

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.R.P. (PD) No.1458 of 2004 &
C.M.P.No.13653 of 2004

M.P.Apartment Owners Association
rep. by its Secretary .. Petitioner

Vs

1.A.A.Riazuddin Ahmed
2.Chennai Metropolitan
Development Authority rep.
by its Member Secretary
3.Pallavaram Municipality rep.
by its Chairman Chennai -44 ... Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order dated 2.12.2002 made in O.S.No.243 of 2001 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.V.Ananthakrushnan
For Respondent : Mr.M.Muniruddin Sherif - R1
Mr.C.Johnson - R2
Mr.P.Srinivas - R3

O R D E R

The plaintiff Association in O.S.No.243 of 2001 is the petitioner herein. This Civil Revision Petition is filed against the finding of the trial court on one of the preliminary issues that the suit is not maintainable under section 101 of the Town and Country Planning Act and the civil court has no jurisdiction to grant the relief against the second defendant Chennai Metropolitan Development Authority represented by its Member Secretary (herein after referred to as CMDA).

2.The plaintiff Association came forward with the aforesaid suit (i)for the relief of permanent injunction restraining the first defendant individual from converting the area in the suit property earmarked as two wheeler parking space, generator room and pump room in the sanctioned plan dated 6.8.1993 into flat and (ii)for permanent injunction restraining the defendants 2 and 3 CMDA and Pallavaram Municipality from approving any revision and/or deviation of the existing plan granted by the second defendant CMDA in planning permission dated 6.8.1993 for such conversion. In short, the relief sought for by the plaintiff in the suit is to prevent the first

defendant individual from converting the common area in the sanctioned plan as flat.

3.The suit was contested by all the defendants 1 to 3 on more than one ground. The second defendant CMDA in their written statement questioned the maintainability of the suit and the jurisdiction of the civil court to try the suit relief. It is contended by the learned counsel for the second defendant that the suit filed against them is barred under section 101 of the Tamil Nadu Town and Country Planning Act, 1971.

4.The trial court on the basis of the respective contentions made on both sides, framed two preliminary issues, which read as follows:

- 1) இவ்வழக்கை விசாரிக்க உரிமையியல் நீதிமன்றத்திற்கு அதிகாரம் உள்ளதா?
- 2) தமிழ்நாடு நகர மற்றும் ஊரக அமைப்புச் சட்டம் 1971ல் கூறப்பட்டுள்ள தடை இந்த வழக்கிற்கு பொருந்துமா?

and decided both the issues in favour of the second defendant and accordingly dismissed the suit against the second defendant and allowed the suit to proceed further insofar as other defendants are concerned. Aggrieved against the dismissal of the suit against the second defendant, the plaintiff has filed the present Civil Revision Petition before this court.

5.Heard the rival submissions made on both sides and perused the materials placed before this court.

6.For better appreciation, Section 101 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter shortly referred to as Act) is extracted hereunder:

"Section 101. Bar of jurisdiction of Courts.-

Any decision or order of the Tribunal or the Government or the planning authority or other authority or of any officer under this Act shall, subject to any appeal or revision or review provided under this Act, be final and shall not be liable to be questioned in any Court of law (and no injunction shall be granted by any Court against the notices served to any person by the planning authority under section 56 or under section 57 of this Act)."

7.The trial court decided the preliminary issues against the plaintiff by mainly relying on the judgment of the learned single judge of this court reported in 2002-3-LW.309 (Chennai Metropolitan Development Authority rep. by its Member Secretary v. Abdul Rehman, Hotel Nest International, Chennai and another), wherein, it was submitted on the side of the CMDA that inspite of the specific bar contained in the Act excluding the Civil Court jurisdiction about 700 suits were filed against the notices issued under the Act and interim orders were obtained without reference to the maintainability of the

suits. In view of the same, one suo motu revision was taken against those suits pending and the records were called for. It was argued before the High court that any suit covering the issues relating to any act initiated under the Act is expressly barred to be entertained by the civil court. The learned brother judge, having regard to the nature of the notices issued by the authority concerned for removal of unauthorised construction and having regard to the procedure laid down under the Act for taking action against such unauthorised development and having considered the statutory remedies available to the person aggrieved against any permission or refusal to grant permission, arrived at the conclusion that the civil court's jurisdiction is expressly barred by Section 101 read with Section 49, Section 56 and Section 80 of the Act. The trial court, after having found that the second defendant has already taken appropriate steps for removal of unauthorised construction by issuing demolition notice and caution notice to the first defendant and applied the view of the learned brother judge to the facts of the present case and rightly decided the preliminary issues against the plaintiff insofar as the second defendant is concerned.

8.As far as the present case is concerned, the relief sought for in the suit is against the defendants 2 and 3 not to approve any revision and/or deviation from the plan already sanctioned. The specific averment raised in the written statement filed by the second defendant is that the second defendant already issued demolition notice and caution notice against the unauthorised construction made by the first defendant. Such notice falls within the scope of section 56 of the Act. The learned brother judge in para 10 of the decision cited above, was of the view that the notice contemplated under Section 56 of the Act is not a mere notice of information, but it is a decision required to be taken if the condition under sub section (1) of Section 56 is fulfilled and if an application is made for permission under Section 49 as per sub section (3), then the notice shall not have any effect pending determination of the application as per sub section (4) and Section 80 provides for a revision by the Director on application to call for and examine the records of any officer subordinate to him. It is further observed therein that against the refusal to grant permission under Section 49, an appeal is provided for under Section 79 of the Act and a revision is provided for against the proceedings under Section 80 of the Act and there are other remedies available against any decision and the proceedings under the Act. That is why, the learned brother judge in para 14 was of the view that the civil court's jurisdiction is expressly barred by Section 101 r/w Section 49, Section 56 and Section 80 of the Act.

9.As rightly argued by the learned counsel for the second defendant, going by the scheme provided under the Act, the decision if any, taken by the second defendant is liable to be called for by the competent authority as provided under the Act and Civil Court jurisdiction is expressly excluded in respect of such acts. Thus way, the issue involved in the present case relating to the development activity as defined under the Act, is barred to be entertained by the civil court and the suit is clearly not maintainable and the same is rightly decided so by the trial court and the finding of the trial

court insofar as the second defendant is concerned, hence warrants no interference by this court.

10.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

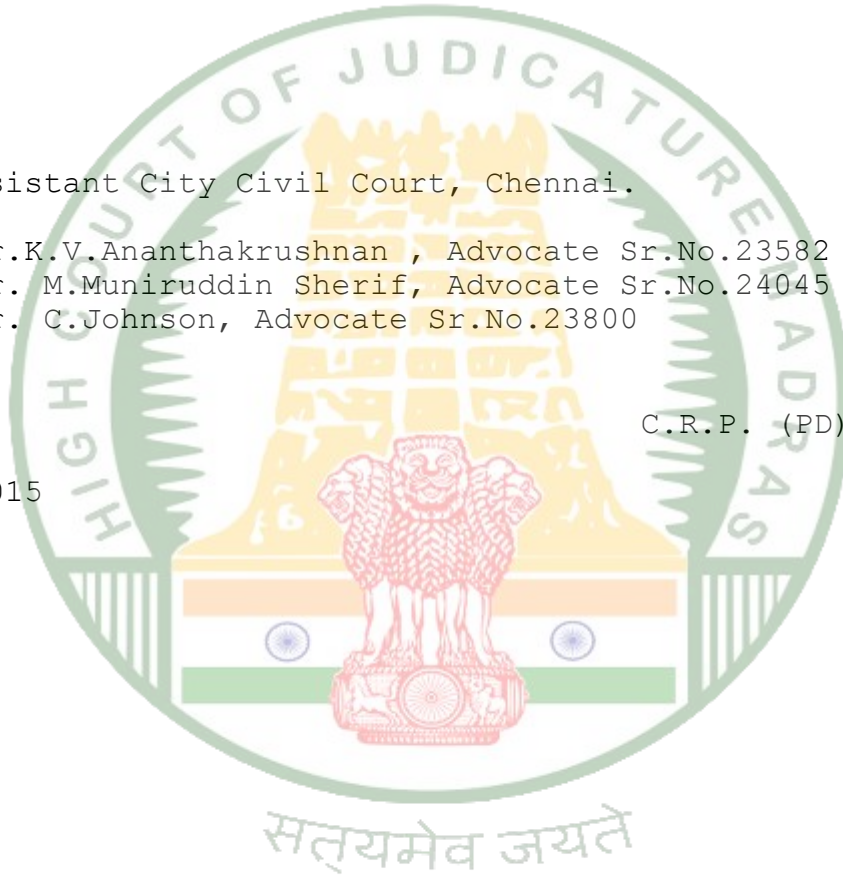
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To
The XI Assistant City Civil Court, Chennai.

1 cc to Mr.K.V.Ananthakrushnan , Advocate Sr.No.23582
1 cc to Mr. M.Muniruddin Sherif, Advocate Sr.No.24045
1 cc to Mr. C.Johnson, Advocate Sr.No.23800

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