

In the High Court of Judicature at Madras

Dated : 04.3.2020

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18583 of 2013

R.Praveen

...Petitioner

Vs

The Member Secretary, Chennai
Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore,
Chennai-8.

...Respondent

PETITION under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to accept and process for approval the application for plan approval under SBC No.1198/ 2012 dated 25.10.2012 without insisting on showing of Green Belt Area of a depth of 15 meters and approve the plan.

For Petitioner : Mr.Guberan for M/s.Rank Associates

For Respondent : Mr.P.Ganesh

ORDER

I have heard the learned counsel for the parties.

2. The petitioner has filed this writ petition seeking a direction to the respondent to accept and process for approval the application for plan approval under SBC No.1198/2012 dated 25.10.2012 without insisting on showing of green belt area of a depth of 15 meters and approve the plan.

3. The petitioner owns the property bearing door No.109B, Poonamallee High Road, Velapanchavadi comprised in survey Nos.12/2C and 13/1A of Noombal village. The petitioner proposed to develop the said property by putting up a construction comprising of a workshop and office building consisting of stilt

(part) + ground floor (part) + 3 floors. An application for grant of planning approval was submitted to the respondent on 25.10.2012. The said application was returned by communication dated 04.3.2013 with certain observations calling upon the petitioner to rectify the defects. One of the observations contained in the said communication dated 04.3.2013 is by directing the petitioner to provide green belt area of depth of 15 meters and front set back of 6 meters to be left and front set back to be shown from green belt boundary line site plan.

4. The case of the petitioner is that such insistence of green belt area does not apply to the petitioner's property because as per the National Highway Standards, green belts on either side of certain roads to a depth of 15 meters have been reserved and it was also decided that in the said green belt area forming part of plots/sites, no development except gate pillars and watchmen booth is permissible.

5. The petitioner refers to the Second Master Plan for the City of Chennai governing the metropolitan area, which came into force on 02.9.2008 vide G.O.Ms.No.190 Housing & Urban Development Department. The petitioner also refers to Regulation 24(6) of the Second Master Plan and would submit that the green belt requirement as per the Second Master Plan relates only to Poonamallee Bypass Road and not to Poonamallee High Road, in which, the petitioner's property is situated whereas in the old Master Plan of the year 1986, Poonamallee Bypass Road was only under contemplation. Hence, as per the Second Master Plan, the petitioner is not required to leave any green belt in Poonamallee High Road. By referring to Regulation 6(3) of the Development Regulations, it is stated that what is to be taken into consideration is the latest development plan, which is the new Master Plan and if the same is done, the petitioner is not required to comply with the condition pertaining to the green belt area.

6. Though such a stand has been specifically taken by the petitioner in the affidavit filed in support of the writ petition, in the counter affidavit filed, the respondent would refer only to the 1986 Detailed Development Plan, which was originally approved by the Government in G.O.Ms.No.1451 Housing & Urban Development Department dated 11.9.1986 and not G.O.Ms.No.190 Housing & Urban Development Department dated 02.9.2008. In paragraph 8 of the counter affidavit, the respondent would state that Regulation 24(6) of the Development Regulations indicates the provision of green belt along Poonamallee Bypass and Red Hills Bypass Road, which is a clear indication of the provision of green belt along these two major bypass roads. However, the respondent would state that this cannot be construed that no green belt is indicated in the Detailed

Development Plan pertaining to the site under reference bearing No.1/86 originally approved by the Government of Tamilnadu, Housing & Urban Development Department in G.O.Ms.No.1451 dated 11.9.1986 and subsequently by G.O.Ms.No.190 dated 02.9.2008.

7. The question would be as to what is the effect of Regulation 6 of the Development Regulations, which deals with Designation of use in Master Plan or Detailed Development Plan. In terms of Sub-Regulation (3), where for an area both Master Plan and Detailed Development Plan were/are sanctioned, the designated use shall be as shown in the latest development plan. If Regulation 6(3) is to be understood in its plain language, the latest development plan is undoubtedly the Second Master Plan unless and until the respondent is able to state that whatever the condition imposed in the 1986 Development Plan would continue to apply de hors the stipulation in the Second Master Plan and more particularly Regulation 24(6), which states that as per National Highway Standards, green belts on either side of certain roads to a depth of 15 meters have been reserved.

8. Therefore, the respondent should be clear in their stand as to whether, even after the publication of the Second Master Plan, the earlier condition would apply to Poonamallee High Road. They should also be in a position to state as to what would be the effect of Regulation 6(3), which refers to the latest development plan. In fact this contention has not been specifically dealt with in the counter affidavit nor the said communication dated 04.3.2013 would clearly state about the same though the said communication was sent in the year 2013 after the Second Master Plan came into effect. Therefore, the matter has to be reconsidered by the respondent by taking note of the observations in the preceding paragraphs.

9. This Court is conscious of the fact that in this writ petition, the petitioner has sought only a direction to the respondent to accept and process for approval the application for plan approval under SBC No.1198/2012 dated 25.10.2012 without insisting on showing of Green Belt Area of a depth of 15 meters and approve the plan. However, considering the facts and circumstances of the case, this Court exercises its discretion and feels it appropriate to quash that portion of the said communication dated 04.3.2013 in paragraph 4, which deals with green belt area, for effective consideration of the petitioner's application.

RS

10. Accordingly, the writ petition is allowed and that portion of the said communication dated 04.3.2013, which deals with green belt area in paragraph 4 is set aside. The matter is remanded to the respondent for a fresh consideration. The

respondent shall take note of the observations in this order, consider the effect of Regulation 6(3) read with Regulation 24 (6) of the Second Master Plan, afford an opportunity of personal hearing to the authorized representative of the petitioner and take a fresh decision on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore,
Chennai-8.

+1 cc to Mr.P.S.Ganesh, Advocate, S.R.No.19319

+1 cc to M/s.Rank Associates, Advocate, S.R.No.19093

WP.No.18583 of 2013

SVI (CO)
RN(19/05/2020)



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