

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.11.2016

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.21497 of 2012
and M.P.No.1 of 2012

M/s.Ananyakrishnaa Constructions (P) Ltd.,
No.28C, Paneer Selvam Salai,
K.K.Nagar, Chennai 600 078
Represented by its
Managing Director Y.Gangathar ... Petitioner

Vs

1.The Chennai Metropolitan Development Authority,
Rep.by its Managing Director,
No.1, Gandhi Irvin Road,
Egmore, Chennai 600 008.

2.The Corporation of Chennai
Rep.by its Commissioner,
Rippon Buildings, Chennai 600 003.

3.The Tamil Nadu Housing Board,
Rep.by its Chief Executive Officer,
Anna Salai, Nandanam,
Chennai 600 035.

4.S.Jayaraman

(R4 Impleaded as per order dated 8.1.2013
by VPDJ in M.P.No.2 of 2012 in W.P.No.21497/12)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance a writ of Mandamus directing the respondents 1 and 2 to entertain, consider and grant the approval to the demolition and reconstruction, planning permit and building approval for the new construction comprised in S.No.220 part & 223 Part T.S.No.2(Part), of Kodambakkam Village, bearing Block No.B at 56th Street, Ashok Nagar, Chennai 600 083, the site measuring 6360 sq.ft.without insisting the NOC from the third respondent or any other

authority so long as the proposed new construction is in accordance with the development rules.

For Petitioner: Mr.S.Muthuraman
For R1 : Mr.P.Tamil Mani
Standing Counsel for CMDA
For R2 : Mr.A.Nagarajan Standing Counsel
for Corporation
For R3 : Mr.V.Anandhamurthy Standing Counsel
for TNHB
For R4 : Mr.T.S.Baskaran

O R D E R

The petitioner seeks for a direction to the first respondent to consider and grant approval for demolition and reconstruction, planning permit and building approval for the proposed construction in S.No.220 Part & 223 T.S.No.2 (Part) of Kodambakkam Village, bearing Block No.B at 56th Street, Ashok Nagar, Chennai 83 .

2.It is the case of the petitioner that he is a promoter engaged in building construction. During the course of his business, he has taken up the subject property for development and consequently, consent letters were obtained from all the owners of B-Block and copies of the same are enclosed in the typed set along with this petition.

3.It is the further case of the petitioner that the respondents 1 and 2 did not process the application of the petitioner seeking approval, on the ground that the petitioner was required to produce " No Objection Certificate"from the third respondent. Challenging the said requirement, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner would submit that No Objection Certificate is not mandatory for the purpose of development of a residential property.

5. However, Mr.T.S.Baskaran, learned counsel for the 4th respondent would submit that he had never given a consent for development of the subject property after demolition and reconstruction and that the letter dated 21.02.2012 is only a formal in-principle consent for the promotion of the new project. The learned counsel further submit that the signature found in the actual application for approval was forged.

6. It is true that the Full Bench of this Court in the decision reported in 2013(3) CTC 129, Tamil Nadu Housing Board

rep.by its Managing Director, Anna Salai, Nandanam, Chennai 600 035 vs. Mary Rani Immanuel and Others, has held that "The Tamil Nadu Housing Board need not be approached for obtaining " No Objection Certificate" for demolition of the existing Flats for putting up new construction." However, in paragraph-19 of the same decision, the Full Bench had also observed that express concurrence of all the owners of the building should be obtained before any proposal for demolition is made. For better appreciation, Paragraph-19 of the said Judgment reads as follows:

19.However, we may add that the allottees or the Subsequent Purchasers from the Allottees shall not convert the residential blocks into commercial one. Further, there cannot be any demolition of the existing Flats and construction of new flats without concurrence or acceptance of all the Allottees or the Subsequent Purchasers of the said block where there is a proposal to demolish the existing superstructure and put up new construction.

7. In view of the above observation, it is made clear that the concurrence of all the owners of the building has to be obtained for the purpose of processing the application for demolition and new construction by the respondents.

8.At this juncture, the learned counsel for the respondents would further submit that the petitioner had filed a suit in O.S.No.3229 of 2015 seeking for mandatory injunction directing the 4th respondent to execute a power of attorney/Joint Commissioner Agreement on the basis of the consent letter dated 21.02.2012 and the same is still pending.

9.I am of the view that any order passed in this writ petition, giving a direction to the respondents to process the application without consent letter from the 4th respondent would have direct bearing on the suit. Hence, no positive direction could be granted as prayed for in the present writ petition. Hence, the writ petition is liable to be dismissed.

10.However taking into consideration that the other inmates of the B-Block have already given their consent and it is only the 4th respondent who has been refusing to give his consent letter, there shall be a direction to the learned Judge of III Assistant City Civil Court to complete the suit in O.S.No.3229 of 2015 as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

With the above direction, this writ petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
The Chennai Metropolitan Development Authority,
No.1, Gandhi Irvin Road,
Egmore, Chennai 600 008.
2. The Commissioner,
The Corporation of Chennai
Rippon Buildings, Chennai 600 003.
3. The Chief Executive Officer
TamilNadu Housing Board,
Anna Salai, Nandanam,
Chennai 600 035.
4. The III Assistant Judge,
City Civil Court, Chennai.

+2cc to Mr.T.S.Baskaran, Advocate Sr.62677
+1cc to Mr.S.Muthuraman, Advocate Sr.62387
+1cc to Mr.V.Anandha Murthy, Advocate Sr.62947

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