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W.P.No.26133 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.26133 of 2017

Kannan Balachandran

.. Petitioner

Vs

1 Chennai Metropolitan Development Authority
Through its Member Secretary
Thalamuthu Natarajan Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008.

2 City Union Bank Ltd
rep by its Managing Director
Having its Office at
48 Mahalakshmi Street
T.Nagar Chennai-600 017.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that the Tamil Nadu Government Notification No.VI(1)/338/2016, dated 21.10.2016 as published in the Tamil Nadu Government Gazette dated 26.10.2016 is illegal, null and void, and ultra vires the Tamil Nadu Town and Country Planning Act, 1971 and the Constitution of India and issue a consequential direction forbearing the first respondent from in any manner permitting the use of the area comprised in Old Door No.48, New Door No.19, Mahalakshmi Street, T.Nagar, Chennai-600017 for



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mixed residential/commercial use.

For the Petitioner : Mr.Suhrith Parthasarathy

For the Respondents : Mr.Y.Bhuvanesh Kumar
Standing Counsel
for 1st respondent

: Mr.V.Ramesh, Senior Counsel
for Mr.R.S.Varadarajan
for 2nd respondent

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner; Mr.Y.Bhuvanesh Kumar, learned Standing Counsel for the first respondent/bank; and, Mr.V.Ramesh, learned Senior Counsel appearing on behalf of Mr.R.S.Varadarajan, learned counsel for the second respondent.

2. The present petition is filed seeking a declaration that the Tamil Nadu Government Notification No.VI(1)/338/2016, dated 21.10.2016, as published in the Tamil Nadu Government Gazette dated 26.10.2016, is null and void.



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3. Mr.Suhrith Parthasarathy, learned counsel for the petitioner, strenuously contends that the second respondent/bank is situated in a residential zone. The impugned notification is issued permitting the bank in a residential zone and classified the same as a mixed residential use zone. The same is arbitrary. No commercial use can be allowed in the residential zone.

4. Learned counsel for the petitioner submits that, even otherwise, as per the Development Control Regulations, the construction cannot be more than 500 sq. mtrs. The second respondent bank has constructed an area of 12786.87 sq.ft., equivalent to 1187.85 sq. mtrs. The same is in gross violation of the Development Control Regulations. Even as per the Development Control Regulations existing now, the construction cannot be more than 500 sq. mtrs. The width of the road required is 10 mtrs., however the width in the present case is only 9 mtrs. Series of violations have taken place while constructing the bank. The same is a nuisance.



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5. Learned Senior Counsel for the second respondent/bank submits that the bank is functioning in the same premises since the year 1968. Earlier the construction was of ground floor + first floor. Thereafter, the second floor has been constructed. The second floor measures 3908.94 sq.ft. According to learned Senior Counsel, initially the application for regularisation was rejected. An appeal was filed and the government allowed the appeal. The government exercised the power under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 [for brevity, "*the Act of 1971*"]

6. We have considered the submissions.

7. It appears that the second respondent/bank is functioning in the said premises since a long time. The built-up area of the bank is as under:

1	Ground Floor	4540.90 Sq. ft.
2	First Floor	4337.03 Sq. ft.
3	Second Floor	3908.94 Sq. ft.
	Total Built up Area	12,786.87 Sq. ft.



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8. Clause 8 of the Development Control Regulations prescribes the maximum limit for construction of the bank's premises in a mixed residential zone and the same is 500 sq. mtrs. and the width of the road ought to be 10 mtrs. Naturally, the construction of the second respondent/bank is in deviation of the said Regulations.

9. It needs to be considered that the application was filed by the second respondent/bank for regularisation and the same was rejected. An appeal was filed by the second respondent/bank before the government. The government allowed the said appeal and notification is issued to that effect. The government exercised the power under Section 113 of the Act of 1971.

10. Section 113 of the Act of 1971 empowers the government, by notification, to exempt any land or building or class of lands or buildings from all or any of the provisions of Act or Rules or Regulations made thereunder. It appears that the government has exercised the said power under Section 113 of the Act of 1971 and



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has exempted the construction of the second respondent/bank. The same is in the year 2016. The said exemption granted to the second respondent/bank is not the subject matter of challenge.

11. As exemption is already granted by the government and the same was not assailed, the grievance of the petitioner, as such, cannot be entertained now.

The writ petition is disposed of accordingly. There will be no order as to costs. Consequently, W.M.P.No.27769 of 2017 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

03.11.2023

Index : Yes/No
Neutral Citation : Yes/No
sasi

To:

The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

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