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Writ Petition No.33230 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/12/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.33230 of 2022

J. Saivinoth

...

Petitioner

Vs

1. The Commissioner
Corporation of Chennai
Rippon Building
Chennai 600 003.

2. The Executive Engineer
Corporation of Chennai
Zonal Office 9
Teynampet
Chennai.

3. Chennai Metropolitan Development Authority
rep. By its Member Secretary
1 Gandhi Irwin Road, Egmore
Chennai 600 009.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of mandamus directing the respondents 1
and 3 to forthwith issue the planning permission to the premises bearing old
Door No.156 New Door No.40/2 Kodambakkam High Road,



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Nungambakkam, Chennai 600 034 comprised in old Survey No.73

R.S.No.166 Block 22 Nungambakkam Village, Egmore Taluk by processing the application of the petitioner for building plan approval vide plan submission No.PPA/WDCNO9/-8881/2022 dated 6/9/2022 without insisting to handover the area 493.73 sq.feet as per requisite, facing the road through a registered gift deed to CMDA or the Corporation of Chennai.

For Petitioner ... Mr.R.Suresh Kumar
for
M/s.K.M.Vijayan Associates

For respondents ... Mr.D.P.R.Prabhu
for R.R.1 and 2

Mr.C.Manoharan
for R.3.

ORDER

This writ petition has been filed to direct the respondents 1 and 3, to issue the planning permission to the premises bearing old Door No.156 New Door No.40/2 Kodambakkam High Road, Nungambakkam, Chennai 600 034, comprised in old Survey No.73 R.S.No.166 Block 22, Nungambakkam Village, Egmore Taluk, by processing the application of the petitioner for building plan approval, vide plan submission No.PPA/WDCNO9/-



8881/2022, dated 6/9/2022, without insisting to handover the area 493.73 sq.feet, as per requisite, facing the road through a registered gift deed to CMDA or the Corporation of Chennai.

2. The case of the petitioner in a nutshell is as follows:-

By virtue of a sale deed, dated 19/5/2022, the petitioner has applied for building plan and the same was registered with the respondents, on 6/9/2022, vide, plan submission No.PPA/WDCNo.9/08881/2022. But the respondents are insisting of a gift deed of a portion of the property to an extent of 493.74 sq.feet, as a prerequisite for approval of building plan. Even though, this Court, in number of cases, had directed the Corporation of Chennai, to process the application of building plan, without insisting for execution of gift deed as a prerequisite for construction of the property, respondents are not considering the same. Hence, the petitioner has come forward with the instant writ petition praying for the relief as stated therein.

3. Heard Mr.R.Suresh Kumar, learned counsel for the petitioner, Mr.O.P.R.Prabhu, learned counsel for the respondents 1 and 2 and Mr.C.Manoharan, learned counsel for the third respondent.



4. The learned counsel appearing for the petitioner submitted that in a similar issue, i.e., in W.A.No.4345 of 2019, a Hon'ble Division Bench of this Court has stayed the execution of the gift deed, as a prerequisite for construction of the property to the condition that the appellant shall not create any third party right encumbrance and shall not construct over the area covered by the proposed gift deed. Pursuant to the above order, similarly situated person has granted permission.

5. That apart, the learned counsel appearing for the petitioner has placed reliance on the judgment of this Court in ***D.PARIMALA Vs. 1. THE DIRECTOR, DIRECTORATE OF TOWN AND COUNTRY PLANNING, CHENNAI AND 5 OTHERS (W.P.No.24093 of 2010)***, wherein this Court has observed as follows:-

"2. It is trite to say that if any part of the land of the petitioner is required for road widening or for over-bridge or for any other public requirement, it will have to be acquired, as per the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



3. Any view to the contrary would be violative of Article 300 A of the Constitution of India and the constitutional protection cannot be compelled to be waived by insisting on a gift deed. However, it is within the domain of the respondents to stipulate that the said area be kept free from construction to facilitate the acquisition.

4. The learned Senior Counsel for the petitioner is right to the limited extent that it cannot be that this land is to be kept free from construction for all times to come. In case the land is required for the project, then acquisition proceedings must be initiated. We, thus, specify a period of six months, which is a reasonable period of time, for any such process to be followed."

6. The learned counsel appearing for the respondents 1 and 2 submitted that as per Section 35 of the Town and Country Planning Act, the gift deed shall be executed for widening the road.

7. It is relevant to extract Section 35 (19) of the Tamil Nadu Combined Development & Building Rules, 2019.



“The space set apart and notified for formation of a new road or road widening or street alignment shall be transferred to the local body through a registered Gift Deed before actual issuance of Building permit. The exact mode of conveyance of the land shall be consistent with the relevant enactment and regulations. In such cases 'Transfer of Development Rights' (TDR) provisions of the Rule 48 shall be applicable.”

8. A perusal of the above provision made it very clear that for every planning permission for a private building insisting of the execution of the gift deed is in fact violating the very Constitutional right of the property.

9. A bare perusal of the order made in W.A.No.4345 of 2019, also makes it very clear that execution of the gift deed as a pre-requisite for construction of the property has been stayed. Thereafter, the above writ petitioner was sanctioned plan which was also placed in the typed set of papers.



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10. In such a view of the matter, the respondents cannot insist for execution of the gift deed for sanctioning the plan. Accordingly, the respondents are directed to consider the case of the petitioner and issue planning permission, according to law, without insisting the gift deed, within a period of three months from the date of receipt of a copy of this order.

11. With the above direction, this writ petition is disposed of. No costs.

9/12/2022

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.



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