

(2000) 03 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No. 6212 of 1999 and W.M.P. No. 8951/99

M. Gouthamchand

APPELLANT

Vs

The Chennai Metropolitan Development Authority

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 03 MAD CK 0096

Hon'ble Judges : A. Ramnn, J

Bench : Single Bench

Advocate : R. Muthukumaraswamy, for the Appellant; M.S. Govindarajan
Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. Ramnn, J.—The petitioner has filed this writ petition under Article 226 of the Constitution, praying for a writ of certiorarified Mandamus

or any other appropriate writ, calling for the proceedings of the respondent in letter No. R 1 /22059/98,dated 5.2.1999 and quash the same and

direct the respondent to reclassify the petitioner's property comprised in Survey No. 2345/2.234S/7and 2345/8, Block No. 46 of Mylapore

Village from Primary Residential Use Zone to Mixed Residential Use Zone as recommended by the Technical Committee of the Chennai

Metropolitan Development Authority. The petitioner is the owner of the property comprised in Door Nos. 113 and 114, Karaneeswarar Koil

Street, Mylapore. The property is comprised in Survey Nos. 2345/2, 2345/7 and 2345/8 of Mylapore Village. The said property abuts Santhome

High Road and constitutes the corner plot where the Karaneeswarar Koil Street and Santhome High Road meet. The property is situate near the

All India Radio and is surrounded by shop, offices, schools etc. The said area has been classified as Primary Residential Use Zone. The petitioner proposed to construct a hotel in the aforesaid property. Hence, the petitioner made an application on 13.1.94 to the Corporation of Madras with a request to forward the same to the respondent herein for effecting a change in the classification of use of the property from Primary Residential Use to Commercial Use Zone. The application was forwarded by the Corporation to the respondent and the petitioner remitted a sum of Rs. 4,000/- towards scrutiny fee as required. The Technical Committee submitted its recommendations, but the respondent did not take any action. Therefore, the petitioner filed a writ petition in W.P. No. 3795 of 1995 for a Mandamus, directing the respondent to consider and pass orders on the application filed by the petitioner for reclassification. In the said petition, an Order was passed by the Court, directing the respondent to consider the application of the petitioner and pass necessary Orders thereon, within a period of eight weeks. The Order was communicated to the respondent in August 1995 itself. On 20.9.1995, the respondent passed orders, rejecting the request on the ground that the site under reference is not suitable for commercial development. No other reasons were given. The petitioner therefore, filed a writ petition in W.P. No. 6843 of 1996, to quash the order of the respondent dated 20.9.1995. In the said writ petition, notice of motion was ordered and the matter came for hearing on 29-10-96. After hearing the parties, the Court allowed the writ petition, setting aside the order passed by the respondent, and directing the respondent to reconsider the application filed by the petitioner in view of the recommendations made by the Technical Committee. Even though the copy of the order was received by the respondent on 29.10.1996 and in spite of the Order of this Court, directing the respondent to pass orders on the same within a month, till February, 1997, no order was passed. Hence, the petitioner reminded the respondent to consider his application and pass orders at an early date. To the shock and surprise of the petitioner, an order was passed on 9.4.1997, rejecting the claim of the petitioner on the ground that the proposed conversion as Commercial Use Zone will create traffic hazard and also that during monsoon, water-logging will prevail in the locality. The order is illegal on the face of it. The Technical Committee has recommended reclassification of the property from

Primary Residential Use Zone to Mixed Residential Use Zone. Therefore, in the circumstances, the petitioner filed W.P. No. 8867/97 to quash the proceedings of the respondent dated 9.4.1997. The writ petition came up for final hearing on 5.10.1998. The learned Judge having found that the respondents have not considered the application of the petitioner in accordance with the directions issued in W.P. No. 8843/ 96, allowed the writ petition, and issued directions to the respondent to consider the application for reclassification of the site into a Mixed Residential Use Zone and pass appropriate Orders within eight weeks. The copy of the order was communicated to the respondent in October, 1998. The respondent passed an order on 5.2.1999, rejecting the request without giving any reason. The petitioner therefore submits that the order passed by the respondent is arbitrary and the same is violative of the principles of natural justice and suffers from non-application of mind. It is a mala fide order. Hence, the writ petition.

2. The respondent has not filed any counter.

3. The main objection to this petition raised by the learned counsel for respondent is that there is an alternative remedy by way of appeal u/s 79, and therefore, the writ petition is not maintainable. The other objections raised is that there are schools situate nearby and it is an area where there will be water-logging during monsoon and therefore, the request of the petitioner cannot be countenanced.

4. In order to appreciate this contention, it is necessary to refer to the previous history.

5. The petitioner is the owner of the property comprised in Door Nos. 113 and 114. Karaneeswarar Koil Street, Mylapore. The said property is

comprised in Survey Nos. 2345/2.2345/ 7 and 2345/8 and it situate in the village of Mylapore. The property is a corner plot abutting Santhome

High Road and lies adjacent to All India Radio. The petitioner wanted to develop the property and put up a hotel. Therefore, he submitted an

application on 13.1.1994 to the Corporation of Madras with a request to forward it to the Chennai Metropolitan Development Authority for

effecting a change in the classification of use of the above property. The property was originally classified as a Primary Residential Area. The

petitioner wanted the classification to be changed into a Commercial Use Zone.

The petitioner enclosed along with this application, the necessary documents such as the Planning Forms, Patta, Sale Deed along with the said application, besides remitting a sum of Rs. 4,000/-, towards scrutiny fee all these took place in March, 1994. While considering the request of the petitioner, the Technical Committee has recommended reclassification of the area from Primary Residential Use Zone to Mixed Residential Use Zone. The Technical Committee considered the fact that the site abuts a public road which at that point had a width of 83ft. There was an old building in existence. The request was for reclassification to put up a commercial complex or a hotel. The Technical Committee also considered the fact that there were no objections received on the request. Nor there were any suggestion to the contrary. The committee also noted that the site is surrounded by mixed type of activities such as schools, offices and the proposed activity is compatible with the surrounding development. Therefore, the Technical Committee recommended to reclassify the site from Primary Residential Use Zone to Mixed Residential Use Zone. The petitioner had asked for reclassification of the same as Commercial Use Zone. But. the Technical Committee recommended the reclassification of the site from Primary Residential Use Zone to Mixed Residential Use Zone, therefore, in such circumstances as no order was passed by the respondent even after the report of the Technical Committee, the petitioner filed a writ petition in W.P. No. 3795 of 1995 for a mandamus, directing the respondent to consider and pass orders on the application filed by the petitioner for reclassification. The order was passed in the said writ petition, directing the respondent to consider the application and pass appropriate orders within a period of eight weeks. The respondent, who received the copy of the order, even in the month of August, 1996, passed the order ultimately on 20.9.1995, rejecting the application, on the ground that the site under reference is not suitable for commercial development. Aggrieved by the said order, the respondent filed W.P. No. 9843 of 1996, praying for issuance of a writ of certiorarified mandamus, calling for the proceedings of the 2nd respondent made in letter No. R-I/ 5582/94 dated 20.9.95 and quashed the said proceedings and to consider the application of the petitioner for reclassification. This court, by its Judgment dated 29.10.1996, held that apart from

the materials considered by the Technical Committee, there were no other materials before the 2nd respondent at the time of considering the

application of the petitioner, and that the order of the first respondent does not even refer to the recommendation of the Technical Committee. Nor

it contains any reason for passing the order, rejecting the application, and therefore, the said order has been passed mechanically without

application of mind. Therefore allowing the writ petition, this court directed the respondent to consider the application filed by the petitioner in view

of the recommendation made by the Technical Committee within a period of one month from the date of receipt of a copy of the order. Though the

respondent was directed to reconsider the matter and pass a fresh order within a month, the respondent did not pass an order till February, 1997.

Secondly, on 9.4.1997 the respondent passed the following order :-

The representative from the Corporation of Chennai objected since the site is located in the vicinity of a school and hence conversion will create

traffic hazards for children. Further during monsoon, water-logging is prevalent in this locality and to drain out the area, the water has to be

pumped out and if a commercial complex is allowed, the existing problems will be further aggravated.

The petitioner thereafter filed the writ petition in W.P. No. 8867 of 1997 to quash the said order. The writ petition was allowed, directing the

respondent to consider the petitioner's application for reclassification into Mixed Residential Use Zone within eight weeks of the order. On

5.2.1999, the authority passed a cryptic order, rejecting the application without giving any reason except to say that ""on merits, the authority

resolved to reject the reclassification of the site into a Mixed Residential Use Zone."" In the above context, the present writ petition is filed,

7. Before I consider the merits of this writ petition, it becomes necessary for me to refer to the objection raised by the learned counsel for the respondent.

8. Learned counsel for the respondent submitted that there is a provision for Appeal u/s 79 of the Tamil Nadu Town and Country Planning Act

1972, and therefore when there is an alternative remedy available, this writ petition is not maintainable.

9. This contention can hardly be accepted. First of all, while disposing of the writ

petition in W.P. No. 8867 of 1997, this court has specifically held that it is not possible to dismiss the writ petition on the ground of alternative remedy. The existence of alternative remedy is not always a bar. Here, three writ petitions entered in favour of the petitioner and necessary directions were issued. In spite of the repeated orders of this court, the authority concerned has not chosen to take note of the recommendation of the Technical Committee, but simply dismissed the request. When the authority concerned has not in spite of the orders of this court, considered the report of the Technical Committee, one can hardly expect the appellate authority to take a different view. In this case there has been a persistent refusal to comply with the order of the court. The writ petition originally tiled in W.P. No. 3795 of 1995 was for a direction to consider the application filed by the petitioner for reclassification. An order was passed by the authority concerned, without stating any reason, but only stating that the site was not suitable for commercial development. The Technical Committee, which is the proper authority, had considered the matter. It had taken note of the fact that there were no objections or suggestions. It held that the proposed activity was compatible with the area which is a mixed activity zone. For, while rejecting the application on 9.4.97, one of the reasons given was that the representative from the Corporation of Chennai objected the same. It is not known what was the competency of the representative of the Corporation of Chennai to make any objection, when they have not done so before the Technical Committee, and what is the nature of objection raised by the said representative of the Corporation is also not stated in the order that was passed on 9.4.1997.

10. The other reason given is that the site is located in the vicinity of schools and hence conversion will create traffic hazard for children. It is not disputed that in respect of a site situate on the opposite side, the authority concerned did not hesitate to classify it as commercial zone, in spite of the fact that the width of the road available in front of the site was only about 40 ft., whereas the width of the road available before the site in dispute is more than 80ft. and when definite traffic hazard was there. When the objection is that there are number of schools situate on the road and therefore, it will pose traffic hazard to the children, it is not known how the

respondent was able to accede to the request of the site situate opposite, by classifying it as a commercial zone. Therefore, when it cannot pose any traffic hazard with reference to the site situate opposite to the present site, it is rather strange that such a reason should be stated for rejected the application.

11. The other reason given in the order dated 9.4.97, is that during monsoon, water-logging will be prevalent in that locality and if a commercial complex is allowed, the existing problems will be aggravated. The same problem was there, when the respondent took into consideration the case of the site situate opposite. There was no such objection then and there. Moreover, water-logging is not and cannot be a reason for rejecting the request for reclassification. Nor it can stand in the way of commercial development. Water-logging is due to the bad maintenance of drains and roads by the Corporation. Since they collect tax from the public and residents of a locality, it is the duty of the Corporation to maintain the roads and drains in proper condition so that during monsoon time, water does not collect into cesspools or clog the drains. Therefore, neither the Corporation nor the Chennai Metropolitan Development Authority can cite their inability to maintain the road and drains in proper condition as a ground for rejection of the request of the petitioner. The Technical Committee did not think it as a problem or as an impediment for the grant of the request.

12. Now, the order passed on 5.2.1999 does not refer to the earlier two objections. It therefore follows that the earlier two objections raised were found by the Corporation as flimsy and untenable and are no longer available for the respondent and therefore, they have not chosen to stick to those objections. They have not given any reason in their order dated 5.2.1999 as to why reclassification of the site is not considered by them. In other words, the reasons upon which they decided not to grant their request, are not disclosed in the order. The order simply says that the authority resolved to reject the reclassification.

13. When a party has rushed to court again and again and when the manner in which the order is passed has been found fault with by the court and the court directed the authority to take into consideration the report of the Technical Committee, to simply reject the request without assigning any

reason, is definitely a failure on the part of the authorities to discharge their duties in accordance with law. When a statutory authority fails to discharge its duties and when there is such a repeated failure inspite of the directions of this court to consider the application on merits and dispose of the same, to reject a request without assigning any reason, amounts to mala fide exercise of their power. Therefore, even though a remedy by way of appeal is provided where there is a persistent and wilful failure on the part of the authorities to discharge their duties properly and in the light of the orders of this court, the mere fact that there is an alternative remedy will not prevent this court from exercising the jurisdiction, it has under Article 226 of the Constitution.

14. There is yet another point to be considered here. Relating to a site situate on the other side of the road, which is just opposite to the petitioner's site, across the road the authority concerned has permitted the classification from Residential Zone into Commercial Zone. While the public road abutting the petitioner's site has a width of 83 ft., relating to the opposite building or site it has only a width of 40 ft. There are schools nearby. Water logging is there also in respect of that site. The objections raised by the representative of the Corporation would equally apply and hold good as far as the site situate on the opposite side. But in spite of it, the Authority did not hesitate to classify it as a Commercial Zone and grant that person permission to construct. Thus, there is a discrimination rampant in this case. When two persons are similarly placed, while the authority will cite certain objections to turn down the request of the petitioner, they did not hesitate to grant reclassification to the other person, which clearly amounts to a violation of the principles of natural justice. It is a glaring example of a biased approach. The rejection is mala fide.

Therefore on this ground as well, the petition under Article 226 can maintained.

15. Learned counsel for the respondent is unable to justify the order passed by the authority concerned. I do not find any other serious or tenable objection to this petition. A litigant has been knocking at the doors of this court and in spite of the orders of this court, the authorities have adopted an unholy indifference and had chosen to act in an arbitrary manner, which has to be pulled up. In the circumstances, I am satisfied that the order of rejection passed by the respondent on 5.2.99 is mala fide, discriminatory and

arbitrary. Further, it suffers from deliberate non-application of mind.

Hence, I have no hesitation in setting aside the same. In the result, the writ petition is allowed, setting aside the order passed by the respondent on

5.2.99 and directing the respondent to pass orders reclassifying the petitioner's property in S. Nos. 2345/2, 2345/7, and 2345/8, Block No. 46

bearing door Nos. 113 and 114 situate in the village of Mylapore as a Mixed Residential Use Zone as recommended by the Technical Committee

on 19.7.1994 within two months of this order. As a consequence, W.M.P. No. 8951 of 1999 shall stand dismissed.