

A. Amaravati Vs. the Member Secretary, Chennai Metropolitan Development Authority

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Court : Chennai

Decided On : Oct-29-2012

Judge : K. Venkataraman

Appeal No. : Writ Petition No.7386 of 2012

Appellant : A. Amaravati

Respondent : The Member Secretary, Chennai Metropolitan Development Authority

Advocate for Pet/Ap. : For the Petitioner: R. Muthukumarasamy, Sr. Counsel for K.S. Jeyaganeshan, Advocate. For the Respondent: K. Raja Srinivas, Advocate.

Judgement :

(Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus to call for the records relating to the impugned order in letter No. BC1/13919/2010 dated 09.02.2011 and refusal letter was signed on 16.02.2012 by the respondent and quash the same and consequentially, direct the respondent to issue planning permit for the petitioner's project for a proposed residential building for stilt + 4 floors with 396 dwelling units situated at S.No.97, 98 and 102/1 part at Agaramel village, Poonamallee, part of Melagaram Village, Poonamallee Taluk, Thiruvallore District in BC No.919/2010

dated 21.09.2010.

The petitioner has come up with the present with petition challenging the impugned order of the respondent dated 9.2.2011, an order rejecting her request for grant of planning permission and consequently directing the respondent to issue planning permission for her project for a proposed residential building for stilt + 4 floors with 396 dwelling units situated at S.No.97, 98 and 102/1 part of Agaramel Village, Poonamallee, part of Melagaram Village, Poonamallee Taluk, Thiruvallore District in BC o.919/2010 dated 21.9.2010.

2. The facts of the case, in nutshell, are set out hereunder:-

(a) The petitioner is the Director of Himabinduinfrac Private Limited and the company is in the business of construction of commercial/ residential houses for the past 15 years and has completed more than 40 projects in the city. The petitioner had submitted planning permission for a proposed residential project for stilt + 4 floors with 396 dwelling units situated at S. No. 97, 98 and 102/1 part of Agaramel Village, Poonamallee, part of Melagaram village, Poonamallee Taluk, Thiruvallore District on 21.9.2010 and revised plan on 7.2.2011. The Assistant planner inspected the property on 10.10.2010 and the Chief Planner inspected during December 2010. During his inspection, the Assistant Planner had recorded the width of road as 9.25 to 13 metres for 250 metres from site.

(b) The respondent had sent a letter dated 23.12.2010 asking the petitioner to submit a revised plan with a minimum of 9 metre to 12 metre wide road on the northern side of her land to have an access on the rear side of the site and also 10 feet wide area to be left for future road widening in front of the site and the same was complied by her on 4.1.2011 with all details as required in the letter dated 23.12.2010.

(c) Again the petitioner was asked to submit a revised plan for single block instead of group development and the same was also done by her on 7.2.2011. Again the petitioner was asked to submit some more particulars and the same was also complied with by her on 23.9.2011 and it was received by the respondent.

(d) The Block Development Officer, Poonamallee Panchayat Union vide letter dated 22.11.2011 had informed the respondent that the width of the road is 10.2 metres and the same is under the control of the Highways Department. The Tahsildar, Sriperumbudur, has also in his letter dated 30.1.2012 has categorically stated along with a sketch that the width of the road is 10.2 metres.

(e) The road leading to Nazarethpet to Malayambakkam earlier was a single road and the same was converted into two lane road, that defines 7.5 metres block top road and the road margin in both sides is 3 metres, totally 10.5 metres and the same has been published in G.O.No.229/2005 dated 11.11.2005 by the State Highway Department. In the abutting road of the site which is maintained by the Highways Department, the width of the road was recorded in revenue records as 6.8 to 8.8, metres. However, the respondent without considering all the above aspects erroneously refused the application submitted by the petitioner on the ground that the width of the abutting road is only 6.8 metres, which is contrary to the finding by the Tahsildar and Block Development Officer, Poonamallee Panchayat Union.

Hence, the petitioner has approached this Court by filing the present writ petition for the relief set out earlier.

3. I have heard Mr. R. Muthukumaraswamy, learned Senior Counsel appearing for the petitioner and Mr. K. Raja Srinivas, learned counsel appearing for the respondent.

4. The undisputable facts are that the petitioner submitted a planning permission for the proposed residential flats for stilt + 4 floors with 396 dwelling units at S. Nos. 97, 98 and 102/1 part of Agaramel Village, Poonamallee, on 21.9.2010 and the revised plan on 7.2.2011. The Assistant planner inspected the property on 10.10.2010 and the Chief Planner during December, 2010. A letter dated 23.12.2010 was sent to the petitioner asking her to submit a revised plan with a minimum of 9 metre to 12 metre wide road on the northern side of her land to have an access on the rear side of the site and also 10 feet wide area to be left out for future road widening in front of the site. The petitioner sent a letter dated 4.1.2011, alleging compliance. She was again asked to submit a revised plan for single

block instead of group development and the same was also done by her on 7.2.2011. The petitioner was again asked to give some more particulars and the petitioner did reply for the same on 23.9.2011.

5. The respondent refused the application submitted by the petitioner on the ground that the width of the abutting road is only 6.8 metres. It transpires that the road leading to Nazarethpet to Malayambakkam was earlier a single road and the same was converted into two lane road, that defies 7.5 meters Block Top road and the road margin in both sides 3 metres, totally 10.5 metres. The same seems to have been published in G.O.No.229 of 2005 dated 11.11.2005 by the State Highways Department. Therefore, in the abutting road of the site which is maintained by the Highways Department, the width of the road seems to have been recorded in the revenue records as 6.8 to 8.8 metres.

6. The said fact seems to have been lost sight of by the respondent. In fact, an Advocate Commissioner was appointed by consent of all the parties and he has filed a report. The measurement noted by him is set out hereunder:-

MEASUREMENT OF WIDTH OF THE ROAD FROM POINT “A” TO “B” i. e. 250 METERS TOWARDS NORTH:

STARTING POINT MEASUREMENT	WIDTH OF ENTIRE ROAD	WIDTH OF BLACK TOP ROAD
0-30 Meters	12 Meters	6.5 Meters
30-60 Meters	9 Meters	6.5 Meters
60-90 Meters	9 Meters	6.4 Meters
90-120 Meters	8.8 Meters	6.7 Meters
120-150 Meters	9.1 Meters	6.2 Meters
150-180 Meters	10.5 Meters	6.4 Meters
180-210 Meters	9.5 Meters	6.4 Meters
210-240 Meters	12.5 Meters	6.5 Meters
240- 250 Meters	10.3 Meters	6.2 Meters
250 Meters	9.3 Meters	6.1 Meters

MEASUREMENT OF WIDTH OF THE ROAD FROM POINT “A” TO “C” i.e.

123.1

METERS TOWARDS SOUTH: FRONT OF THE PETITION PREMISES TOWARDS SOUTH:

STATING POINT MEASUREMENT	WODTH OF ENTORE ROAD	WIDTH OF BLACK TOP ROAD
0-30 Meters	12 Meters	6.5 Meters
30-60 Meters	12.5 Meters	6.6 Meters
60-90 Meters	11.8 Meters	7 Meters
90-120 Meters	12 Meters	6.6 Meters
120-123.1 Meters	12 Meters	6.2 Meters
123.1 Meters	12 Meters	6.2 Meters

The plan filed by him also reveals that the measurement taken by him which was set out earlier shows that the width of the road is as per the requirement of the respondent.

7. Even according to the objection raised by the respondent, there is no definite boundary on either side of the road and there is only one boundary stone, that too, on one side of the road and the width of the road can only be a rough estimate.

8. It has to be further seen that the Commissioner, Poonamallee Panchayat Union, in her proceeding dated 22.11.2011, has categorically informed the respondent that the width of the road is 10.2 metres and the same was under the control of the Highways Department. The Tahsildar, Sirperumbudur has also in her proceeding dated 30.1.2012, categorically stated long with sketch that the width of the road is 10.2 meters. The said proceedings have been filed in the typed set of papers which would show that the width of the road is 10.2 meters. Contrary to the same, the respondent cannot take a different stand that the width of the rod in only 6.82 meters without considering the fact that the road leading to Nazarethpet to Malayambakkam earlier was a single road and the same was converted into two lane road, that defines 7.5 meters Block Top road and the road margin in both sides were 3 meters, totally 10.5 meters, which was also published in G.O.No.229 of 2005 dated 11.11.2005.

9. Considering the totality of the circumstances referred to above, I am of the considered view that the impugned proceeding dated 9.2.2011 and the proceeding dated 16.2.2012 of the respondent are liable to be set aside and accordingly, set aside and the writ petition stands allowed. The respondent is directed to issue planning permission to the petitioner for her project of a proposed residential building for stilt + 4 floors with 396 dwelling units situated at S.No.97 98 and 102/1 part at Agaramel village, Poonamallee, part of Melagaram Village, Poonamallee Taluk, Thiruvallore District in BC No.919/2010 dated 21.09.2010, if there is no other impediment. The said exercise has to be carried out within a period of two months from the date of receipt of a copy of this order. No order as to costs.

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