

In the High Court of Judicature at Madras

Dated : 18.11.2015

Coram :

The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No.36736 of 2015

1.Mrs.Mythili Sundaresan
2.Mrs.B.Rajee
3.Mr.Vijay Krishnan
4.Mrs.Shoba Ramesh
5.Mr.A.S.Govardhan
6.Mr.S.Venkatesan
7.Mrs.SujathaPetitioners

All the petitioners are represented by their authorised power agent S.Ramakrishnan.

Vs

1.The Commissioner, Corporation
of Chennai-3.
2.The Regional Deputy Commissioner
(Central), Corporation of Chennai,
No.36G, Pulla Avenue, Shenoy Nagar,
Chennai-40.
3.The Assistant Executive Engineer
Town Planning Approval Section,
Regional Office Centre, Corporation of
Chennai, No.36G, Pulla Avenue,
Shenoy Nagar, Chennai-40.Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent - the Regional Deputy Commissioner in his impugned communication bearing No.RDC (C)/C.No./DA314/2015 dated 27.8.2015 (served on the petitioners only on 28.10.2015), quash the same and further direct the respondents to consider the claim of the petitioners and to grant permission for demolition of the building situated in Flat Nos.A, B, C, D, E & F of Block No.H-19, Manthope Colony, 46th Street, 8th Avenue, Ashok Nagar situated at Kodambakkam Village, Ashok Nagar in Chennai City and the building duly erected in

Town Survey No.3/6 in Corporation Block No.56 and comprised in S.Nos.146 (Part), 148/1 (Part), 149/2 (Part), 149/3 (Part), 149/4 (Part) and 150 (Part) of Kodambakkam Revenue Village, Mambalam Guindy Taluk, Chennai District and situated within the Registration District of Chennai-Central and Sub-Registration District of Ashok Nagar without insisting 'no objection certificate' from the adjacent owners of block No.H-18 or from any other person pursuant to the application made by the petitioners in LP.No.2014-15/2209 within a time frame fixed by this Court.

For Petitioners : Mr.S.Sivakumar for Mr.G.Ilamurugu
For Respondents : Mr.P.V.Selvakumar

ORDER

Heard Mr.S.Sivakumar, learned counsel appearing on behalf of Mr.G.Ilamurugu, learned counsel for the petitioners. Mr.P.V.Selvakumar, learned Standing Counsel accepts notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

2. The petitioners are aggrieved by the proceedings issued by the second respondent dated 27.8.2015. Earlier, the petitioners approached this Court by filing a writ petition in W.P.No.7915 of 2015 wherein they sought for the issuance of a Writ of Mandamus to direct the Corporation of Chennai to grant permission to demolish the building in the said properties without insisting on the no objection certificate from the adjacent land owners. In the said writ petition, the neighbouring land owners were not impleaded as the respondents. Therefore, this Court, by an order dated 20.3.2015, disposed of the said writ petition with the following observations/directions :

"4.Thus, the reason for insisting of No Objection Certificate from the neighbouring flat owners appears to be, because there is a common wall. According to the petitioners, they are the lawful owners of the property in question, having acquired title by virtue of a sale deed executed by the Tamil Nadu Housing Board and they have got absolute right to enjoy the property and the manner in which they are going to put up construction, will in no way affect the neighbouring flat owners and the developer with whom the petitioners have entered into

a Joint Development Agreement, have also assured that they will not damage the neighbouring building nor in any manner cause any obstruction to the amenities given to the residents of the neighbouring building.

5. Prima facie the objection raised by the 2nd respondent appears to be right, since there is a common wall and there is a likelihood of the neighbouring flat owners being aggrieved. However, the petitioners cannot be compelled to obtain No Objection Certificate, if the neighbouring flat owners are unwilling to give such No Objection Certificate. Therefore, the proper procedure to be followed by the 2nd respondent is to consider the petitioners' application, issue notice to the neighbouring flat owners as well as the petitioners and examine the nature of construction proposed to be put up by the petitioners and after considering the objections, if any, of the neighbouring flat owners, the 2nd respondent should proceed in accordance with law. It appears that there is no consensus as of now with the neighbouring flat owners and therefore, it may not be appropriate for the 2nd respondent to insist upon the No Objection Certificate from the neighbouring flat owners at this stage.

6. In the light of the above, there will a direction to the 2nd respondent to consider the petitioners' representations dated 21.08.2014, 15.09.2014 and 26.02.2015, issue notice to the petitioners, neighbouring flat owners as well as to the person with whom the petitioner has entered into a joint development agreement for the purpose of putting up construction, hear the parties and thereafter pass orders in accordance with law within a period of three weeks from the date of which the petitioners and the other parties appear.

7. The writ petition stands disposed of with the above directions."

3. Pursuant to the above direction, the petitioners submitted a representation to the second respondent on 2.6.2015 stating that they will demolish the building without affecting the neighbouring building. Even prior to that, the petitioners filed a contempt petition before this Court alleging wilful disobedience of the orders of this Court dated 20.3.2015 in W.P.No. 7917 of 2015. In the interregnum, the impugned order has been passed stating that the petitioners failed to produce the no objection certificate from the neighbours and that the proposed demolition and construction to be made by the petitioners would affect the common wall.

4. The learned counsel for the petitioners submitted that the petitioners proposed to adopt latest technology and ensured that there is no damage to the neighbours' properties. In this regard, the learned counsel for the petitioners submitted that the petitioners already gave the representation dated 2.6.2015.

5. On a perusal of the said representation, it is evident that the said submission of the learned counsel for the petitioners is absolutely vague. All that the petitioners stated in the representation dated 2.6.2015 is that they are going to do the demolition with the latest sophisticated technology by using modern machinery. However, what are the modern machinery to be employed have not been disclosed. If the petitioners have been advised by experts that demolition can be carried out without affecting the neighbouring buildings or superstructures, then the petitioners should have made a representation clearly disclosing the methodology to be adopted, duly supported by the reports from engineers/architects. This has not been done by the petitioners. Therefore, the respondents cannot be faulted for having passed the impugned order. In such circumstances, the challenge to the impugned order has to necessarily fail.

6. However, the learned Standing Counsel for the respondents, on instructions, submitted that the second respondent would be willing to consider the petitioners' case, if full particulars are disclosed.

7. In response to the said submission, the learned counsel for the petitioners, on instructions, submitted that the petitioners are ready and willing to furnish full information, both technical as well as expert, to enable the second respondent to re-consider the petitioners' case.

8. Therefore, while rejecting the challenge to the impugned proceedings, liberty is granted to the petitioners to approach the second respondent by way of a fresh representation, duly supported by certificates obtained from competent technical

persons and the methodology, which they propose to adopt prior to carrying out the demolition. If such representation is made, then the second respondent shall re-consider the matter, after hearing the petitioners as well as neighbouring land owners and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of submitting such a representation by the petitioners.

9. The writ petition is disposed of in the above terms. No costs.

sd/
ASSISTANT REGISTRAR(CO)

/TRUE COPY/
SUB-ASSISTANT REGISTRAR

RS

To

1.The Commissioner, Corporation of Chennai Chennai-3.

2.The Regional Deputy Commissioner (Central),
Corporation of Chennai, No.36G,
Pulla Avenue, Shenoy Nagar, Chennai-40.

3.The Assistant Executive Engineer,
Town Planning Approval Section, Regional Office Centre,
Corporation of Chennai, No.36G,
Pulla Avenue, Shenoy Nagar, Chennai-40.

+1 CC to MR.P.V.Selvakumar Advocate. SR.NO. 62279

+2 CC to MR.G.Ilamurugu Advocate. SR.NO. 62372

सत्यमेव जयते

W.P.No.36736 of 2015

CO-TM

JD 26/11/2015

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