

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2016
Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No.27947 of 2015
M.P.No.1 of 2015
and
W.M.P.No.2729 of 2016

Mejuri Residents' Association,
rep. By its Secretary,
Reg.No.167/2014,
No.4, Avalapalli Road,
Hosur - 635 109.

...Petitioner

Vs.

1. The Member Secretary,
Hosur New Town Development Authority,
25/2, Nethaji Road,
Hosur - 635 109.

2. S.C.M. Venkatachalam,

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the first respondent to restore the open space reserved in Survey No.718/2AIC as per the original plan in plan Approval No.12/2011, dated 04.08.2011, and to ensure the new construction put up by the second respondent, in S.No.718/2AIC in accordance with the planning permission granted by the first respondent.

For Petitioner : Mr.N.Senthilkumar

For Respondent-1 : Mrs.M.E.Rani Selvam
Additional Government Pleader

For Respondent-2 : Mr.L.Chandrakumar

O R D E R

The petitioner is a residents' Association of an Apartment, called "Mejuri Residential Apartment". The said Residential Complex is situate at Hosur, and it was developed by the second respondent/developer. The petitioner has come forward with this Writ Petition to direct the first respondent to restore the open space, reserved in Survey No.718/2AIC, as per the original plan, which was approved in plan Approval No.12/2011, dated 04.08.2011.

2. The learned counsel appearing for the petitioner has drawn this Court's attention to the sketch, which were filed at Page Nos.1 and 2 of the typed-set of papers, and submitted that two areas were earmarked for two different purposes. One area, being "Open Space" and the another area for "Future Use". The said "Future Use" area appears to be in south-west corner, and the another area, which is on the north-west corner, has been shown as OSR (open space reservation), measuring 258.00 sq.mts., The allegation is that the second respondent/developer, under the guise of putting up construction in the "Future Use Area", has started construction in the "OSR area". Since the representation given to the authorities did not evoke any response, the petitioner has filed an Original Suit, being O.S.No.115 of 2015, on the file of the District Munsif Court, Hosur, and also taken out an Interlocutory Application, viz., I.A.No.18 of 205, in the said Suit, seeking for interim injunction. It is stated that the Suit is pending trial, and there is no interim injunction granted by the Civil Court. It is only, thereafter, the petitioner-Association have filed this Writ Petition, wherein, they mentioned about the pendency of the Suit. When the Writ Petition was entertained, order of interim injunction was granted on 04.09.2015, recording reasons. Thereafter, when the Writ Petition came up on 08.09.2015, the Court has made certain observation on the perusal of the records, and pointed out that OSR measures 2777 sq.fts., and it is wrongly mentioned as 1713 sq.fts., , which is meant for "Future Use" and shown as separate one. Therefore, the extent, wrongly mentioned as '1713 sq.fts', in para Nos.3 and 4 of the interim order, dated, 04.09.2015 was substituted with '2777 sq.fts'. The learned counsel appearing for the petitioner, therefore, submitted that the authorities are bound to initiate action against second respondent/developer for illegal construction put up by him in "OSR area".

3. The learned counsel appearing for the second respondent/developer submitted that the petitioner cannot invoke parallel remedies, and having filed a suit, and the Civil Court having not granted any interim injunction after contest, they have approached this Court and the Writ Petition is liable to be dismissed. Further, it is submitted that the dwelling houses were constructed in strict adherence with certain plan, which was approved in Approval No.12 of 2011. Furthermore, it is submitted that the construction, which has been put up by the second respondent/developer is not in "OSR Area", but it is in "Future Use Area", for which, the second respondent/developer is entitled to do.

4. During the course of arguments, the learned Standing Counsel for first respondent, the Member Secretary, Hosur New Town Development Authority has submitted that already action has been initiated against the second respondent/developer, and notice has been issued under Sections 56 and 57 of the Town and Country Planning Act, 1971, (the Act), dated 11.01.2016, and the noticees are i) Secretary of the petitioner's Association and ii) second respondent/developer. The copy of such notice has been placed before this Court for reference, from which, it is seen that a site inspection was conducted on 22.09.2015, and it is found that the construction put up at the site is without permission, which is required under Section 49 of the Act, and that, the construction is being proceeding against the planning permission, issued on 04.08.2011, and it is found to be in deviation and violation. There are various issues are pointed in the said notice, dated 11.01.2016, in a tabulated column such as "i) outer dimension, ii) OSR (open space reservation), iii) front setback, iv) pathway, v) south side, vi) north side, vii) back side, viii) height, ix) stilt floor and x) ground floor to third floor. That apart, another notice has been issued on the same date, i.e., 11.01.2016, addressed to the second respondent/developer. This notice pertains to the deviation relating to the outer dimension, and in the remarks column, it is stated that, without the planning permission of the Tamil Nadu Town and Country Planning Act, 1971, the noticee, viz., the second respondent/developer has put up the construction, hence, the noticee is given 30 days' time to restore the land to its original condition as before the construction was made without permission/in contravention to the permission granted or the condition subject to which permission/even after the permission has been duly revoked / in contravention to the permission duly modified.

5. Thus, in the light of the action initiated by the first respondent/Town Development Authority, no orders would be required to be passed in this Writ Petition, and it would suffice to direct the first respondent to proceed strictly in

accordance with law. Till orders are passed by the first respondent, no further construction shall be made by the second respondent/developer.

6. With the above direction and observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Member Secretary,
Hosur New Town Development Authority,
25/2, Nethaji Road,
Hosur - 635 109.

+1cc to M/S.N.Senthilkumar, Advocate, S.R.No.7834
+1cc to M/S.M.E.Rani Selvam, Advocate, S.R.No.7629
+1cc to M/S.G.M.Ananthakumar, Advocate Sr.8390
+1cc to M/S.L.ChandraKumar, Advocate Sr.7719

Writ Petition No.27947 of 2015

sns (CO)
srg (17/02/2016)

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