

(1992) 06 MAD CK 0022

In the Madras High Court

Case No : W.A. No's. 1351 and 1436 of 1991

Madras Metropolitan Development Authority

APPELLANT

Vs

M/s. Keyaram Hotels Pvt. Ltd. and The Corporation of Madras

RESPONDENT

Date of Decision : 30-06-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 06 MAD CK 0022

Hon'ble Judges : Kanta Kumari Bhatnagar, C.J.;Venkatasami, J

Bench : Division Bench

Advocate : K.T. Palpandian, for the Appellant; R. Swaminathan for Respondent 1 and Mr. A.L. Somayaji for M/s. A. Chellakumar and G. Durairaj for Respondent 2, for the Respondent

Judgement

Kanta Kumari Bhatnagar, C.J.—These two appeals arise out of same facts and we propose to dispose of them by one common order. Both these appeals have been preferred against the order dated 27.9.1991 passed by the learned single Judge of this Court. The writ petitioner had filed the writ petition under Art. 226 of the Constitution of India in this Court with the averments that despite the plan and permit being prepared by the Corporation of Madras (Corporation for short hereinafter referred to) the same had not been issued and hence sought the quashing of the order dated 21.4.1988 passed by the Madras Metropolitan Development Authority (MMDA for short, hereinafter referred to) and directing the authorities to reconsider the application for the plan for the construction of building at old No. 1, new No. 2, Harrington Road, Madras-31, without insisting upon the reclassification of the site in reference.

2. Records produced before the learned single Judge indicated that on the application of the writ petitioner, plan was prepared (approved)? and permit was to be issued, but the MMDA did not agree to accord sanction on the ground that before issuing permit, re-classification of the zone was required. The petitioner felt aggrieved by the order of the MMDA and approached this Court. The learned

single Judge after considering the averments in the writ petition and the counter affidavit and other materials on record, arrived at the conclusion that no reclassification of the zone was required, because the classification of the concerned area as "Mixed Residential zone" was already there by virtue of Division No. 54 shown in Annexure II to the Development Control Rules for Madras Metropolitan Area (for short Rules) hereinafter referred to . In view of that finding, the learned single Judge set aside the impugned order directing the authorities/respondents in the writ petition, particularly the Corporation to issue plan and planning permit to the petitioner and give the necessary sanction under the Act.

3. Learned Counsel, Mr. A.L. Somayaji, appearing for MMDA, has assailed the findings of the learned single Judge on the ground that without there being any cogent material to establish that the area had been classified as Mixed Residential zone, the learned Judge has arrived at the conclusion that no re-classification was required. It has also been urged by the Learned Counsel that a direction to the Corporation is not worth being carried out, because the permit and planning permit sought by the writ petitioner is not in accordance with Rules. It is also stressed that the Corporation is not competent to give sanction and MMDA should not be obliged to accord sanction on a permit which is not in accordance with the Act and Rules made thereunder.

4. Learned Counsel for the writ petitioner controverting these submissions submitted that the learned single Judge has referred to the Rules and has rightly arrived at the conclusion that no re-classification was required. According to him, the application for permit has been filed long back on 15.6.1976 and the plan was also prepared before the Rules came into force and therefore Rule 8 does not come in the way of granting permit in the way it has been prepared by the Corporation.

5. We have carefully examined the material on record. We have also seen the Rules framed under the Tamil Nadu Town and Country Planning Act, 1971. We agree with the findings of the learned single Judge that in Rule 4(c)(ii) of the Rules there is a non-obstante clause and that under that Rule all lands and premises listed in Annexure II are to be deemed to be under "Mixed Residential zone." In view of that provision, the learned Judge has arrived at the conclusion that no reclassification was required. This fact, in view of the specific provision, is not open to dispute. The finding of the learned single Judge in that regard having been confirmed by us, the next question would be, as to whether the direction given by the learned Judge to the Corporation is proper or not. If there is no necessity for re-classification then the Corporation cannot be said to have exceeded its delegated authority in considering the application of the petitioner for permit for constructing a building for a two star hotel. However, absence of direction to the MMDA to accord sanction may create a difficulty for the petitioner. In that view of the matter, while upholding the order passed by the learned single Judge, we also issue a direction to the MMDA to accord necessary

sanction under the Act to the plan and planning permit issued to the petitioner under the Act. As the application of the petitioner is lingering for about sixteen years without there being any fault on his part, the Corporation shall do the needful within a period of two months from today and the MMDA on receiving the matter shall not be take more than a month in according sanction. The writ appeals are ordered as above. No costs.

7-7-1992: Heard, No modification is required.