



W.P.No.10982 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10982 of 2024

M/s Sikora Salvador International Ltd.,
Represented by its authorized Signatory,
Mr.S.Ramakrishnan
Office at
No.259/1, Bypass Road,
Poonamallee, Chennai- 600 056.

...Petitioner

Vs

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai -8

2. The Commissioner,
Poonamallee Municipality,
Poonamallee, Chennai – 600 034.

3. The Tamil Nadu Construction Welfare Board,
No.8, Valluvar Kottam High Road,
Nungambakkam, Chennai – 600 034.

...Respondent



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent to quash the same and direct the 2nd and 3rd respondents to refund the amount remitted toward the building approval and other infrastructural charges to a sum of Rs.19,50,000/- to the petitioner and pass orders.

For Petitioner : Mr. Reshmi Christy

For Respondent-1 : Mrs.P. Veena Suresh
Standing Counsel

For Respondents 2 and 3 : Mr. M.Shahjahan
Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records on the file of the second respondent to quash the same and direct the 2nd and 3rd respondents to refund the amount remitted toward the building approval



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and other infrastructural charges to a sum of Rs.19,50,000/- to the petitioner and pass orders.

2. In view of the consent expressed by the learned counsel appearing for either side, this petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner is the owner of the land to an extent of 72 cents as per the documents and 69 cents as per the patta comprised in S.No.259/1/A1 of Poonamalle Village, Tiruvallur District. The petitioner gave a power of attorney to M/s.Golden Prosperous property Developers Pvt. Ltd to construct a multi stored building and also gave all the relevant documents required to get planning approval for the said construction. The sum and substance of the case is that as per clause 11 of the JDA the building should obtain all necessary sanctions, permissions permits and approval for construction of the building within one year from the date the subdivided patta obtained by the petitioner. The builder did not fulfil any of the obligations of JDA, due to which the petitioner revoked the said Power of Attorney. The further case of the petitioner is that inspite the



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petitioner has handed over all the documents to the builder on 09.05.2011, the builder has obtained the approval from the respondent only on 18.05.2015 and violated the terms. As per the procedures the builder ought to have obtained the planning approval within one year from the date of application i.e on or before 09.05.2012. The grievance of the petitioner is that there was some monetary transactions took place for getting approval and after proper calculation the petitioner concluded that still a sum of Rs.19,50,000/- which was remitted for building permission is still pending before the second respondent. Hence, the petitioner filed W.P.No.31836 of 2022 seeking prayer to issue a writ of mandamus directing the respondent to refund the amount wherein, this Court vide order dated 13.04.2023 partly allowed the writ petition with a direction to consider the case of the petitioner and pass orders within a period of 10 weeks from the date of receipt of a copy of this order. Despite the second respondent have not turned up, which has given rise to Contempt petition No.3041 of 2024. Pending this Contempt petition the second respondent without conducting an enquiry has passed an order, wherein, it has been stated that the period of building permission as sanctioned by the second respondent was for a period of three years i.e



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from 23.06.2016 to 22.06.2019 and the petitioner has approached belatedly after expiry of the specified date. The grievance of the petitioner is that he has approached the second respondent on 08.10.2018 which is well within the date notified by the second respondent for getting approval. Aggrieved over the order passed by the second respondent the petitioner has come up with this writ petition.

4. The learned counsel for the petitioner submitted that there is no delay on the part of the petitioner as he has approached the second respondent within the specified date and the fault lies with the second respondent who has passed the impugned order after a lapse of six years. Hence prays to allow this petition.

5. *Per Contra*, the learned standing counsel appearing for the respondent submitted that inspite of the fact that the petitioner was informed that the building permission was for a period of 23.06.2016 to 22.06.2019 the petitioner has not turned up. Further more there is some dispute between the petitioner and the said builder, due to which we are not able to get the requisite details and arrive at a conclusion. Hence



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prays to dismiss this petition.

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6. I have given anxious consideration for either side submission and perused the materials available on records.

7. On a perusal of records it is seen that the second respondent has intimated that the building permission period is from 23.06.2016 to 22.06.2019. The petitioner also approached the second respondent on 08.10.2018 which is well within the date specified by the second respondent. Even assuming that the petitioner has approached the second respondent after the stipulated date, the second respondent has passed an order only on 12.03.2024 i.e after a lapse of six years. Further more what prevented the second respondent to pass order earlier is not stated, which is the subject matter of this writ petition.

8. Division Bench of this Court while dealing with the W.A.No.1664 of 2017 filed by the petitioner vide order dated 03.07.2023 has ordered that the Municipality is bound to take a decision upon the



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representation of the appellant on merits regarding the refund of the claim.

6. Considering the facts and circumstances of the case, this Court is of the view that there is no default on the petitioner as he has approached the second respondent within the prescribed time. Therefore, the second respondent is directed to consider the claim of the petitioner with regard to refund of the amount and pass orders on merits and in accordance with law, after affording reasonable opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

7. With the aforesaid direction, this Writ Petition stands disposed of. No costs.

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



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V.BHAVANI SUBBAROYAN,J.

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