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W.P.No.2336 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**Writ Petition No.2336 of 2015
and MPNo.1 of 2015**

Madha Residency Hotels (Pvt.) Ltd.

Rep by its Managing Director

Mr. S.Peter

No.1A Chari Street North Usman Road

T.Nagar,Chennai-17.

.... Petitioner

.Vs.

Chennai Metropolitan Development Authority

Rep by its Member Secretary

Thalamuthu Natarajan Building

No.1 Gandhi Irwin Road

Egmore, Chennai-600 008.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent dated 3.12.2013 in Letter No. C3 (N)/19016/2012, quash the same and consequently direct the respondent to grant planning approval to the petitioner to construct the proposed hotel building with double basement floor + ground floor + 2 floors + service floor + 3rd to 8th floor + toilet in terrace floor with 53 guest rooms in the site measuring 39 cents situated in survey No.114/2A-11, Valasaravakkam Village, Ambattur Taluk, Thiruvallur District,



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For Petitioner : Mr.A.Jesasanen

For Respondents : Mr.Kumaresan
Additional Advocate General
Asst.by
Mrs.K.Mageswari
for CMDA

ORDER

The writ petition has been filed in the nature of a Certiorarified Mandamus calling for records of the respondent, Chennai Metropolitan Development Authority, represented by its Member Secretary, Egmore at Chennai dated 03.12.2023 in Letter No. C3 (N)/19016/2012 and quash the same and direct the respondent to grant planning approval to the petitioner in pursuance of his application dated 28.11.2012. The application had been given about 12 years back. The impugned letter was passed 11 years back. The writ petition was filed 9 years back. It is only obvious that the lay of the land would have seen many changes in the passage of time.

2.In the affidavit filed in support of the writ petition, it had been stated that the petitioner, a Company incorporated under the provisions of the Companies Act, and involved in a hotel business, had purchased 39 cents in Survey



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No.114/2A-11 which was part of a larger area of land measuring 5 acres and 11 cents from Mrs.Gousia Begum by a sale deed dated 01.06.2011 registered as Document No.2990 of 2011. The larger area of 5 acres and 11 cents, was the subject matter of a planning permission sought. But however, building approval was granted to two separate builders one on the south western corner and the other on the northern corner. The land of the petitioner is situated on the south east corner. The building permission forwarded by the petitioner came to be rejected by the respondent on the ground that the said plan was not part of the plan submitted for the larger area of 5.11 acres and that this particular sub division of 39 cents which had been purchased by the petitioner was an unauthorised sub division of the larger area.

3.It had also been stated that the builder for whom the permission was granted and whose property was on the south western corner had independent access to the public road. It was also stated that the open space reserved area was unauthorisedly used for access by the builder in a northern portion of the larger area of the land.

4.The learned counsel for the petitioner stated that the petitioner was not



directly or indirectly connected with the builders who had developed the lands in the northern portion or in the south western portion. The petitioner had independently purchased the subject matter land of about 39 cents from Mrs.Gausia Begum, the daughter of the original owner in whose name a gift deed had been executed by the original owner. It had been stated that the land is demarcated with specific boundaries and the land is still vacant for the past 10 years. It is contended that the open space reserved area used as an access is not being put to use by the petitioner. It is also contended that the land of the petitioner also has access to the public road.

5.The learned Additional Advocate General however supported the impugned order by pointing out that the sub divided area of 39 cents which had been purchased by the petitioner out of the larger area of 5.11 acres was an unauthorised subdivision. It had been contended by the learned Additional Advocate General that the petitioner will have to satisfy the rules relating to grant of planning permission. It was stated that since the rules did not provide for grant of approval for putting up of a building in an unauthorised plot, the respondent could not grant permission. The learned Additional Advocate General pointed out that area which the petitioner had purchased was unauthorisedly subdivided.



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Originally, the planning permission was given for the larger area of 5.11 acres.

This subdivided portion therefore stands together with the larger area and an independent planning permission cannot be granted unless the petitioner gets authorisation for such subdivision.

6.I have heard the arguments advanced.

7.It is a fact that the petitioner had purchased 39 cents of land out of a larger area of 5.11 acres. The petitioner had purchased the said 39 cents from the daughter of the original owner. The original owner had granted a gift deed in favour of his daughter/Vendor of the petitioner. That particular document/gift deed which is the parent document insofar as the petitioner is concerned would contain the schedule of the property giving specific boundaries. Therefore, for all particular practical purposes the 39 cents of land had been split away from the larger area.

8.It was also contended on behalf of the petitioner that separate patta had been granted in favour of the petitioner. These are all aspects which should have been examined and re-examined by the respondent herein.



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9.As on date, two separate builders have developed portions of the larger area of 5.11 acres. The land of the petitioner also abuts the public road. The petitioner had not encroached into the open space reserved area.

10.I hold therefore that it is only appropriate that the petitioner gives a fresh application for approval of plan and if it is within the rules and regulations, the respondent may examine grant of approval. It must be mentioned that the land has been subdivided from the larger area of 5.11 acres. A gift deed had been originally executed in favour of the Vendor of the petitioner herein. That document will have the schedule of the property. The original owner had consciously subdivided the land and had granted the subdivided portion as gift to his daughter/vendor of the petitioner.

11.Let all these facts be examined by the respondent. The petitioner may furnish a separate application. The petitioner must conform with the fees as payable for a fresh and separate application and on furnishing such application, the respondent may examine it and proceed to pass appropriate orders. The case should be taken that the original open place reserved area is not be disturbed by



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the lands of the petitioner. It is evident from the plan submitted that it is away from the land of the petitioner.

12.The impugned order is therefore set aside granting permission to the petitioner to file a fresh application.

13.The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

NCS : Yes/No

KP

To

Chennai Metropolitan Development Authority
Rep by its Member Secretary
Thalamuthu Natarajan Building
No.1 Gandhi Irwin Road
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C.V.KARTHIKEYAN.,J

KP



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