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W.P.No.14751 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

and

THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.14751 of 2019

and

W.M.P.Nos.14746 of 2019

R.Bhuvaneswari

...Petitioner

vs

1. The Principal Secretary,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.
 2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Building,
Gandhi Erwin Road, Egmore,
Chennai - 600 008.
 3. The Deputy Planner, (North),
Enforcement Cell,
Chennai Metropolitan Development Authority(CMDA),
Thalamuthu Natarajar Building,
Gandhi Erwin Road, Egmore,
Chennai - 600 008.
 4. The Commissioner,
Shozhavaram Panchayat Union,
Shozhavaram, Chennai.
- Respondents



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Writ Petition filed under Article 226 of the Constitution to issue a Writ of Mandamus to forbear the respondents and their subordinates from interfering or demolishing or any other steps being taken against the property of the petitioner situated at S.No.350, Alamathi II Village, Edapalayam, Thiruvallur High Road, Shozhavaram Pachayat Union, Thiruvallur District till the policy is taken on the developments in catchment areas as per the letter dated 28.02.2019.

For Petitioners : Mr.G Ethirajulu
for Mr.K.Balu

For Respondents : Mr.E.Vijayanand,
Additional Government Pleader for R1
Mrs.P.Veena Suresh,
Standing Counsel for R2 & R3.

ORDER

This writ petition has been filed to issue a Writ of Mandamus to forbear the respondents and their subordinates from interfering or demolishing or any other steps being taken against the property of the petitioner situated at S.No.350, Alamathi II Village, Edapalayam, Thiruvallur High Road, Shozhavaram Pachayat Union, Thiruvallur District till the policy is taken on the developments in catchment areas as per the letter dated 28.02.2019.

2. The case of the petitioner is that, she is the owner of the land and



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building situated at Survey No.350 of Alamathi-II Village, Edayapalayam, Thiruvallur High Road, Sozhavaram Panchayat Union, Thiruvallur District and the same was acquired by her through settlement deed dated 10.01.2017 from her husband V.Rajkumar. Subsequently, the petitioner land and building were notified under 2nd Master Plan of the 2nd respondent/CMDA. The petitioner's husband made an application for regularization to the 1st respondent and the same was pending. In the meantime, the 2nd respondent had issued a notice on 29.01.2016, calling for approval plan based on the site inspection on 29.01.2016. On 03.02.2016, the petitioner submitted an application for regularization as per the notice of CMDA dated 29.01.2016 along with necessary documents and fees. The 2nd respondent rejected her application for regularization with certain remarks vide letter dated 13.07.2016. Subsequently, the petitioner submitted an appeal to the 1st respondent on 09.08.2016 under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971. The said application is pending without any further progress. On 16.08.2016, the petitioner made a request to the 2nd respondent not to seal the building and she also brought to the notice of the 2nd respondent that clarification application is pending before the Government for reclassification from the catchment area. In the



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same village, several hotels, houses were granted permissions by the 2nd respondent. While so, on 24.10.2016, the 2nd respondent issued locking & sealing and demolition notice against her building and thereafter, she made a representation to the 2nd respondent on 31.10.2016 requested not to take any coercive steps against her building. On 09.08.2018, she submitted an application for regularization along with necessary documents and the same was accepted by the 2nd respondent. The petitioner's application for regularisation is pending before the 1st respondent. In the meantime, the Government of Tamilnadu announced a scheme for regularization of building viz., Building Regulation Scheme-2017 under Section 113 C of the Town and Country Planning Act, 1971. The petitioner made a representation on 13.08.2019 to the 1st respondent to hold the appeal, since as per the scheme, the petitioner had made an application for regularisation on 9.8.2018. The 1st respondent has replied that the appeal committee decided to defer the matter till a policy decision was taken on the developments in the catchment area. The petitioner has got permission from the 4th respondent and constructed the building. Since the petitioner's rights have to be protected , the present writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned



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Additional Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the 2nd and 3rd respondents.

4. It is pertinent to point out that in a similar issue, the Division Bench of this Court vide order dated 24.04.2023 in W.P.No.26673 of 2017 has held that there can be no direction by way of a mandamus contrary to the statute and in fact, the planning authorities cannot permit any development or regularization in the catchment area. It has also been held that if such permission is granted, it will not only be violating the statutes but also its constitutional duty to protect the environment. Therefore, the Division Bench declined to pass any orders.

5. In the light of the order passed by the Division Bench in the said writ petition, the 1st respondent is directed to dispose of the appeal dated 09.08.2016 filed by the petitioner, after providing an opportunity of hearing to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (N.M.,J.)
16.08.2023

Index:Yes/No
Speaking/Non-speaking order
vsi



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**J.NISHA BANU,J.
and
N.MALA,J.**

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