

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.6590/2021 & WMP.NO.7154/2021

M.Charles

.. Petitioner

Versus

1.The Member Secretary
CMDA, Thalamuthu Natarajan Maligai
Gandhi Irwin Road,
Chennai 600 008.

2.The Assistant Engineer
Zonal Officer, Division No.193
Sholinganallur, Chennai.

3.Assistant Executive Engineer
Unit 45, Sholiganallur
Chennai.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the notice dated 16.02.2021 bearing No.15/00189/2021 issued by the respondents 2 and 3 and quash the same and further issue necessary direction to the 1st respondent to process the Regularisation Application filed by the petitioner dated 02.03.2021 in Reg.No.189/2021 bearing receipt No.CMDA/REg-113C/2202/2021.

For Petitioner : Mr.A.Prabhakaran
For RR2&3 : Mr.K.Raja Shrinivas
Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)Mr.K.Raja Shrinivas, learned Standing counsel accepts notice

on behalf of respondents 2 and 3.

- (3) The petitioner claims to have purchased a landed property admeasuring to an extent of 2812 sq.ft., in Neelangarai Village, Venkateswara Nagar S.No.9/2, through a registered Sale Deed dated 03.07.2006 bearing Doc.No.3971/2006 registered on the file of the office of the Sub Registrar, Neelangarai.
- (4) It appears from the materials placed that the petitioner, without obtaining any planning permission/license had commenced and completed the construction during January-March, 2008 and in paragraph No.4 of the affidavit filed in support of this writ petition, the petitioner would admit that ''.....However, inadvertently necessary permission or approval was not obtained from the competent authority. However, I was under the impression that necessary order will be passed in respect of the construction made by me in the above property.''
- (5) Respondents 2 and 3 had issued the impugned Notice dated 16.02.2021 calling upon the petitioner for approved plan by invoking sections 56 and 57 of the Town and Country Planning Act, 1971 [in short 'the Act'] and challenging the legality of the said notice, the present writ petition is filed.
- (6) The learned counsel for the petitioner would submit that the petitioner, after the receipt of the impugned Notice, filed an application under Section 113C of the Act dated 02.03.2021 for regularisation of the existing structure bearing Old Door No.134, New Door No.47, E.B.Road Venkateswara Nagar, Perungudi, Chennai-96 comprised in S.No.9/2 as per patta No.9118 of Neelangarai Village, Greater Chennai Corporation and since the building came into existence prior to March 2007, he is entitled for regularisation of the alleged offending construction and prays for interference.
- (7) Per contra, Mr.K.Raja Srinivas, learned Standing counsel appearing for respondents 2 and 3 has drawn the attention of this Court to paragraphs No.4 and 9 of the affidavit filed in support of this writ petition and would submit that in paragraph No.4, the petitioner took a stand that the construction of the building was commenced and completed during January-March 2008, and whereas in paragraph No.9, a statement has been made as if the said superstructure has been put up prior to 01.07.2007 and further points out that entertainment of the application u/s.113C of the Act, would not prevent the authority from proceeding further and also drawn the attention of this Court to the disclaimer clause contained and in the acknowledgment of the receipt of Section 113C TCP, 1971 Application dated 02.03.2021 and prays for dismissal of this writ petition.
- (8) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (9) It prima facie appears that the petitioner, without obtaining planning permission whatsoever, has put up the superstructure

and only after the receipt of the impugned notice dated 16.02.2021 issued by respondents 2 and 3, calling for approved plan, thought fit to apply for regularisation by filing an application dated 02.03.2021 u/s.113C of the Act. It is also relevant to extract the Disclaimer Clause, which reads thus:-

DISCLAIMER

- Filing an application for exemption under these regulations will not in any way prevent the competent authority from taking action under any of the provisions of the Act, unless otherwise ordered so by the competent authority.
- Development charges and other applicable charges normally leviable at current rates will be collected after scrutiny and ascertaining approvability.

(10) Assuming for the sake of argument that the application submitted by the petitioner under Section 113C of the Act, has been entertained and kept pending, in the light of Section 56 [2-A] of the Town and Country Planning Act, it is always open to the respondents 2 and 3 to proceed further in accordance with law.

(11) It has become a habit of the persons like the petitioner to put up an unauthorised construction and later on seeking the benevolence of the aid under the provisions of the Town and Country Planning Act, 1971. The petitioner, being a citizen, is also expected to abide by the law of the land and from the materials placed, it appear to be otherwise.

(12) This Court finds no merits in this writ petition.

(13) In the result, the writ petition stands dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Member Secretary
CMDA, Thalamuthu Natarajan Maligai
Gandhi Irwin Road,
Chennai 600 008.

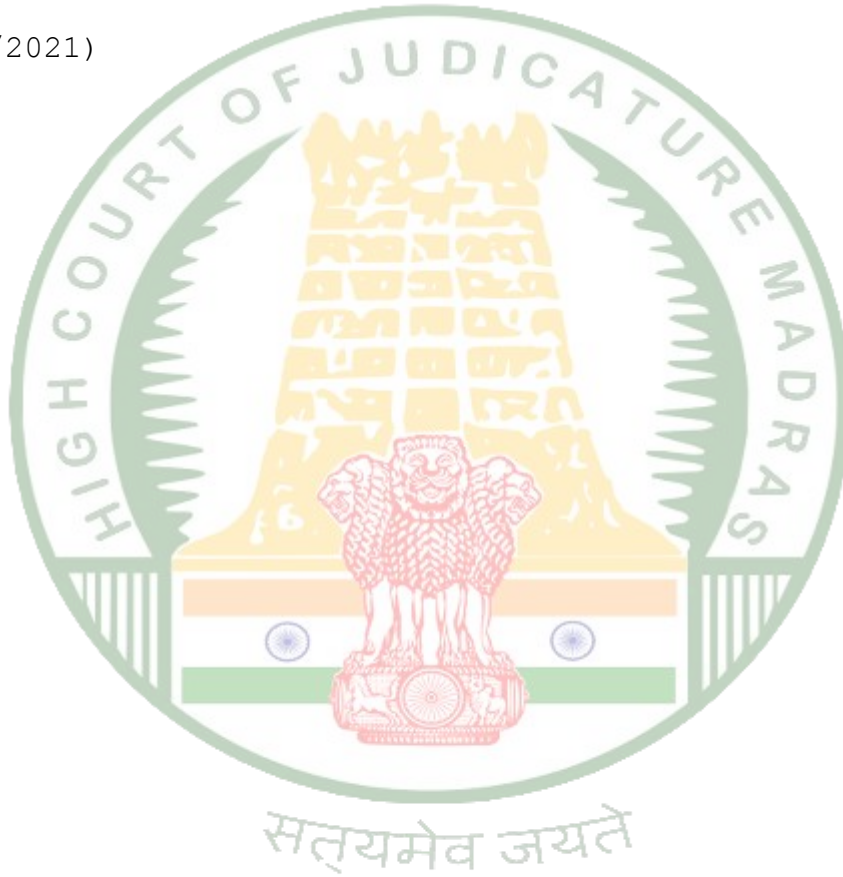
2.The Assistant Engineer
Zonal Officer, Division No.193
Sholinganallur, Chennai.

3.Assistant Executive Engineer
Unit 45, Sholiganallur, Chennai.
Chennai.

+1 cc to Mr.A.Prabakaran, Advocate Sr.No. 16391
+1 cc to Mr.P.Veena, Advocate Sr.No. 16508

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PCH(CO)
RMP(09/04/2021)



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