

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No. 23422 of 2012
and

M.P. Nos. 1 & 2 of 2012

Narendra C.Shah

..Petitioner

-vs-

1.The Member Secretary
Chennai Metropolitan Development Authority
1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

2.The Commissioner
Corporation of Chennai
Ripon Building
Chennai.

3.The Assistant Executive Engineer (T.P.)
Corporation of Chennai
Chennai - 600 003.

..Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus, to call
for the records of the third respondent in
W.D.C.No.PPA/WDC05/09016/2012 dated 14.08.2012 and quash the
same and further direct the respondents to forthwith issue
planning permission to the petitioner permission to the
petitioner herein for the premises bearing New Door No.259, Old
Door No.125, Mint Street, Chennai - 600 003 without insisting to
hand over the area earmarked for road widening as shown in the
sketch through a registered Gift Deed to the CMDA or Local Body
and without compelling the petitioner to accept the Transferable
Development Rights for the same.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.A.Ganesh
Senior Counsel

O R D E R

Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.A.Ganesh, learned senior counsel for the respondents.

2. The petitioner has filed this writ petition for issuance of writ of certiorarified mandamus to quash the proceedings of the third respondent dated 14.08.2012 and for a consequential direction to issue planning permission to the petitioner in respect of the premises at new door no. 259, old door no.125, Mint Street, Chennai - 600 003.

3. The learned counsel for the petitioner submitted that on earlier occasion this Court dealt with identical prayer that there was proposal for road widening and the respondents were insisting upon the land owners to execute a gift deed stating that as per the second master plan there is going to be a change of alignment of the street. The said writ petitions were disposed of by directing the petitioner to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to its right to claim compensation. One such order was made in W.P. No. 15759 of 2014 , which was disposed of by order dated 20.11.2015, the operative portion of the order reads as follows:-

"3. The learned counsel appearing on either side have not disputed the fact that, the issue involved in this Writ Petition, is squarely covered by an order dated 06.02.2015, passed by this Court in W.P.Nos.148 of 2014, 18541 of 2012, 12581 of 2012 and 5188 of 2013 [G.Dilip Kumar and others Vs.The Member Secretary, Chennai Metropolitan Development Authority, Chennai and others]. The said Writ Petitions were disposed of, by issuing following directions :

6. In the light of the above, this Court is of the view that it may be true that the interest of the Government should be protected, as there is a need for wider roads and the need is in public interest. At the same time, the interest of the small land owners, who own the land abutting the existing road, cannot be forgotten. Therefore, this Court, in several writ petitions issued directions directing the owner of the land to file an affidavit of undertaking to handover the front portion to the

maximum extent required and also undertaking to keep the area free from any construction and subject to such undertaking, the planning permission application was directed to be processed and if it satisfies the other conditions, planning permission to be granted subject to the endorsement that the approval is granted based on the undertaking given by the petitioner and in the event of requirement of the front portion of the land, the land owner or their successors in interest will hand over the land without any resistance.

7. Therefore, this court is of the view that the same direction should be issued in these cases also. Accordingly, the writ petitions are disposed of, directing the petitioners to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to their right to claim compensation. If such affidavit is filed, the respondents shall consider the same and process the application in accordance with the statutory provisions. No costs. Consequently, connected miscellaneous petitions are closed."

4. Thus, by following the above direction the writ petition is disposed of by directing the petitioner to submit an affidavit of undertaking not to put up any construction in the area earmarked for the purpose of road widening and keeping the area clear and also undertake to surrender the portion for implementation of road widening without prejudice to its right to claim compensation. If such affidavit of undertaking is filed by the petitioner, then the respondents shall consider the same and process the application for grant of planning permission in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Member Secretary
Chennai Metropolitan Development Authority
1, Gandhi Irwin Road, Egmore
Chennai - 600 008.

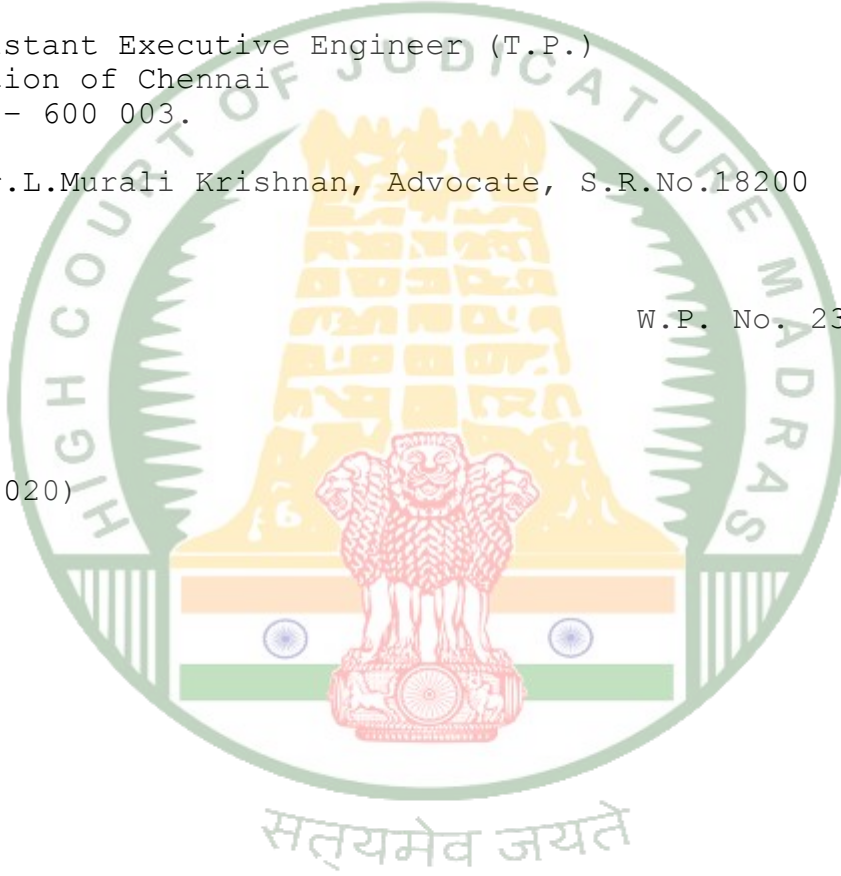
2.The Commissioner
Corporation of Chennai
Ripon Building
Chennai.

3.The Assistant Executive Engineer (T.P.)
Corporation of Chennai
Chennai - 600 003.

+lcc to Mr.L.Murali Krishnan, Advocate, S.R.No.18200

W.P. No. 23422 of 2012

SPD(CO)
RN(30/05/2020)



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