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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.7247 of 2021
and
W.M.P.7751 of 2021

R.Mallika
W/o.N.K.Ramakrishnan

... Petitioner

Vs

1.The Government of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.

2.The Commissioner,
Directorate of Town and Country Planning,
Chengalvarayan Building,
4th floor, 807 Anna Salai, Chennai-600 002.

3.The Deputy Director,
Directorate of Town and Country Planning,
Salem Region, 6, Sannadhi Street,
Subramania Nagar, Sooramangalam,
Salem-636 005.

4.The Commissioner,
Attur Municipality, Municipality Office,
Attur, Salem District-636 102. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to consider the representation dated 09.03.2021 on merits and pass suitable orders for reconsideration and review of the application dated 18.08.2020 for revision of plans relating to the building constructed over the property situated at Door No.1098, Block No.9, Ward D, Salem-Cuddalore Main Road, Attur comprised in Survey No.35/3.



For Petitioner : Mr.OLV.Ganesan
for M/s.Ganesh and Ganesh

For Respondents

For R1 to R3 : Mr.M.Elumalai
Additional Government Pleader

For R4 : Mr.B.Anand
Standing counsel

ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The Petitioner is the absolute owner of the property measuring to an extent of 9283.50 sq. ft., situated at Door No.1098, Block No.9, Ward D, Salem-Cuddalore Main Road, Attur, comprised in Survey No.35/3, Attur Taluk and Attur Town in Block 7 & 9, D ward.

2. The petitioner applied for planning permission for the construction and the same was granted by the 4th respondent on 16.09.2016 and he has put up a commercial construction. Though total permissible FSI of 18,567 Sq.ft. was available for construction, the petitioner availed 1949 sq.ft alone. Subsequently, additional construction has been made contrary to the approved plan and therefore, the petitioner has submitted a revised plan to the 4th respondent for necessary approval.

3. Thereafter, on 09.12.2017 the petitioner is said to have filed an application to the 2nd respondent along with the supporting original documents, through the 3rd respondent. Though the application has been sent to the 2nd respondent, the petitioner was asked to approach the 1st respondent by communication dated 26.02.2020 and therefore, the petitioner had filed an appeal on 18.08.2020. A communication has been received by the Petitioner on 20.01.2021 from the first respondent, offering online hearing on 22.01.2021 in which the petitioner's husband, on her behalf, had participated and submitted necessary facts. The petitioner had also submitted all the connected facts and merits for the consideration of the appeal in writing on 23.02.2021, which was acknowledged by the office of the 1st respondent on 23.02.2021. Thereafter, by order dated 26.02.2021, the petitioner was informed that her appeal has been rejected. Thereafter, the petitioner gave a detailed representation on 09.03.2021 to the 1st respondent, stating that he has not deviated from the approved plan and his appeal deserves to be considered, taking into consideration the following points:



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"(a) There is no FSI violation for the subject construction and in fact majority of FSI is yet to be availed by me

(b) The details of the front set back, rear setback and side setback as available to the subject construction has been provided. More specifically the front setback is available to the subject construction as the land owned by me along with my husband and son in Survey No.35/4 is available. I can also submit the necessary affidavit of declaration from my husband and son to confirm the availability of setback in the said area. More particularly the land in Survey No.35/4 abutting the subject construction is exclusively owned by me along with my husband and son. Alternatively if required I also agree to modify the entrance of the subject property towards the eastern side wherein 5.4 metre access road is available as well as 1.5 metre of front setback is available. The said front setback and access road in the eastern side is comprised in survey No.35/7 which is also exclusively owned by me along with my husband and son.

(c) The afore said details was submitted by me more comprehensively vide my communication dated 23.02.2021 and the same establishes and confirms the availability of necessary front, side and rear setback areas to the subject construction as well as the availability of proper access from the Salem Cuddalore main road and also the availability of required car parking area. The details as provided thereof confirms that the subject construction satisfies necessary rules as per combined Development and Building Rules, 2019 as applicable."

The said representation is pending before the 1st respondent. Since the said representation has not been disposed of, the petitioner has come before this Court.

4. Heard Mr.OLV.Ganesan, learned counsel appearing for the petitioner. Mr.M.Elumalai, learned Additional Government Pleader appearing on behalf of Respondents 1 to 3 and Mr.B.Anand, learned counsel appearing on behalf of the 4th respondent.

5. It is evident from the affidavit filed in support of this Petition that the petitioner has deviated from the approved plan. In this regard, he had already approached 1st and 2nd respondents with all the documents to show that he has not made any massive FSI violation and setback violation. However, the petitioner's appeal has been rejected on 26.02.2021. A perusal



of the order would reveal that it is not a speaking order and there are no reasons given as to why the appeal given by the petitioner has been rejected.

6. Be that as it may. The 3rd respondent had directed the petitioner to approach the 1st respondent by communication dated 26.02.2020. Based on that only, the petitioner had approached the 1st respondent by preferring an appeal dated 18.08.2020 with all the required documents. In fact, a communication dated 20.01.2021 has been issued by the 1st respondent, offering online hearing to the petitioner and the Appeal filed by the Petitioner was rejected on 26.02.2021. Thereafter, the petitioner gave a detailed representation on 09.03.2021 to the 1st respondent to review the order passed in the Appeal. Since this Court is of the view that the order dated 26.02.2021 is a non-speaking order, it is appropriate to direct the 1st respondent to consider the representation given by the petitioner on 09.03.2021, alongwith all the documents filed by her, to review the order dated 18.08.2020, after giving an opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. Till the appeal is disposed of and the order copy is served upon the petitioner, no coercive steps shall be taken against the petitioner.

Accordingly, this Writ Petition is disposed of. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner,
Directorate of Town and Country Planning
Chengalvarayan Building
4th floor, 807 Anna Salai, Chennai-600 002.



3.The Deputy Director,
Directorate of Town and Country Planning,
Salem Region, 6, Sannadhi Street,
Subramania Nagar, Sooramangalam,
Salem-636 005.

4.The Commissioner,
Attur Municipality, Municipality Office,
Attur, Salem District-636 102.

+1cc to M/s.Ganesh & Ganesh, Advocate Sr.22903
+1cc to the Government Pleader Sr.23386

W.P.No.7247 of 2021
and
W.M.P.7751 of 2021

vsn II[co]
srg 12/08/2021