

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.7917 of 2015

- 1.Mythili Sundareasn
- 2.B.Rajee
- 3.Vijay Krishnan
- 4.Shoba Ramesh
- 5.A.S.Govardhan
- 6.S.Venkatesan
- 7.Sujatha

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

...Petitioners

Versus

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

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of MANDAMUS directing 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 and the building duly erected in T.S.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 without insisting "No Objection Certificate" from the adjacent owners of Block No.H-18 or

from any other person in pursuant to the application made by the petitioners in LP. No.2014-15/2209 within a time frame fixed by the Honourable court.

For Petitioners : Mr.G.Ilamurugu

For Respondents : Mr.P.V.Selvakumar

ORDER

Heard Mr.G.Ilamurugu, learned counsel for the petitioners and Mr.P.V.Selvakumar, learned counsel accepting notice for the respondents and with their consent, the writ petition is disposed of at the admission stage itself.

2.The petitioners have filed this writ petition praying for issuance of a writ of mandamus to direct the respondents to consider the claim of the petitioners for granting 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 and the building duly erected in T.S.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, without insisting of No Objection Certificate from the adjacent owners of Block No.H18 or from any other person.

3.The petitioners are the joint owners in possession and enjoyment of the land and building comprised in the flats described above. The petitioners were issued with separate pattas in respect of the property in question. They intend to demolish the existing superstructure and reconstruct the flats. With regard to the permission from the Housing Board, the petitioners had filed a writ petition in W.P.No.30857 of 2012 and this court, by order dated 26.04.2013, following the Full Bench decision in the case of Tamil Nadu Housing Board Vs Mary Rani Immanuel and others in Writ Appeal No.783/2011 etc. batch cases, allowed the writ petition and directed the planning authorities to consider the planning permission without insisting upon No Objection Certificate from the Tamil Nadu Housing Board. Thereafter, the 2nd respondent has considered the application given by the petitioners for demolishing the existing superstructure and for reconstructing the same. In the process of considering the application, the 2nd respondent has stated that the petitioners have to obtain No Objection Certificate from the owners of block No.H18

for the purpose of considering the application for proposed alteration on the ground that the end wall of the block No.H19 on the Northern side is abutting the end of block No.H18 [neighbouring flat] and the roof slab at all the floor continues.

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 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. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

AP/gya

To

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

1 CC to Mr.G.Ilamurugu, Advocate SR.No. 15827

VSN (CO)
PSI (27.03.2015)

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