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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU
W.P.No.19480 of 2020

Colonel C.M.Unnithan

.. Petitioner

vs

1. Government of India,
Through Secretary, Ministry of Housing
and Urban Affairs, Nirman Bhawan,
'C' Wing, Dr.Maulana Azad Road,
New Delhi 110 011.

2. Government of Tamil Nadu,
Through Secretary, Housing and Urban
Development Department,
Secretariat, Chennai 600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration Declaring that Rule 2 (h) of Tamil nadu Real Estate (Regulation and Development) rules 2017 G.O.Ms. No. 112 Housing and Urban Development UD1(2) 22nd June 2017 issued by the 2nd respondent is inter alia ultra virus inconsistent non conformity to the Real Estate (Regulation and Development Act 2016 and the same is liable to be quashed.

For the Petitioner : Mr.R.Ramasubramaniam Raja

For the Respondents : Mr.T.V.Krishnamachari
Stdg. Counsel for R-1

: Mr.C.Harsharaj,
Addl. G.P. for R-2



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ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The learned counsel for the petitioner submits that in view of the judgment in the case of Subashini Thulasiram vs SPR & RG Constructions Pvt. Ltd. reported in 2020 SCC Online Mad 20120, the petitioner is not required to press the writ petition for challenge to the validity of Rule 2(h) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. It is especially in the light of the finding recorded by the Division Bench in the case supra.

2. A reference of para 30 of the said judgment has been given with the prayer that the petition may be governed by it and if the direction aforesaid is given, the petitioner is not required to press the prayer made in the writ petition for challenge to the constitutional validity of Rule 2(h)(ii) of the Rules of 2017.

3. The learned Government Pleader has no objection to it. It is, however, stated that the issue is already considered by the RERA in favour of the petitioner after taking note of Rule 2(h)(ii) of the RERA Rules and Section 3 of the RERA Act. It may be true that the challenge before the High Court against the order passed by the RERA authority sustain, but it was not on the merit of the case but in view of the violation of principle of natural justice. The petitioner did not implead promoter as party respondent. The Tribunal otherwise did not accept the view expressed by the Regulatory Authority for exemption from registration. The RERA has already decided the issue in favour of the petitioner on the subject requiring registration of the project.

4. We have considered the submissions made by the parties and find that in the light of the finding recorded by this Court in para 30 in the case of Subashini Thulasiram (supra), the learned counsel for the petitioner is not pressing the writ petition for challenge to the constitutional validity of Rule 2(h) of the Rules of 2017.

However, we dispose of the writ petition by governing it by the observation made in para 30 of the judgment supra and otherwise the matter is pending consideration in regard to the issue of requirement of registration, it would be decided by the



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authority after considering the facts of the case and judgment in the case supra. No costs.

Sd/-
Assistant Registrar(CSIII)

//True copy//

Sub Assistant Registrar

sra

To:

1. The Secretary,
Government of India,
Ministry of Housing and Urban Affairs,
Nirman Bhawan, 'C' Wing,
Dr.Maulana Azad Road,
New Delhi 110 011.
2. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai 600 009.

+2ccs to Mr.T.V.Krishnamachari, Advocate SR.No.489

+1cc to Government Pleader SR.No.688

W.P.No.19480 of 2020

NMI (CO)
GMY(12/01/2022)