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W.P.No.17635 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.17635 of 2019 and

WMP Nos.17094 and 17097 of 2019

R.Chitralkha

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Authority,
Seretariat, Chennai 600 009.

2. Chennai Metropolitan Development Authority,
Rep. by its Member-Secretary,
No.1, Gandhi-Irwin Road,
Egmore, Chennai 600 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, by calling upon the entire records of the first respondent dated 29.05.2019 in G.O.D No.50 in confirming the order of the 2nd respondent dated 16.08.2016 in LR No.Reg I & I/C7/3171/2001 insofar as rejection of Appeal petition filed under Section 113-A(6) of the Tamil Nadu Town and Country Planning Act with regard to



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regularization of the building put up at No.16 Saraswathi Street, Mahalingapuram, Nungambakkam, Chennai 600 034 by quashing the same and consequently direct the 2nd respondent to regularise the building put up at the subject mentioned property.

For Petitioner : Mr.R.Mohan

For Respondents : Mr.A.Selvendran, Spl.Govt. Pleader
for R1

Mrs.P.Veena Suresh, Standing Counsel
for R2.

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to quash the order of the first respondent dated 29.05.2019 in G.O.D No.50, confirming the order of the 2nd respondent dated 16.08.2016 in LR No.Reg I & I/C7/3171/2001 insofar as rejection of Appeal petition filed under Section 113-A(6) of the Tamil Nadu Town and Country Planning Act with regard to regularization of the building put up at No.16 Saraswathi Street, Mahalingapuram, Nungambakkam, Chennai 600 034 and consequently direct the 2nd respondent to regularize the building put up at the subject mentioned property.



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2. The Property situated at Plot No.179, Door No.16, Saraswathi Street, Mahalingapuram, Nungambakkam, Chennai 600 034 was purchased by the mother-in-law of the petitioner viz., M.Vittobai on 07.06.1960 under a registered deed. Later, the petitioner's husband Dr.Rangabashyam along with his mother M.Vottobai developed the property by putting up Ground+First Floor+Part terrace in the above said property by obtaining planning permission dated 07.02.1997 and subsequent revised proposal dated 21.08.1998.

3. During May 1998, the officials of CMDA issued demolition notice under Section 56 of the Tamil Nadu Town and Country Planning Act, alleging that there are certain deviations in the constructions. In the year 2000, the Government had issued notification under Section 113-A, extending cut off date and also called upon everyone to submit fresh application irrespective of those who had applied in the year 1998 for regularization. The petitioner submitted an application on 29.12.2000 in the name of his husband seeking regularization, under Section 113-A of Tamil Nadu Town and Country Planning Act along with regularization fee



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amounting to Rs.2,20,175/-. The officials inspected the site and scrutinize the application and demanded to pay Rs.1,44,650/- for the alleged deviation.

According to the petitioner, the plan was approved in the year 1997 and demolition notice was issued in the year 1998 and electricity service connection was obtained in the year 1998 and hence, the building was constructed prior to 28.02.1999 and satisfied the requirements of Section 113-A to claim exemptions with regard to deviations. However, without providing any opportunity to the petitioner, the second respondent rejected the claim of regularization on 16.08.2016. Therefore, the petitioner preferred an appeal on 14.09.2016 before the first respondent, which was also rejected on 29.05.2019. Hence the writ petition.

4. The learned counsel for the petitioner submitted that building permission was accorded on 07.02.1997 and electricity service connection for the constructed building was obtained on 10.08.1998. Further, the CMDA had issued demolition notice on 06.05.1998 itself for the portions constructed in contravention of the plan, which clearly shows that the building was completed before the cut off date 28.02.1999. He further



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submitted that, the husband of the petitioner had submitted application for regularization on 27.12.2000 along with advance regularization fee of Rs.2,20,175/- and he also paid a sum of Rs.1,44,650/- towards regularization fee and other charges, as per the letter dated 29.05.2002, issued by the CMDA. The above facts proved that the building was completed before 28.02.1999. However, for the application submitted in the year 2000 seeking regularization, the impugned order of rejection was passed by the second respondent on 16.08.2016, without giving any opportunity of hearing to the petitioner. Further, without considering the documentary evidences and submission made by the petitioner, the first respondent has rejected the appeal petition on 29.05.2019. Therefore, the above orders are liable to be quashed and the second respondent may be directed to regularize the building put in the subject matter of the property.

5. The learned counsel appearing for the respondents submitted that the husband of the petitioner N.Ranga Bashyam, had applied for regularization of existing Ground Floor + First Floor institutional building at Plot No.179, Old Door No.16, New No.20, Saraswathi Street,



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Mahalingapuram in S.No.620/30, Block No.36, Nungambakkam Village on 29.12.2000. While inspection on 14.08.2001, it was observed that the ground floor + First floor has been completed and the same was in usage of institutional purpose. As per Section 113-A of the Town and Country Planning Act, to regularize the building constructed in deviation to the approved plan, the building should be completed before 28.02.1999. Though the applicant was requested individually to furnish the evidences to prove that the construction completed prior to 28.02.1999, no evidence was filed by the petitioner and hence, the application was rejected, vide order dated 16.08.2016 by the second respondent. Thereafter, since the applicant Rangabashyam died on 14.07.2013, his wife, the petitioner herein filed an appeal. As the petitioner did not prove that the construction made prior to 28.02.1999, the Appeal was also rejected, vide order dated 28.02.1999 by the first respondent. Therefore, the above said rejection order passed by the second and first respondents are in order and the same does not warrant any interference by this Court and hence he seeks for dismissal of the writ petition as is not maintainable.



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6. Heard the rival submission made by the learned counsel appeared

on either side and we have perused the material records.

7. It is an admitted fact that, originally the petitioner's husband Mr.N.Ranga Bashyam had got planning permission for construction of ground+first floor + part terrace in the property at No.16, Saraswathi Street, Mahalingapuram, Nungambakkam, Chennai-34 on 07.02.1997. However, subsequently, as there was some deviation in the building to the approved plan, demolition notice was issued on 06.05.1998 by the officials to demolish the portion constructed in contravention. Therefore, the husband of the petitioner had applied for regularization of the building on 29.12.2000 by remitting necessary fees and after inspection made by the officials of the CMDA, he had also paid additional fees as requested by them for regularization of the building.

8. Admitting that the ground floor is using as Prayer Hall and Exhibition Hall, the husband of the petitioner had sought for regularization of the institutional building only on 29.12.2000. At this juncture, it is



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worthwhile to mention that the Hon'ble First Bench of this Court *in the case of Consumer Action Group, dated 23.08.2006 reported in 2006 (4) CTC*

483 [W.P.Nos.18898 of 2000, etc. batch] has observed as follows.

32. (i) The amendments to Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 by amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999, as far as applicable to the constructions made after 28.02.1999 are hereby declared ultra vires.”

From the above, it is clear that the validity of Section 113-A of the Act, to regularize the building constructed in deviation to the planning permission is applicable only to the construction made prior to 28.02.1999, provided the application for regularization has been submitted before 30.06.2002. Here in this case, admittedly the husband of the petitioner had made application for regularization on 29.12.2000, i.e., before 30.06.2002. Therefore, his application was considered by the official concerned and vide letter sent by the CMDA dated 29.05.2002, the petitioner's husband was directed to pay necessary fees, as stated therein and also specifically directed to furnish five copies of the revised plan as per the site condition



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along with detailed plan for all structure. The petitioner's husband had also sent a reply on 18.06.2002 stating that he had enclosed necessary fee and documents, as directed by the official concerned.

9. The main contention of the CMDA is that after demise of petitioner's husband on 14.07.2013, the petitioner was called for submitting documents to prove that the construction made prior to 28.02.1999, however, it was not submitted by her and hence, her application for regularization was not considered by the second respondent and for the same, the appeal petition was also rejected by the first respondent. But, according to the petitioner, the electricity connection charges advice slip dated 27.07.1998 proves that the building completed prior to 28.02.1999. But, it is to be noted that the planning permission was obtained in the year 1997 for the residential building. However, since the building was converted into institutional purpose, the husband of the petitioner made application on 29.12.2000 for regularization. Further, the above said advice slip issued by the electricity Board dated 27.07.1998, does not contain the details of numbers of the floors and the areas of the floors. In such



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circumstances, it cannot be construed that the construction made prior to 28.02.1999. Though the demolition notice was issued on 06.05.1998 itself, the husband of the petitioner had not applied for regularization immediately after 06.05.1998 and had applied only on 29.12.2000, i.e. after cut off date 28.02.1999. Further, in the demolition notice dated 06.05.1998, it was mentioned as " the construction of G + Mezzanine + First floor is in contravention of the planning permission granted under Section 49 of the Town and Country Planning Act, 1971 ". But, according to the petitioner the building consisting Ground + First + Part put up in the terrace. However, there is no evidence on the side of the petitioner to prove that the entire building completed prior to 28.02.1999. Therefore, we are not agreed with the submission made by the learned counsel for the petitioner. As such, we are of the view that the impugned orders passed by the first respondent dated 29.05.2019, confirming the order passed by the second respondent dated 16.08.2016, does not warrant any interference by this Court.

10. Accordingly, this Writ Petition is dismissed. No costs.



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Consequently, connected miscellaneous petitions are closed.

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(D.K.K.J.)

(P.D.B.J.)

05.06.2023

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