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Review Application No.36 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Review Application No.36 of 2022

in

W.P.No.24044 of 2021

V.Ranganathan
S/o. Thiru. Varadhan
No.7/8, Kothamadu,
Saithapet, Chennai – 600 015.

Represented by his Power of Attorney
K.Rathinasamy
S/o P.Koilpillai
Residing at 9/G-11, Rupy Exlane,
Kulakarai Street,
Tambaram West,
Chennai – 600 045.

... Applicant

Vs.

The Chief Executive Officer
Chennai Metropolitan Development Authority
No.1 Gandhi Irvin Road,
Egmore, Chennai – 600 008.

... Respondent

Prayer: Review Application filed under Order XLVII Rule 1 read with Section 114 of Civil Procedure Code, to set aside the order dated 10.11.2021 and made in W.P.No.24044 of 2021.



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For Applicant : Mr.M.Rajasekar

ORDER

The Review application is filed to review the order dated 10.11.2021 passed in W.P.No.24044 of 2021.

2. The petitioner filed a writ petition for a direction to direct the respondents to consider the representation of the petitioner dated 20.10.2021 for allotment of Shop No. from B/P-24 to T/A-P-4 on conversion in the light of W.P.No.4004 of 2000 order dated 08.03.2000.

3. This Court passed an order on 10.11.2021, as under:

“4. The High Court Cannot issue a direction in the form of recommendation, so as to direct the respondent to consider the case of Writ Petition. Consideration of a claim could arise only if the process commenced for such allotments of shops in a market or the place under the control of the CMDA. It is not as the any person can file a Writ Petition seeking a direction to consider the representation and by obtaining



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such an order get preference for allotment or otherwise. On most occasions, such a general direction issued by the High Courts to consider the representations are wrongly interpreted or implemented by the authorities at their whims and fancies, which causes prejudices to the other eligible persons and more so deprived the right of other eligible persons, who are also longing to get such allotment in accordance with the rules and regulations in force. Thus, even for issuing a direction to consider the representation, the rights of the persons, who are approaching the High Court in a Writ Petition has to be considered.

5. In the present case, the petitioner states that he should be given preference. Preferences or otherwise are to be granted only in accordance with the provisions of the Act and Rules and not otherwise. Thus, this Court cannot issue any such direction to consider the representation. It is for the petitioner to submit an application in the event of any notification of such allotment or if he is otherwise eligible, the authorities are bound to



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follow the regulations scrupulously while taking decision in such matter.

6. With these observations, the Writ Petition stands disposed of. No costs.”

4. The petitioner filed Writ Appeal in W.A.No.18 of 2022 and the Hon'ble Division Bench of this Court allowed the petitioner to withdraw the writ appeal and granted liberty to maintain a review application against the order passed in the writ petition. Pursuant to the liberty, the petitioner has chosen to file the present Review Application.

5. The learned counsel for the review applicant mainly contended that this Court passed an order, granting liberty to the applicant to submit an application in the event of any notification for allotment of shop and if he is otherwise eligible. The authorities are bound to follow the regulations scrupulously while taking decision in such matters.

6. The learned counsel for the applicant referred the order passed in W.P.No.4004 of 2000 dated 08.03.2000, wherein, the learned Single Judge of this Court passed an order as follows:



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“In view of the submission made by the learned counsel appearing for the petitioner, the writ petition is disposed of, directing the respondents to consider the representation submitted by the petitioner on 16.02.2000. in future, if any shops fall vacant in any of the categories, the respondent would consider the request of the petitioner on preferential basis for allotment if they otherwise satisfy the requirements and pass orders according to law. Consequently, WMP is closed.”

7. The learned counsel for the review applicant further referred the order in another Division Bench in Review Application No.39 of 2009 dated 28.07.2009, wherein, the Division Bench has made an observation that “if they frame such scheme in future, the applicant is at liberty to apply, which is already stated in the earlier order. In these circumstances, we see no reason to alter, modify or review the impugned judgment passed in W.A.No.170 of 2009.”



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8. In yet another writ petition, the learned Single Judge of this Court passed an order directing the authorities to consider the representation submitted by one Mr.T.S.K.Ramachandran.

9. Growing trend of filing writ petitions seeking the relief to consider the representation, at all time, cannot be encouraged by the High Court, while exercising the powers of judicial review under Article 226 of the Constitution of India. Numerous representations are sent without even ascertaining or establishing the right to claim certain reliefs or benefits. In such circumstances, the High Court is expected to ascertain, whether the writ petitioner has established a right for seeking remedy. In the absence of establishing any right, then no writ can be issued against the executives to consider the representation.

10. Imagine, if High Court issues an order of direction to consider the representation in a routine manner without even ascertaining the right of an individual, the authorities may not be in position to consider the case of such persons. Contrarily, this practice will pave way for corrupt activities amongst the executives. By abusing such directions of the High Court, it is possible



that the executives may create a file and try to consider on extraneous consideration, which would cause infringement of rights of all other citizen, who all are eligible and aspiring to get relief.

11. Therefore, to maintain a writ petition, right is to be established. Even to consider a representation, the petitioner has to prove that his rights are violated with reference to the Statutes or Rules and such violations provided a cause. Therefore, mere sending of representations alone cannot be considered for the purpose of issuing a direction for disposal.

12. Statutory Appeals, if any filed also may be considered. However routine representation or representations to achieve their goal in an indirect manner at no circumstances be encouraged by the High Court by entertaining writ proceedings.

13. The earlier orders referred by the learned counsel for the review applicant reveals that this Court has not issued any positive directions, but had passed an order stating that if there is any scheme, this case could be considered. The parties are bound to establish that there is a scheme in force



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and the authorities are abusing the scheme or violating the scheme, and then alone the persons approaching the Court are entitled for the relief. Mere presumption cannot be a ground to issue an order and such hypothetical orders will also give unnecessary hope for the litigants to indulge in corrupt activities with the connivance of the Executives and High Court at no circumstances would aid for such illegalities.

14. The cause must be definite and certain so also the relief sought for must be supported by violation or infringement of right. In the absence of establishing such violations or infringement, no writ needs to be entertained under Article 226 of the Constitution of India for the purpose of issuing a direction to consider the representation in a mechanical manner.

15. Yet another practice of filing writ petitions have been recently developed in the High Court, which is by sending representation, by putting anti-dates and by filing a writ petition seeking the relief to consider the representation. All such manipulative way of filing writ petitions should be dealt with seriously and Courts cannot be utilised for achieving goals by the



litigants in an indirect manner. All such writ petitions deserve to be rejected with exemplary costs. It should be construed as an abuse of judicial process.

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16. In the present case, the applicant is unable to establish that there is a scheme in force. In the absence of any such scheme, his representation itself is not maintainable before the authorities. If at all there is a scheme, then there must be an application in the prescribed format and all eligible persons must be provided with an opportunity to submit their applications and thereafter, the authorities are bound to take a decision on merits and in accordance with law.

17. Thus, merely by sending a representation to the authorities for allotment or conversion of shop cannot be construed as a right. Unless an administrative decision is taken by the authorities for allotment or conversion, the petitioner or any person have no locus to claim allotment or conversion as a matter of right.

18. Thus, this Court has considered the grounds raised by the applicant and granted him liberty to submit an appropriate application, if



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any scheme is introduced or notifications issued either for allotment or for conversion or otherwise. The cause for submission of application would

arise only if there is a notification or scheme in force, but not otherwise.

When this Court has already granted liberty to the applicant to submit an application in a prescribed format, if any notification or scheme has been issued. Thus, there is no reason to reconsider the order passed by this Court.

19. With these clarifications, the Review Application stands dismissed. No costs.

09.03.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Chief Executive Officer
Chennai Metropolitan Development Authority
No.1 Gandhi Irvin Road,
Egmore, Chennai – 600 008.



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S.M.SUBRAMANIAM, J.

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