

Madras High Court

V.K.Shrinivasan vs The Tamil Nadu Housing Board on 7 April, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 7.4.2011

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Petition No.8652 of 2011

V.K.Shrinivasan,
S/o late V.Krishnan,
resident at 13/7, Srinivasa Street,
T.Nagar,
Chennai-600 017,
Power of Attorney Agent of
the Principal
Dr.S.Subbulakshmi @ S.S.Lakshmi.

... Petitioner

vs.

1.The Tamil Nadu Housing Board,
represented by its Chairman,
Nandanam,
Chennai-600 034.

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

3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue

For petitioners : Mr.N.Anand Venkatesh,

For respondents : Mr.A.Vijayakumar,
for R1

Mr.C.Kathiravan,
for R2.

Mr.V.Bharathidasan,
for R3.

O R D E R

Writ Petition is filed praying to issue a Writ of Mandamus, directing the respondents 2 and 3 to entertain, receive, process and grant approval on the petitioner's application for planning permission and building permit for putting up a new residential construction on the property situated at Block No.H-22, Vaigai Street, Kalakshetra Colony, Besant Nagar, Chennai-600 090, comprised in old S.No.171(part), T.S.No.220/1, 221, 222, 223, 224, 225, 226, Block No.55, Thiruvanmiyur Village, Mylapore-Triplicane Taluk, in Patta No.SD/400/10-11 dated 9.2.2011, within the Registration District of Chennai South and Registration Sub District of Saidapet, without insisting upon No Objection Certificate from the first respondent, namely, Tamil Nadu Housing Board, so long as the proposed construction activities are in accordance with Development Control Rules and Town and Country Planning Act.

2. Mr.A.Vijayakumar, learned counsel takes notice on behalf of the first respondent; Mr.C.Kathiravan, learned counsel takes notice on behalf of the second respondent; and Mr.V.Bharathidasan, learned counsel takes notice on behalf of the third respondent. By consent of all parties, the writ petition is taken up for final disposal.

3. Petitioner is the owner of the property having purchased the same from the first respondent Tamil Nadu Housing Board. He is the owner and the original allottee. The undisputed fact is that the Tamil Nadu Housing Board has no lien over the property as on today. For the purpose of developing the property, the second respondent orally insisted the petitioner that no objection certificate issued by the Tamil Nadu Housing Board should be submitted along with the application for the purpose of demolition, planning permission and for issuance of planning and building permit to put up new construction.

4. Similar issue with regard to the insistence of no objection certificate from Tamil Nadu Housing Board was considered by a Division Bench of this Court in W.A.No.1052 of 2007 (The Managing Director - vs. - Lancor G:Crop Properties Limited & another) where it has been clearly held that the Housing Board has no right over property developed and sold to the individual allottees. The petitioner has enclosed sale deeds to show absolute ownership. The only restriction appears to be that the property developed for residential purpose should not be commercial use. The petitioner's plea is only for demolition and reconstruction as residential property.

5. Petitioner's counsel states that the development of the property is for residential use only and petitioner is willing to file an affidavit to that effect. Following the Division Bench Judgment as above, several orders have been passed by this Court, viz., W.P.No.15170 of 2010 dated 20.7.2010, W.P.No.14784 of 2008 dated 6.8.2008 where the Chennai Metropolitan Development Authorities were directed to accept the application without insisting on no objection certificate.

6. Since the property in question undisputedly has been sold to the individual allottee by way of proper sale deeds, the Tamil Nadu Housing Board can have no right over the property and therefore, the question of issuing no objection certificate does not arise.

7. In view of the above, the second respondent is directed to proceed with the application submitted by the petitioner without insisting no objecting certificate from the first respondent Tamil Nadu Housing Board subject to condition that the property will be developed only for residential purpose. The petitioner, however, is directed to submit the sale deeds to the competent authority to get planning permission. The Writ Petition is ordered as above. No costs.

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1.The Chairman, Tamil Nadu Housing Board, Nandanam, Chennai-600 035.

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

3.The Commissioner, Corporation of Chennai, Rippon Building, Chennai