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W.P.No.1665 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1665 of 2006 and
WPMP.No.1909 of 2006

Kay Pee Kay Medical Services (Pvt) Ltd.
No.52, Second Main Road,
Raja Annamalaipuram,
Chennai 600 025

... Petitioner

Vs.

1.Secretary to Government,
Housing & Urban Development,
Govt. of Tamilnadu,
Fort St.George,
Chennai 600 009
2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Chennai 600 008

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of certiorarified mandamus by calling for the
records of the first respondent with reference to the G.O.(D) No.370
dated 20.07.2005 and quash the same and direct the first respondent to



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assess the regularization fee payable by the petitioner by applying uniform norms for the violations including FSI.

For Petitioner : Mr.A.Sasishdaran

For Respondents

For R1 : Mr.V.Manoharan,
Additional Government Pleader

For R2 : Mr.Y.Bhuvanesh Kumar,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 20.07.2005 thereby rejected the appeal filed by the petitioner as against the demand issued by the second respondent dated 01.01.2004 for regularization of the construction made by the petitioner.

2. The case of the petitioner is that the petitioner owns a property at survey Nos.3968/2, 3927/53 and 3929/3 (part) of Mylapore, Chennai to an extent of 1197 sq.mtrs. The petitioner proposed to develop the same to put up a hospital. Originally, the said land was reserved for



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shops, business premises, commercial houses and bazaar from the residential use. Thereafter, the Government published the Gazette notification dated 19.03.1980 and the petitioner made application on 28.10.1986 before the second respondent for planning approval and the same was approved by an order dated 03.12.1986 for construction of a hospital building. Accordingly, the petitioner submitted building plans for approval and obtained approval by an order dated 19.10.1987 to put up a hospital building for basement plus ground floor plus Mezzanine floor plus three floors. After completion of the construction as per the approved building plan, the petitioner proposed to put up further construction of additional floors of 4 to 6 in the same building and made application on 25.08.1988 to the second respondent. However, the second respondent refused the said request by an order dated 16.11.1988 on the ground that the permissible Floor Space Index was 2.25. It was challenged before the first respondent by way of an appeal. The first respondent by order dated 08.02.1989, made remarks that the provided FSI as per the additional construction is 2.98 as against the required FSI of 2.25 and found excess by 0.73.



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2.1 Thereafter, the second respondent introduced a scheme in the year 1999 for assessment and regularisation of the additional area constructed over and above the area covered by the sanctioned plan. Necessary rules were framed as per the Government Gazette i.e. application, assessment and collection of regularisation fee (Chennai Metropolitan Area) Rules, 1999. As per the said Rules, necessary application for regularisation of construction deviated from the sanctioned plan completed on or before 31.08.2000, are eligible for regularisation. The Regularisation Rules were also published by the second respondent as amended upto 29.09.2000. As per the original notification, the petitioner applied for regularisation for the additional construction by application dated 28.05.1999 and also the petitioner paid requisite fee of Rs.41,400/- towards scrutiny fees and registration deposit. As per the requirements of the Regularisation Rules and the Revised Regularisation Scheme, 2000, the petitioner made payment towards the first instalment on 31.10.2000 and the remaining balance amount on 30.10.2000 towards second and final instalment. After having been received the instalments,



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the second respondent by its proceedings dated 01.01.2004, demanded further payment of Rs.66,09,900/- as regularisation fees payable by the petitioner for the area of construction violated. The violations are as follows:

<i>Violations</i>	<i>Area (sq.m)</i>	<i>Rate of R.F. (per sq.m.)</i>	<i>Amount of R.F. (Rs.)</i>
Sub division/Plot Frontage	1197.00	20.00	23490.00
Land Use	3669.48	150.00	550422.00
Road Width	1795.00	900.00	1615950.00
FSI	1838.57	2250.00	4136782.50
setbacks	251.15	1125.00	282543.25
Parking	---	---	---
			6609637.70
		Total Say	6609900.00

2.3 Aggrieved by the same, the petitioner preferred appeal before the first respondent. The first respondent passed order on 20.07.2005 in GO.(D).No.370 of Housing and Urban Development (UDI) Department, referring the report from the second respondent that the remittance of the second instalment was missed due to error and it can be rectified. The relatable approval benefit was not given since no approved plan copy was



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furnished. The extent of the plot is less than 1500 sq.mtrs and abutting road width 16.3 meters and inviting charges for violation. The set back violation fee was also charged only for the area over and above the FSI violated area.

3. The learned counsel appearing for the petitioner submitted that the appeal was however rejected by the first respondent without considering the report submitted by the second respondent.

4. In view of the above, the order impugned dated 20.07.2005 of the first respondent is quashed. The second respondent is directed to re-assess the regularisation fee and other charges for the violation of construction made by the petitioner subject to the proof submitted by the petitioner that the construction was made on or before 28.02.1999 which is the cut off date fixed by the Hon'ble Supreme Court of India, after inspection of the subject construction and after giving opportunity of hearing to the petitioner, by applying the uniform norms for the violations, and to issue demand within a period of four weeks from the



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date of receipt of copy of this order.

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5. With the above direction, this writ petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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To

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2. The Member Secretary,
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