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W.P. No.23337 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND**

THE HONOURABLE MRS. JUSTICE N. MALA

W.P.No.23337 of 2006

Sivakami Ramesh

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai – 600 009.

2.The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
“Thalamuthu Natarajan Maaligai”,
Egmore, Chennai – 600 105.

3.Neelankarai Town Panchayat,
Represented by its President,
Neelankarai, Saidapet Taluk,
Chennai – 600 041.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.O.(D) No.33 dated 16.1.2006 affirming the order of the



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second respondent in letter No.REG III/B6/46127/2000 dated 5.5.2003, quash the same and forbear the respondents from taking any steps to demolish the petitioner's house or interfere with the right of the petitioner to enjoy the same at plot No.91/2 9th South Cross Street, kapaleeswarar Nagar, Neelankarai, Chennai-600 041.

For Petitioner : Mr.Madan Babu
for Mr.R.Parthasarathy

For R1 : No appearance

For R2 : M/s.Veena Suresh
for CMDA

For R3 : No appearance

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed for issuance of a writ of certiorarified mandamus to quash the proceedings of the 1st respondent vide G.O.(D) No.33, Housing and Urban Development (UD VI) Department, dated 16.01.2006.



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2.The petitioner has purchased a property and built a house on the same. The property of the petitioner is situated at Neelankarai within 500 m of High Tide Line, but beyond 200 m from the High Tide Line. By notice dated 26.02.1997, the petitioner was warned not to put up any construction on the ground that it is within the Coastal Regulation Zone (“CRZ” for brevity), where development is restricted.

3.Despite the demolition notice, it appears that the petitioner has proceeded with the construction and applied for regularisation of the development. The application for regularisation of building put up by the petitioner at Door No.145, Plot No.91/2, 9th South Cross Street, Kapaleeswarar Nagar, Neelankarai, Chennai, was rejected by the Member Secretary/2nd respondent, Chennai Metropolitan Development Authority, vide letter dated 05.05.2003, on the only ground that the development is without following the regulations and cannot be implemented. Thereafter, an appeal was preferred by the petitioner before the Government and the same was rejected by the Government vide G.O.(D) No.33, Housing and Urban Development (UD VI) Department, dated 16.01.2006, aggrieved by which,



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the present writ petition is filed.

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4.Learned counsel appearing for the petitioner submitted that the petitioner's building is not within 200 m from the High Tide Line and therefore, the construction of building is permissible.

5.A status report is filed by the 2nd respondent/CMDA. In Para No.8 of the report, it is stated as follows :

“8.It is further submitted that, however in view of the Coastal Zone Management Plan (CZMP) of Tamilnadu, Prepared as per the CRZ Notification 2011 and as approved by Government of India, Ministry of Environment, Forest & Climate Change in F.No.12-8/2018-IA-III dated 24.10.2018. The site under reference lies in the CRZ-II, where the areas within the 0-200 meters from the HTL are classified as "No Development Zone" and the areas between 200-500 meters and beyond can be permitted for developments subject to the other planning parameters of the competent Authority. The Petitioner site, as per the prevailing CRZ norms qualifies for developments and therefore the Petitioner may be directed to apply afresh for the planning permission for the subject



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property, before the Local Authority, namely the Greater Chennai Corporation. For the sake of convenience, the definition of CRZ-II is produced hereunder,

Category II (CRZ -II):

The area that have already been developed up to or the shoreline. For this purpose, 'Developed Area' is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

It is therefore prayed that this Hon'ble High Court may be pleased to consider the submissions of this Respondent and pass suitable orders on the facts and circumstances of the case in the interest of justice.”

6.In the light of the stand taken by the 2nd respondent/CMDA, the application for regularisation has to be considered in the light of the fact that the petitioner's site, as per the CRZ norms, qualifies for development. Therefore, the impugned order is set aside and the matter is remitted to the



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2nd respondent/CMDA, as it is contended by the learned counsel on either side that the 2nd respondent is the competent authority to decide the application of the petitioner, for passing appropriate orders. The 2nd respondent is directed to pass appropriate orders on the application of the petitioner, on merits and in accordance with law, in the light of the CRZ Notification 2011 and also considering the fact that the construction made by the petitioner is within the zone where development is permissible as per the Regulations, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition is allowed with the above direction.

No costs.

(S.S.S.R., J.) (N.M., J.)
17.10.2022

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order



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To
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