clearly shows that a Doctor's establishment is not covered by the expression "Commercial establishment". The petitioner has also explained to the first respondent that he has used the premises only as a consultancy room in the name of American Eye Care Centre. Even, then the second respondent has passed an impugned order, which is not sustainable. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Commissioner
Corporation of Chennai,
Chennai-600 003.
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Zone-5,
183, E.V.R.Periyar Road,
Kilpauk,
Chennai-600 010.

3. The Member Secretary,
Chennai Metropolitan Development Authority
Egmore,
Chennai-600 008.

+1 cc to Mr.N.Sathiyamoorthy, Advocate, S.R.No.63001

+1 cc to Mr.C.Ravichandran, Advocate, S.R.No.62750

+1 cc to Mr.S.Thiruvengadam, Advocate, S.R.No.62607

W.P.No.15290 of 2010

M.P.No.1 of 2010

LN(CO)
SSM(21/08/2019)



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