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W.P.No.3374 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.3374 of 2020
and conncted WMP.**

1.R.A.Zaheer Ahmed
2.Haseena Zaheer

... Petitioners

.Vs.

1.The Government of Tamil Nadu
Rep. By its Principal Secretary
Housing and Urban Department
Fort St.George, Chennai-9

2.The Chennai Metropolitan Development Authority
Rep. By its Member Secretary,
No.1, Gandhi Irwin Road
Egmore, Chennai

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records in G.O.(D).No.155 dated 15.11.2019 on the file of the 1st respondent and quash the same as illegal and consequently direct the respondents to regularize the building situated at Door No.115, Portugese Church Street, George Town, Seven Wells, Chennai-600 001 exists with ground plus three floors.



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For Petitioner : Mr.I.Abdul Basith

For respondents : Mrs.R.L.Karthika, Govt. Advocate
Mrs.P.Veena Suresh, Standing counsel.

ORDER

(Order of the Court was made by J.NISHA BANU, J.)

This Writ Petition is filed praying to quash the G.O.(D).No.155 dated 15.11.2019 on the file of the 1st respondent and to consequently direct the respondents to regularize the building situated at Door No.115, Portugese Church Street, George Town, Seven Wells, Chennai-600 001 exists with ground plus three floors.

2. The petitioners claim that they are the absolute owners of the property above mentioned. The petitioners further state that they purchased the said property under Registered Document and at that time, ground plus three floors constructed building existed.

3. The petitioners received a communication dated 16.09.2016 from the CMDA addressed in the name of previous owner, wherein, it is stated that the regularisation application received from Malik has been rejected. That time



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only, the petitioner came to know that the erstwhile owner made an application for regularisation u/s.113(A) of the Tamil Nadu Town and Country Planning Act for the said building vide PPA Reg.No.97 dated 31.10.2000. However, the said application has been rejected after 16 years.

4. The petitioners have filed statutory appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, as against the above referred to order dated 16.09.2016. The petitioners state that the subject building consisting of ground plus three floors are existing from 1998 and the same is much prior to the cut off date 28.02.1999, hence the same is eligible for regularization.

5. According the petitioners counsel, the petitioners attended enquiry on 08.11.2019 and filed written submissions and submitted that due to efflux of time, they are not having the records and information sought by the Department.

6. The petitioner counsel would further submit that the petitioners in support of their submissions filed documents viz., Chennai Metro Water and Sewerage Board which is from 01/04/1998. Further the property tax details of



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the Chennai Corporation website also clearly serves as a proof to substantiate that the building existed from 01/04/1998. However, the 1st respondent rejected the petitioners' appeal holding that the petitioners have not produced any credible evidence to prove that the building was constructed prior to 28.02.1999, hence, the appeal cannot be entertained under Section 113-A of the Regularisation Scheme.

7. The learned Government Advocate and the learned Standing counsel appearing for the respondents would submit that since documents showing that the building is in existence prior to petitioners' purchase has not been furnished to the 1st respondent, the 1st respondent passed G.O.No.155 dated 15.11.2019 rejecting the regularisation. They would further submit that if the petitioners are willing to produce the required documents, the same may be considered.

8. A perusal of the entire materials placed before this court in support of the averments raised by the petitioners, would go to show that the sale deed executed in favour of the 1st and 2nd petitioners is of the year 2002. It is transpired from the typed set of papers that from the date of Water and Sewerage connection dated 01.04.1998, the building is in existence. Further the assessment for the said property in 1998 is about Rs.56,511/-. Further the



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website of the Chennai Corporation assessed the property tax from the year 1996-97. Therefore, when the building of the petitioners is in existence with ground plus three floors as early as 1998 much before the cut off date viz., 28.02.1999 for building plan approval from the CMDA, the regularisation of the said building cannot be rejected at the threshold.

9. The learned counsel for the petitioners would submit that the petitioners are willing to produce all the documents necessary to substantiate his contention that the building exists from the year 1998.

10. In such view of the matter, the writ petition is disposed with the following directions:-

(i) The impugned order dated 15.11.2019 is set aside and the matter is remanded back to the first respondent. The 1st respondent shall intimate the petitioners about the personal hearing in respect of fresh consideration of the matter. The petitioners shall produce all the necessary documents to substantiate their stand that the building existed before 1999.

(ii) The first respondent is directed to consider the matter afresh and pass orders after giving opportunity to the petitioners within a period of eight weeks from the date of receipt of a copy of this order.



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No costs. Consequently, connected miscellaneous petition is closed.

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(J.N.B, J.) (N.M., J.)
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msv/nvsri

To

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