

A.M.M. Arunachalam Vs. Madras Metropolitan Development Authority and ors.

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Court : Chennai

Decided On : Nov-09-1993

Reported in : (1994)2MLJ387

Appellant : A.M.M. Arunachalam

Respondent : Madras Metropolitan Development Authority and ors.

Advocate for Def. : Mr. Chellakumar

Advocate for Pet/Ap. : Mr. C.A. Sundaram

Judgement :

ORDER

AR. Lakshmanan, J.

1. The petitioner owns a house property at Chitaranjan Road, Alwarpet, Madras, where he has been residing. According to the petitioner Chitaranjan Road runs from East to West connecting T.T.K. Road on the eastern side and Cenatoph Road and the said Chitaranjan Road has been classified as a residential zone. It is stated by the petitioner that he wrote letters to the first respondent during November, 1992 and the communication received from the respondents would show that the said Chitaranjan Road has been classified as a residential zone.

The petitioner would state that in March, 1993, an old residential building belonging to the 5th respondent on the western end of Chitaranjan Road bearing Corporation Door No. 21, Cenatoph Road was demolished. Subsequently, a board was put up bearing the name of 3rd respondent indicating that the 3rd respondent proposed to construct an office complex in the said property. The petitioner claims that the 2nd respondent stated on 18.5.1993 that no proposal for construction of any office complex in Chitaranjan Road was received from the 3rd respondent. However, the first respondent informed the petitioner by letter dated 31.5.1993 that the 3rd respondent had applied for construction of an office complex and that it was proposed to reclassify the area from primary residential use zone to mixed residential use zone. The petitioner was also informed by the first respondent that the proposed reclassification was published in Tamil Daily on 5.11.1992 and English Daily on 7.11.1992 inviting objections and that no objection was received for the proposed reclassification. According to the petitioner he raised an objection on 21.5.1993 and that objection was refused to be taken into account by the 1st respondent that the same was belated. It is in the above circumstances, the petitioner has filed the writ petition and the prayer in the writ petition is as follows:..to issue a writ of mandamus or other appropriate writ, order or direction of like nature forbearing the first and second respondents from classifying the stretch of Chitaranjan Road from Cenatoph Road end to T.T.K. Road (formerly Mowbrays Road) end from primary residential zone to mixed residential zone or otherwise grant any permission to the third and fifth respondents or any one claiming under or through them to put up a non-residential building on the plot bearing No. 21, Cenatoph Road, Teynampet, Madras-600 018 bearing R.S. Nos. 3843, 3844 (part), 3845 (part), 3846 (part) of Mylapore village....

2. My learned brother Kanakaraj, J. admitted the writ petition on 22.6.1993 and granted interim injunction in W.M.P. No. 17579 of 1993. The third respondent has filed W.M.P. No. 19773 of 1993 to vacate the interim injunction. I heard Mr. C.A. Sundaram, learned Counsel for petitioner and Mr. Chellakumar, learned Counsel for respondents 1 and 2, Mr. R. Krishnamoorthy, senior advocate for 3rd respondent and Mr. N. Kanadasan, learned Counsel for 4th respondent. With the consent of all the parties, the main writ petition itself was taken up for hearing.

3. I have also perused the records produced by M.M.D.A. It is seen that the 5th respondent has submitted plans for reclassification of Plot No. 2, Cenatoph Road, Teynampet on 25.2.1992 from 'primary residential use zone' to 'mixed residential use zone'. The first respondent notified that they have received the request from the 5th respondent for reclassification of the R.S. No. 3843, 3844 (part), 3845 (Part) and 3846 (Part) of Mylapore village of an extent Order 32 Hectares from 'primary residential use zone' to 'mixed residential use zone' for office complex and the aforesaid notification of the first respondent was published in Hindu on 7.11.1992 and in Daily Thanthi on 5.11.1992. It was mentioned in the said notification land used Maps relating to the above request reclassification were available for inspection and that any person who intended make any objection/suggest ion/or representation regarding the above variation proposal were directed to do so in writing within 15 days from the date of notification. It is seen that the Corporation of Madras recommended the classification. The Deputy Planner of the first respondent inspected the site and also the immediate surroundings and a note was placed before the Technical Committee on the basis of the report of the Deputy Planner and after taking into account the surrounding and the activities in and around the area recommended to reclassify the site from 'primary residential use zone' to 'mixed residential use zone' in its meeting held on 17.12.1992. Thereafter, the Member Secretary of the first respondent who is the competent authority in the meeting held on 28.5.1993 accepted the recommendation. It is seen from the above that the reclassification proposal submitted by 5th respondent has been considered by the authorities concerned and necessary action has been taken after due inspection and verification. The Technical Committee's recommendation for reclassification has been accepted by Member Secretary. Therefore, it is not open to the petitioner to ask for a mandamus forbearing the respondents 1 and 2 from reclassifying the site. It is a well settled proposition that statutory authority cannot be prevented from exercising the functions vested in him under the statutes. Therefore as rightly contended by Mr. R. Krishnamoorthy, learned senior counsel for respondents 1 and 2 cannot be forbidden by a mandate of this Court from reclassifying the site.

4. I have already referred to the notification issued by the first respondent which was published in the papers inviting objections. No objections were received from

anyone for the proposed reclassification within the stipulated time. The first respondent was right in rejecting the objections raised by the petitioner in his letter dated 12.5.1993 which was long after the stipulated period. The authorities cannot be expected to wait indefinitely awaiting objections or entertaining objections after the stipulated period. There is every reason and justification for refusing to take into account the objections raised by the petitioner after the stipulated period. On this ground, the writ petition is liable to be dismissed.

5. I have already referred to the settled legal positions that a statutory authority cannot be interdicted from exercising its function under the statute. Consequently the petitioner cannot be granted the first portion of his prayer. So far as the second portion of the prayer is concerned, it cannot be considered or entertained at this stage. The question of respondents land 2 granting permission to the third respondent and the 5th respondent to put up an office complex would arise only after the site is reclassified in accordance with the provisions of the Act.

6. Mr. C.A. Sundaram, learned Counsel for the petitioner would invite my attention to Rule 9 of Development Control Rules and would submit that for granting permission to construct office complex, Rule 9 of the Development Control Rules alone would be attracted. On the other hand, Mr. R. Krishnamoorthy, learned Counsel for the 3rd respondent would contend that it is only Rule 8 which would be applicable to the facts of this case. It is unnecessary for me to go into this controversy at this stage. I am of the view that the writ petition itself is liable to be dismissed on the ground that it is premature.

7. Consequently, there are no merits in the writ petition and hence the writ petition is dismissed. W.M.P. No. 17579 of 1993 is dismissed. Injunction granted is vacated. W.M.P. No. 19773 of 1993 is allowed.