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M.M. Rafi Vs. the Madras Metropolitan Development Authority, Madras-8 and Two Others

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Court : Chennai

Decided On : Apr-09-1999

Reported in : 1999(3)CTC434

Judge : T. Meenakumari, J.

Acts : Tamil Nadu Town and Country Planning Act, 1971 -- Sections 49 and 56(1)

Appeal No. : Writ Petition No. 5153 of 1999

Appellant : M.M. Rafi

Respondent : The Madras Metropolitan Development Authority, Madras-8 and Two Others

Advocate for Def. : Mr. S. Wilson, ;Mr. M.S. Govindarajan, Advs.

Advocate for Pet/Ap. : Mrs. Prabha Sridevan, Adv.

Judgement :

ORDER

1. This is a writ of certiorari calling for the records of the respondent in Notice No. 15 of 1990 dated 3.3.1990 and quash the same. In this writ petition the petitioner had challenged the demolition notice issued by the Madras Metropolitan

Development Authority, the first respondent herein. The grievance of the petitioner is that he has constructed a building at No.6, Sparking Sands Avenue, Sholinganallur Village, within the jurisdiction of the third respondent.

2. It has been contended on behalf of the petitioner by Smt. Prabha Sridevan that on 17.12.1982 the petitioner has applied for permission under Section 49 of the Tamil Nadu Town and Country Planning Act to the Commissioner of Panchayat Union, Chitlapakkam, who was having jurisdiction in respect of Sholinganallur Village for approval of the plan and permission relating to the construction of the building in a portion of 1 acre of the petitioner's plot No. 69 in Survey No. 1/1-C/2 and 1/1Cp/3. The respondents have not replied to the application made by the petitioner herein. Under the deeming provision the petitioner commenced the construction and completed in 1983 itself.

3. By Proceedings No. L.D is 127 of 1983 dated 10.11.1983 the petitioner received a communication of the Commissioner, Panchayat Union, Chitlapakkam addressed to the Member Secretary, M.M.D.A. to the effect that the permission sought for construction comes under 'banned area'. On 3.12.1983 the petitioner addressed a letter to the above stated Member-Secretary. There was no reply for nearly one year. On 17.12.1983 the petitioner received the plans submitted by him stated that he should apply for the permission after the ban was lifted by the Government. On 30.12.1983 the petitioner appealed to the Government to regularise the construction. However, the second respondent by his letter No. 45874/UDI (I)/84-2 dated 28.2.1985 informed the petitioner that the Member Secretary, the first respondent had recommended rejection of the appeal on the ground that the proposal sent to the local body was examined and returned unapproved, that the construction was already over without prior sanction and there is no statutory time limit in the Tamil Nadu Town and Country Planning Act, 1971.

4. Learned counsel has argued that the notice of termination has been issued after the period of limitation of three years an envisaged under Section 5691) of the Tamil Nadu and Country Planning Act. She was emphasized that the construction has been completed in the year 1983. Even assuming that the respondents have

to come to know of the above fact. Which is evident from their letter dated 28.2.1985 the period of limitation has to be reckoned from the date 28.2.1985. So the period of limitation expired on 28.2.1988. But the notice of demolition has been issued on 13.3.1990, that is nearly after two years after the expiry of the period of limitation.

5. The respondents have not filed any counter in this matter. Counsel appearing for the first respondent orally argued that the petitioner is not entitled for any relief as per G.O.Ms.No. 190 Housing and urban development Department dated 23.2.1980 since the construction made by the petitioner comes under the banned area. But a reading of the impugned order shows that the order of demolition was issued not on the provisions of the G.C.Ms. 190 dated 23.2.1980; but on the ground that the construction has been carried out without the planning permission as required under Section 49 of the Tamil Nadu Town and Country Planning Act. In view of the above, the contention of the counsel for the respondent that the G.O. applies to the present case is rejected and the Government Order has no application in the particular circumstances of the case as the respondent authorities have not issued the notice based on the above-said G.O.

6. Under similar circumstances, learned Judge of this Court had an occasion to deal with the provisions of Section 56(1) of the Tamil Nadu Town and Country Planning Act in which he has held that the limitation period is three years within which the notice should be issued, S. Radhakrishnan and 4 others v. Government of Tamil Nadu rep. by the Secretary, Housing and Urban Development Department Fort St., George, Madras-9 and 9 others, 1994 W.L.R. 365 Learned Judge has held that the notice of termination issued in the particular case was barred by limitation. Under the above circumstances as the demolition notice was issued after nearly a period of seven years, if the date is reckoned from 3.12.1983 or within a period of five years if the date is reckoned from 14.3.1985 relying upon the above ... the demolition notice is barred by limitation.

7. The Panchayat Union which has been shown as the third respondent has not filed any counter or objected for the construction. The Panchayat has already assessed the petitioner for tax.

8. The second respondent has recommended for the rejection of the appeal to the first respondent. I am of the view that the second respondent should not have recommended for the rejection of the appeal which shows that there is no proper application of the mind.

9. In the result the writ petition is allowed. But in the circumstances of the case there will be no order as to costs.

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