

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.03.2016

Delivered on : 29.03.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.33013 of 2015
and
M.P.Nos.1 and 2 of 2015

- 1.Alarmel Valli
- 2.Vanitha M
- 3.Sujatha V
- 4.Balachander
- 5.Mohini Sriram

... Petitioners

V.

- 1.The Secretary,
Urban and Housing Department,
Fort St. George,
Chennai - 600 009.
- 2.The Member Secretary,
Chennai Metropolitan
Development Authority,
"Thalamuthu Natarajan Malagai",
Egmore, Chennai - 600 008.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Builidngs, Chennai - 3.
- 4.The Area Engineer,
Old Zone - V, New Zone No.VIII,
Corporation of Chennai,
"Brindavanam",
Shenoy Nagar, Chennai - 30.
- 5.M/s.Ambika Constructions,
Rep. By its Managing Director,
No.16, Narayana Mudali Street,
IV Floor, Chennai - 600 079.

6.Vinod Bansal,
No.452, T.H. Road,
Tondiarpet, Chennai - 600 081.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Mandamus directing the Respondents 1 to 4 to demolish the unauthorised construction at Door No.232 Kilpauk Garden Road, Kilpauk, Chennai - 600 010 being done by 5th and 6th Respondents.

For Petitioners : Mr.C.Ramakrishnan
Senior Counsel
for S.L. Sudarsanam

For 1st Respondent : Mr.P.S.Siva Shanmugasundaram
Special Government Pleader

For 2nd Respondent : Mr.K.Raja Srinivas

For 4th Respondent : Mr.A.Nagarajan

For RR 5 and 6 : Mr.M.L.Ramesh

ORDER

M.VENUGOPAL, J.

The Petitioners have focussed the present Writ Petition praying for passing of an order by this Court in directing the Respondents 1 to 4 to demolish the unauthorised construction at Door No.232, Kilpauk Garden Road, Kilpauk, Chennai - 600 010 being done by 5th and 6th Respondents.

2. Summation of Facts:

(i) According to the Petitioners made a representation dated 21.12.2011 followed by a telegram dated 05.01.2012 to the 2nd and 3rd Respondents complaining about the unauthorised and illegal construction at Door No.232, Kilpauk Garden Road, Kilpauk, Chennai - 600 010. Since no action was taken by the 2nd and 3rd Respondents, they filed W.P.No.11235 of 2012 and this Court on 23.04.2012 had passed the following order:

"After considering the averments made in the Writ Petition, we are of the view that the petitioner shall pursue her representation before the 2nd Respondent, the Commissioner, Corporation of Chennai. In turn, the Second Respondent shall conduct enquiry and after giving opportunity to the Petitioners as well as the private respondents, take appropriate steps in

accordance with law. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petitions are closed."

(ii) Pursuant to the orders passed by this Court in the aforesaid Writ Petition dated 23.04.2012, the 3rd Respondent/Commissioner, Corporation of Chennai directed the Petitioners to appear for an enquiry before him and they appeared on 11.05.2012. In fact, the Petitioners had addressed a detailed representation dated 21.05.2012 pointing out the nine deviations in the unauthorised construction at Door No.232, Kilpauk Garden Road, Chennai - 600 010 for taking appropriate action at the earliest.

(iii) Later, the Petitioners were given to understand that the demolition notice was also issued in respect of the unauthorised construction. Indeed, based on the orders passed by this Court and based on the enquiry, the 3rd Respondent/Commissioner, Corporation of Chennai passed an order to seal the premises during June 2012 and thereafter the premises was sealed.

(iv) During March 2013, the seal placed on the construction site was removed and further, when one of the Petitioners questioned the same, the persons who came to remove the sealing left without giving any notice. Thereafter, from 11.03.2013, there were few construction activities in the said premises. The Petitioners counsel issued a legal notice dated 12.03.2013 addressed to the 2nd Respondent/CMDA, Chennai and others, which was duly acknowledged by the 3rd Respondent. The 5th Respondent had refused the notice and the 6th Respondent issued a reply dated 25.03.2013 stating that they had preferred an Appeal before the 1st Respondent/Secretary, Urban and Housing Department, Chennai under Section 80-A of the Town and Country Planning Act, 1971 and obtained an order to remove the seal and do the rectification works. Based on the orders passed by this Court, the 3rd Respondent/Commissioner, Corporation of Chennai had caused the premises to be sealed on 05.07.2013 thereby stopping all further work in the premises.

(v) The violations committed by the 5th and 6th Respondents cannot be rectified and in fact, the authorities should have demolished the building. Moreover, it was mandatory on the part of the authorities to put the Petitioners on notice for any appeal filed against the Sealing and Demolition Notice. As such, they filed another Writ Petition in W.P.No.10081 of 2013 and this Court was pleased to pass an order directing the 2nd and 3rd Respondents to inspect the premises No.232, Kilpauk Garden Road, Chennai - 600 010 and to file their status report regarding the unauthorised construction, whether it is in accordance with the

Planning Permission and Development Rules for Chennai Metropolitan Area and forward the said Report to the 1st Respondent/ Secretary, Urban and Housing Department, Chennai. That apart, the sealing was effected by the 3rd Respondent/Commissioner, Corporation of Chennai on 05.07.2013.

(vi) This Court on 04.10.2013 in W.P.No.10031 of 2013 at paragraph 29 & 30, had, inter alia, observed the following:

"29. This Court is of the considered view that unless and until, a joint inspection is carried out by the concerned Officials of the Corporation of Chennai as well as the CMDA and the remarks in this regard, are forwarded to the Government, the premises cannot be de-sealed.

30. In the result, this writ petition is disposed of and the officials of the Corporation of Chennai as well as the CMDA are directed to re-inspect the premises in question, to confirm whether the alleged rectification carried out by the respondents 5 and 6, is in accordance with the planning permission and Development Rules for Chennai Metropolitan Area, within a period of four weeks from the date of receipt of copy of this order and forward the said report to the Government within a period of two weeks thereafter. The first respondent on receipt of the remarks, is directed to consider the appeal petition dated 21.05.2013, received on 31.05.2013, strictly on merits and in accordance with law and pass orders thereon within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioners as well as to the respondents 5 and 6. No costs. Consequently, connected Mps are closed."

(vii) All of a sudden, the Petitioners had noticed the commencement of the construction for past few weeks and further the construction activities had re-commenced with breakneck speed for the past three weeks.

(viii) The Petitioners attended the enquiry before the 1st Respondent/Secretary, Urban and Housing Department, Chennai and produced all relevant documents and submitted a detailed representation on 03.02.2014. Subsequently, the Appeal was heard by the 1st Respondent and passed an order of Lock and Sealing. Thereafter, the building was sealed all along. Recently, all of a sudden in the last two weeks, the sealing was removed and the construction activities had commenced without any notice and the deviations were not removed which is in violation of the orders passed by this Court and the order passed by the 1st Respondent.

(ix) The Petitioners were perforced to issue a legal notice dated 14.09.2015 to the 3rd Respondent and the Area Engineer, Old Zone - V, Corporation of Chennai, Chennai requiring them to take appropriate legal action against the 4th and 5th Respondents and further to restore the sealed premises by sealing the premises in obedience of the orders passed by this Court and the orders passed by the 1st Respondent, confirming the Lock and Sealing Notice.

(x) The Petitioners plea is that the physical construction cannot be entirely different or at variance with the sanctioned plan. Ad hoc changes to a sanctioned plan to suit the 5th and 6th Respondents immediate needs cannot be permitted. Furthermore, the Respondents ought to put the Petitioners on strict notice while hearing an Appeal.

3.No counter is filed on behalf of the Respondents 1 to 5.

4.Resume of the Sixth Respondent's Counter:

(i) It is totally false, baseless and incorrect to state that the 6th Respondent had built an illegal construction at No.232, Kilpauk Garden Road, Chennai - 10. The 6th Respondent and four other owners had sought to demolish the old building and wanted to construct a new building at No.232, Kilpauk Garden Road, Kilpauk, Chennai and applied for planning permission for the proposed construction with the 3rd Respondent/Corporation of Chennai.

(ii) The 3rd Respondent had granted planning permission in No.P.P.A.D5/1494/2010 and BA/D5/1679/2010. The planning permission was granted for stilt + two floors. Accordingly, the construction was done comprising of stilt floor, first floor and second floor and terrace floor. There is no violation of floor, F.S.I. Plot coverage of any nature than the sanctioned plan. They had achieved 1.37 F.S.I. only as against 1.48 F.S.I. in the sanctioned plan. No additional floor was constructed other than the stilt first and second floor and terrace floor sanctioned in the plan. The plot coverage is less than 70% sanctioned under the plan. Right from the beginning of the construction, the neighbouring plot owner/s started giving trouble due to the objection raised by them against the 1st Petitioner in encroaching the public road and thereby entrance to his property was affected. Furthermore, the 1st Petitioner intended to purchase the property, which the previous owner had not agreed to sell to her.

(iii) Pursuant to an order passed in W.P.No.11235 of 2012 dated 23.04.2012, an enquiry was conducted by the 3rd Respondent/Corporation of Chennai. The plot is of trapezium shape and therefore, the construction has a minor deviation in side set back to an extent of 0.2 meter hardly measuring less than $\frac{3}{4}$ feet

in structuring the property. The Petitioners, pointing out the same, made the 3rd Respondent/Corporation of Chennai to issue stop work notice and immediately the construction was stopped. In compensation to the setback on the south-west side, additional setback was left in the front side. The construction falls under the category of an ordinary building and is comprised of four residential unit in one block falling on six meter road width.

(iv) Consequent to the order passed by the appellate authority, after noticing the facts, the property was de-sealed, to carry out the rectification's up to the second floor. The rectification work for 1/3rd solid connection between the residential units was completed in stilt floor by joining all the four residential units by attaching 1/3rd length of the residential units as an ordinary building well within the time limit of 90 days granted in the stilt floor and the authorities was informed of the same, but unfortunately the communication went unnoticed as confirmed by the Corporation of Chennai in the counter affidavit filed by it and the building was re-sealed during the course of hearing the Writ Petition. Thereafter, it must be recalled that after the filing of the rectification plan, the officials of the Corporation of Chennai visited the property and filed a report to the appellate authority.

(v) As a matter of fact, the appellate authority, even in the rectification plan, directed certain other modifications to be made and the rectifications were carried out and a revised plan for regularisation was submitted before the 2nd Respondent on 08.07.2015. The planning permission was granted for construction of four residential units. The sanctioned FSI was 1.48 m, as per the rectification plan there is no violation in FSI as per the development rules. No additional floor was constructed in violation of the sanctioned plan.

(vi) The 1st Respondent/Secretary, Urban and Housing Department, Chennai in Letter No.15422/UD-VI/2012 dated 21.05.2015 had passed an order and directed the 3rd Respondent/Corporation of Chennai to de-seal the building for three months for the purpose of rectification of the deviations and to restore the building as per the approved plan. Pursuant to the order dated 31.07.2015, the 3rd Respondent/Commissioner, Corporation of Chennai had ordered the 4th Respondent/Area Engineer, New Zone - VIII, Corporation of Chennai, Chennai to de-seal the property. After carrying out the rectification on 15.10.2015, an affidavit of compliance was filed with the plan for regularisation of the small deviations.

5. Petitioners' Contentions:

(i) The Learned Senior Counsel for the Petitioners submits that when the present Writ Petition is pending, the 1st Respondent had exceeded his jurisdiction by passing an order on 01.02.2016 granting exemption to all the violations committed by the 5th and 6th Respondents. As such, the order dated 01.02.2016 passed by the 1st Respondent is per se an illegal one.

(ii) The next limb of contention of the Learned Senior Counsel for the Petitioners is that during the hearing of the Writ Petition, no one can in Law intercede with the proceedings, which means the entire Writ Petition gets vitiated affecting the Petitioners.

6. Submissions of the 1st Respondent:

(i) In response, the Learned Special Government Pleader for the 1st Respondent submits that the 3rd Respondent/Corporation of Chennai had issued notice of de-occupation to the 6th Respondent and that the 6th Respondent made a representation before this Court that the property was not occupied at any point of time and this Court passed an order for re-sealing of the property. Furthermore, the 3rd Respondent/Corporation of Chennai had sealed the property again and based on the direction of this Court, an inspection was conducted by the 3rd Respondent/Corporation of Chennai and the 2nd Respondent/Chennai Metropolitan Development Authority and a report was filed by the 1st Respondent in this regard.

(ii) The Learned Special Government Pleader for the 1st Respondent brings it to the notice of this Court that the report and all the papers relating to the planning of the 6th Respondent were placed before the Appeal Committee and the said Committee, considering the aspect of deviations, found that there was no major deviation such as violation of Floor Space Index unlawful or unauthorised additional constructions, total violation of the set back space and also the four buildings were connected with each other, it could not be construed as a group housing, had recommended to allow the Appeal with certain conditions viz., to remove the masonry wall in a stilt floor and to convert it as seven car parking. Subsequently, considering the Development Regulation Rules, 2026 invoking Rule 25 of the said Rules, certain exemptions were extended to the 6th Respondent's building. In fact, it was considered that the setback space on the northern side and southern side of building is of -0.20 and -0.30 meters respectively.

(iii) Besides the above, it is represented on behalf of the 1st Respondent that considering the fact an excess of Setback Space was provided on the eastern side of the building is +0.70 meters and on the western side, the correct setback space was left and also taking note of the fact that a plot is in trapezium shape plot and the minor deviations of -0.30 meters could not be avoided and the extent of the road was considered

as 6 feet. As such, only after considering all the aspects and applying the mind consciously the Appeal Committee had recommended to allow the Appeal before the 1st Respondent and quite in tune with the recommendations so made, the Appeal projected by the 6th Respondent and four others under Sections 79 & 80-A of the Tamil Nadu Town and Country Planning Act, 1971 was allowed and an order was passed in G.O.(3D).No.38 dated 01.02.2016.

Pleas of the 5th and 6th Respondents:

7.The clear-cut stand of the 5th and 6th Respondents is that the Appeal Committee, on scrutiny of the report and all the papers relating to the plan of the subject matter in issue of the property in question were placed before the Appeal Committee of the 2nd Respondent/CMDA and after taking into account of the same, had recommended to allow the Appeal before the 1st Respondent. Ultimately, the 1st Respondent allowed the Appeal filed by the 6th Respondent under Sections 79 and 80-A of the Tamil Nadu Town and Country Planning Act, 1971 and an order was issued in G.O.(3D).No.38, Housing and Urban Development (UD-V) Department, dated 01.02.2016.

Judicial Review:

8.It is to be borne in mind that a Court of Law is to exercise its restraint while exercising powers over executive functions in its Writ jurisdiction. Certainly, the Court can step in where there is complete lack of reasons or total non application of mind, in the considered opinion of this Court.

9.Also that, a Court of Law will interfere when the administration had acted with bad faith or it took a decision on irrational, irrelevant or ulterior considerations and/or for non-compliance with the prescribed procedure where an interference is an obligation on the part of a Court of Law, then, it cannot either absolve or abdicate its duty.

10.At this stage, it is to be relevantly pointed out that 'Fairness' in the procedure will be poignant where the decision maker provides a personal hearing thereby giving an opportunity to the concerned to put forward their case. It is to be remembered that the salient features of 'Fair Hearing' are 1) issuance of prior notice; 2) right to make representation; 3) right to be heard. In this regard, this Court points out the decision of the Hon'ble Supreme Court in O.P.Gupta V. Union of India and others reported in AIR 1987 Supreme Court 2257 at special page 2264, wherein it is observed that '..... there is no presumption that the Government always acts in a manner which is just and fair.'

11.As a matter of fact, in the decision Ridge V. Baldwin, (1964) AC at page 40, it is held as follows:

"Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: It need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty into act judicially is implicit in exercise of such power."

12.Also, in the decision *Susannah Sharp v. Wakefield and others*, (1891) AC 173, it is observed as follows:

"'Discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular."

Glimpse of Decisions:

13.At this stage, this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, cites the following decisions:

(i) In the decision *R. Antony Doss and another V. The State of Tamil Nadu and another* reported in 1991 (II) MLJ at page 486 and at special pages 489 & 490, whereby and whereunder, at paragraphs 10 & 11, it is observed and held as under:

10. We have taken care to compare the language in Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, with that of Section 91, where delegation of powers is contemplated. Section 91 says that the Government or the Director may, by notification, authorise any officer or authority to exercise any of the powers vested in them or him by this Act, except the power of the Government to make rules and the power of the Director to hear any appeal preferred under Section 76. Whereas in Section 76, the power to hear appeal is vested in the prescribed authority, and not the State Government. So, there is no authority, and not the State Government. So, there is no authority given to the State Government to hear any appeal under Section 79 of the Act. The State Government may become the prescribed authority only when by prescription of law or notification issued in exercise of the rule-making powers of the

State Government, the appellate power to hear appeals under Section 79 is given to the State Government. That is how the Courts in India have distinguished between the power vested by an Act and the power vested under an Act. Be that as it may, we are satisfied that the instant case is one in which Appeal Committee had no jurisdiction to but in and since the impugned order is based upon the report of the Appeal Committee, the same is without jurisdiction.

11. For the above reason alone, we are inclined to set aside the order of the learned single Judge in W.P.No.8838 of 1991, dated 28.6.1991 and quash G.O.Rt.No.288, Housing and Urban Development Department, dated 29.5.1991. On the facts of this case, however, we remit the case to the prescribed authority for rehearing and disposal in accordance with law. While saying so, we make it clear that we are in agreement with the view expressed by the learned single Judge that Sec.79 of the Act does not contemplate an oral hearing. With the direction as above, the appeal is accordingly allowed. There will be no order as to costs."

(ii) In the decision *Mrs.Nalini Chidambaram and others V. State of Tamil Nadu rep. by its Commissioner and Secretary to Government, Housing and Urban Development, Fort St. George, Madras-600 009 and others* reported in 1990 V(1) MLJ at page 222 and at special pages 228 to 231, it is held that 'It is enough if the petitioners are able to show that they have got enough interest in the matter.'

(iii) In the decision *S.Shanmugha Velaudasamy Gounder V. State of Tamil Nadu and others* reported in 2002 (3) MLJ at page 538 and at special page 539 and 540, wherein at paragraphs 9 & 10, it is observed and held as follows:

"9. Apart from that, in the cases granting exemption, the Supreme Court laid down the principles as to how the authority should act. In a recent judgment in the case of *Consumer Action Group v. State of Tamil Nadu and another*, Air 2000 SC 3060. It is also a case of dealing with the powers under Section 113 of the Town and Country Planning Act. The Apex Court has said that even if

the section is silent about the recording of reason, it is obligatory on the part of the Government, while passing orders under Section 113 of the Town and Country Planning Act to record the reason in the following terms :

"When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz., the public and the individual. So long it does not materially effect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health, etc. the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may be in a given case, be justified but in no case effecting the public at large. So every time Government exercises its power it has to examine and balance this before exercising such a power. Even otherwise every individual right including fundamental right is within reasonable limit but if it inroads public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted effecting public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, Government must keep in mind, whether such a grant would recoil on public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal

compared to the hardship of an individual that may be considered for granting. Such an application of mind has not been made in any of these impugned orders. Another significant fact which makes these impugned orders illegal is that Section 113 empowers it to exempt but it obligates it to grant subject to such condition as it deems fit. In other words, if any power is exercised then Government must put such condition so as to keep in check such person. We find in none of these sixty-two orders any condition is put by the Government. If not this then what else would be the exercise of arbitrary power.

We find in the present case, under the garb of its wide power, it has exercised it illegally and arbitrarily beyond its powers vested under the said section without application of mind. We heard both learned counsel for the State and other affected respondents. They could not submit anything for us to draw inference contrary to the above. Thus after examining each of said G. Os.. In view of the finding recorded above, all these 62 G. Os. are not sustainable in law and are hereby quashed."

10.If the above principle is taken as a guideline to decide the case on hand, this Court has no hesitation to come to the conclusion that the impugned order is nothing but an arbitrary exercise of power by the first respondent, especially when the impugned order does not reveal any reason for the grant of exemption. Hence, the impugned order is liable to be quashed on the ground of non-application of mind also."

(iv) In the decision Esha Ekta Apartments Co-operative Housing Society Ltd., and others V. Municipal Corporation of Mumbai and others reported in 2013 (5) SCC at page 357 and at special page 359, the Hon'ble Supreme Court had observed the following:

"In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the

task of ensuring implementation of the Master Plan, etc., have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that the Supreme Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

(v) In the decision *Salahudeen Babu V. P.T.Prabhakar and 3 others* reported in 2005 (1) Law Weekly at page 643 and at special page 649, wherein at paragraph 7, it is observed as under:

"7.It is indeed lamentable that in our country building rules and regulations are being flouted left and right by persons who think that they are above the law because they have money or some high post. Time has come that a clear message must be given that the building rules do not exist merely on paper but will be strictly enforced to forthwith demolish any construction made in violation of the rules. Unless that is done a wrong impression will be created and a wrong message sent that the building rules exist only on paper and are not to be taken seriously."

Also, in the aforesaid decision at page 651, at paragraph 17, it is observed as follows:

"17.If there are rules, they have to be followed otherwise there is no use having rules at all, and the rule of law will collapse in this Country and the rule of the jungle will prevail. Time has come that every one must know that the building rules and bylaws will be strictly enforced by this Court and any deviations made therefrom shall result in orders of demolition forthwith."

(vi) In the decision of the Hon'ble Supreme Court in *Pratibha Co-operative Housing Society Ltd., and another V. State of Maharashtra and others* reported in AIR 1991 Supreme Court at page 1453 and at special pages 1455 & 1456, wherein at paragraphs 6 and 7, it is, among other things, observed as under:

"...We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents ... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bylaws made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the Citizens to obey and follow such rules which are made for their own benefits."

Discussions:

14. At the outset, it is to be pointed out that the Petitioners sought for passing of an order by this Court in directing the Respondents 1 to 4 to demolish the unauthorised construction at Door No.232, Kilpauk Garden Road, Kilpauk, Chennai being done by the 5th and 6th Respondents. In this connection, the plea of the Petitioners is that the physical construction cannot be entirely different or at variance with the sanctioned plan. Also, the stand of the Petitioners is that ad hoc changes to a sanctioned plan to suit the 5th and 6th Respondents immediate needs cannot be permitted.

15. Repelling the contentions of the Petitioners, it is represented on behalf of 5th and 6th Respondents that the 6th Respondent had filed an Appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 challenging the sealing of the property and the simultaneous Appeal was filed for regularisation in respect of minor deviation before the 2nd Respondent/CMDA and that the 2nd Respondent dismissed the Appeal, against which an Appeal was filed under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 before the concerned authority and further that, the Appeal Committee of the 2nd Respondent had directed the 6th Respondent to approach the 1st Respondent for regularising of minor deviations and to seek permission for de-sealing the property to carry out the correction and that the de-sealing of the property was ordered. Feeling aggrieved against the order of de-sealing the property, the Petitioners filed W.P.No.10081 of 2013 wherein this Court on 04.10.2013 had directed to consider the Appeal filed by the 6th Respondent and after inspection of the property as to the

rectification of deviations filed a report to the Government and thereafter to pass appropriate orders in Appeal. At this stage, it is to be remembered that only on the request of the 6th Respondent and on his representation, the de-sealing of the property was done to carry out the rectification of minor deviations. Only at that point of time, the present Writ Petition is filed.

16.It comes to be known that pursuant to the orders passed by this Court on 23.04.2012 in W.P.No.11235 of 2012 and the order dated 04.10.2013 in W.P.No.10081 of 2013 [filed by the Petitioners], this Court on 15.10.2015 in W.P.No.33013 of 2015 had directed the 3rd Respondent/Corporation of Chennai to cause an inspection forthwith and submit the action taken report within a period of two weeks and directed the matter to be listed on 27.12.2015. The 4th Respondent/ Area Engineer, New Zone VIII, Corporation of Chennai - 30 had filed a report on 27.10.2015 inter alia stating that as per the direction of the Secretary, Housing and Urban Department, Chennai (1st Respondent) dated 21.05.2015, the Regional Deputy Commissioner (Central) Region through his proceedings dated 31.07.2015 [Regional Central/ TPENF/E1/8759/2015] had passed an order to de-seal the premises and further that, on 08.08.2015 the said premises was sealed for a period of three months time which expires on 08.11.2015 and that further action would be taken as per the Tamil Nadu Town and Country Planning Act, 1971.

17.It is to be noted that on 03.11.2015 this Court in W.P.No.33013 of 2015 had passed an order, among other things, mentioning that the 3rd and 4th Respondents seeks some more time to remove the deviations and unauthorised constructions and submit a report on or before 17.11.2015 and directed the Writ Petition to be called on 19.11.2015. The 4th Respondent filed a report dated 17.11.2015 stating that after the expiry of the time granted by the appellate authority, the Executive Engineer, Enforcement (Central Region) had issued a de-occupation notice to the 6th Respondent, through speed post on 17.11.2015 and the copy of the notice was also affixed on the premises of the 6th Respondent, under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971.

18.In this connection, it is to be pertinently pointed out that on 19.11.2015 this Court passed a further order in the Writ Petition by granting three days time to Respondents 2 and 4 to seal the property and to file a report. The 4th Respondent had filed a report dated 25.11.2015 stating that only on 25.11.2015, the premises was locked and sealed. Besides the above, this Court posted the Writ Petition on 08.12.2015 for final consequential action taken report and on 08.12.2015 this Court granted two weeks time to the 3rd Respondent/ Corporation of

Chennai to comply with its earlier direction and in fact, the 5th and 6th Respondents were directed to co-operate with the Corporation for removal/demolition of the unauthorised portion.

19.It may not be out of place for this Court to make a significant mention that on 02.02.2016 this Court in the Writ Petition had passed an order permitting the 2nd and 3rd Respondents to de-seal the stilt floor alone forthwith to carry out the direction of the 1st Respondent and further observed that other floors shall continue to be locked and sealed till the next date of hearing and directed the matter to be posted on 16.02.2016. This Court, on 02.03.2016 in the Writ Petition, had passed an order in directing the 3rd Respondent/Corporation of Chennai to inspect the property in question and submit a report in regard to the compliance of undertaking given by the 5th Respondent by demolishing the deviated portion and posted the matter for filing report on 14.03.2016. The 4th Respondent submitted a report dated 08.03.2016 stating that the Corporation officials inspected the site on 08.03.2016 and found that the 5th and 6th Respondents had demolished the walls as the per the Government Order on 01.02.2016.

20.For better and fuller appreciation of the aforesaid Government Order, the relevant portions of the order beginning from paras 24 to 26 run as under:

"24.The Government examined the appeal along with the connected original records of Chennai Metropolitan Development Authority. After careful examination, the Government have decided to accept the recommendations with condition thereon of the Appeal Committee at para 23 above. Accordingly, the Government allow the appeal preferred by Thiru.Vinod Bansal & 4 others under Section 80-A/79 of Tamil Nadu Town and Country Planning Act, 1971 against the locking and re-sealing of the premises of Part Stilt + Part Ground Floor + Ground Floor + 2 Floor Residential building with dwelling unit at Old Door No.232, New Door No.27, Kilpauk Garden Road, Kilpauk by the Executive Engineer-VIII, Corporation of Chennai and refusal of Planning Permission for regularisation of the building by Chennai Metropolitan Development Authority respectively and accordingly, the appellant is directed to restore the stilt floor for parking only without any masonry wall enclosure and to provide ramp to reach the stilt floor parking. The Corporation of Chennai is directed to desal the premises

for above rectification work by the appellant within a month with the condition that the premises shall not be put to use. If Floor Space Index achieved exceeds the permissible Floor Space Index, then the appellant has to pay the Premium Floor Space Index Charges.

25.The Government also exempt the building from the provisions of Development Regulation Rule 25(c) relating to Minimum Road width; Development Regulation 25(D) relating to Maximum Height; Development Regulation 25(G) (i) (ii) & (iii) relating to Front Set Back, Side Set Back (South & North), Rear Set Back of Second Master Plan for Chennai Metropolitan Area 2026. The appellant is also directed to provide the feasible car parking of 7 cars by re-arranging the parking requirements as per the norms.

26.On satisfaction of the above stipulated conditions, the Member Secretary, Chennai Metropolitan Development Authority is directed to issue planning permission to the said building as per existing procedures."

Findings:

21.On a careful consideration of respective contentions and also on going through the order in G.O(3D).No.38, Housing and Urban Development (UD-V) Department, dated 01.02.2016 passed by the 1st Respondent, in allowing the Appeal filed by the 6th Respondent and four others, admittedly, the Petitioners were not heard. In this connection, this Court makes a pertinent and useful reference to the Section 79 (3) of the Tamil Nadu Town and Country Planning Act, 1971 which runs as follows:

"79(3) In disposing of an appeal, the perscribed authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the prescribed authority may deed fit."

22.In the instant case, although the Petitioners have projected the present Writ Petition as aggrieved persons and the same being per se maintainable before this Court, they need not be given the personal hearing to be heard, because of the simple reason that Section 79(3) of the Act does not specify 'Personal Hearing' to be given.

23.It cannot be gainsaid that the 1st Respondent, in the order dated 01.02.2016 in G.O.(3D).No.38, while allowing the Appeal filed by the 6th Respondent and four others and making observations therein (vide paragraphs 24 and 25), had not ascribed reasons much less justifiable or acceptable to satisfy the subjective conscience of this Court, in accepting the Appeal Committee's Recommendations (as referred to in paragraph 23 of the order dated 01.02.2016). In short, a mere running of the eye over the contents of the paragraph 24 of the order dated 01.02.2016 in G.O.(3D).No.38 passed by the 1st Respondent unerringly point out that the 1st Respondent had merely straight away arrived at a conclusion to the effect that 'After careful examination, the Government have decided to accept the recommendations with condition thereon of the Appeal Committee at para 23 above. etc.' and as such, in the considered opinion of this Court, the said order is a cryptic one, like the face of a inscrutable sphinx, [without there being an outlining of process of reasoning as to how the 1st Respondent had accepted the recommendations of the Appeal Committee]. As such, the order of the 1st Respondent dated 01.02.2016 is not legally tenable.

24.Coming to the aspect of the Government exempting the building from the provisions of the Development Regulation 25(c) etc. (mentioned in para 25 of the order dated 01.02.2016), it is to be borne in mind that in Law, the power of granting exemption of building rules, regulations or requirements of conditions imposed in the Tamil Nadu Town and Country Planning Act, 1971 has to be pressed into service with utmost care, caution and circumspection, bearing in mind the prime fact that the building rules and regulations exist for the same being adhered to by the concerned. As a matter of fact, the State Government cannot deviate from the procedure prescribed and further, the power of the Government to exempt any land or building etc., from the provisions of the Tamil Nadu Town and Country Planning Act, 1971 or rules or regulations made thereunder as per Section 113 of the Act, cannot be exercised freely. In the present case, even in paragraph 25 of the order dated 01.02.2016 of the 1st Respondent which pertains to the Government exempting the building from the provisions of the Development Regulation Rule 25 (c) relating to Minimum Road width etc., the same is also bereft of valid reasons being assigned thereto, relating to the grant of exemption. On this score also, the order of the 1st Respondent dated 01.02.2016 is incorrect, in the eye of Law.

25.In the upshot of detailed discussions as mentioned supra, this Court sets aside the order of the 1st Respondent in G.O. (3D).No.38, Housing and Urban Development (UD-V) Department, dated 01.02.2016 and remits back the matter to the 1st Respondent for fresh consideration/rehearing and disposal in a dispassionate manner and in accordance with Law.

Result:

26.In fine, the Writ Petition is disposed of. No costs. The 1st Respondent is directed to consider the Appeal filed by the 6th Respondent and four others afresh and to pass a reasoned speaking order on merits and in accordance with Law, within a period of six weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Secretary,
Urban and Housing Department,
Fort St. George,
Chennai - 600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
"Thalamuthu Natarajan Malagai",
Egmore, Chennai - 600 008.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Builidngs, Chennai - 3.
- 4.The Area Engineer,
Old Zone - V, New Zone No.VIII,
Corporation of Chennai,
"Brindavanam",
Shenoy Nagar, Chennai - 30.

+1cc to M/s. S.R. Sumathy, Advocate, S.R.No.19437
+1cc to M/s. K. Raja Shrinivas, Advocate, S.R.No.19957
+1cc to M/s. S.L. Sudarsanam, S.R.No.19339
+1cc to M/s. G. Kumud Jhabakh, Advocate Sr.19313

PPA(CO)
EU(01/04/2016)

W.P.No.33013 of 2015