

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition Nos.37756 to 37759 of 2015
and connected MPs

L.Balaji	...Petitioner in W.P.37756/2015
P.Shanmugasundaram	...Petitioner in W.P.37757/2015
L.Prabhakar	...Petitioner in W.P.37758/2015
Maheshbabu	...Petitioner in W.P.37759/2015

Vs.

1.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008

2.M/s.Emmar MGF Land Ltd.,
Door No.75, Vaidyanathan Mudali Street
Tondiarpet, Chennai-600 079

3.The Tamil Nadu Pollution Control Board
950/1, P.H.Road, Arumbakkam
Chennai-600 106

...Respondents
in all the above Writ Petitions

Common Prayer in all the above W.Ps.37756 to 37759/2015:-Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to take appropriate action against the 2nd respondent herein and lock and seal the additional construction of 7 blocks of Multi storeyed Building at Door No.75, Vaidyanathan Mudali Street, Tondiarpet, Chennai-600 079 in R.S.No.3936/1, 3938/1&3, 3940 of Tondiarpet Village in the light of the Locking and Sealing and demolition notice issued by the 1st respondent in proceedings Letter No.EC/CCW/N&C/10029/2014 dated 11.07.2014 to the 2nd respondent.

For Petitioners	: Mrs.Hema Murali Krishnan
For respondents	: Mr.K.Raja Srinivas,
	Standing counsel for R1

No appearance for R2
Mrs. H.Yasmeen Ali for R3

COMMON ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

These Writ Petitions are filed praying to issue a Writ of Mandamus, directing the 1st respondent herein to take appropriate action against the 2nd respondent herein and lock and seal the additional construction of 7 blocks of Multi Storeyed Building at Door No.75, Vaidyanathan Mudali street, Tondiarpet, Chennai-600 079 in R.S.No.3936/1, 3938/1&3, 3940 of Tondiarpet Village in the light of the Locking & sealing and demolition Notice issued by the 1st respondent in proceedings Letter No.EC/CCW/N&C/10029/2014 dated 11.07.2014 to the 2nd respondent.

2. In the accompanying affidavit filed in support of the Writ Petitions, it is averred that the 2nd respondent-M/s.Emmar MGF Land Ltd., planned to put up an apartment complex consisting of 536 dwelling units with a total built up area of 99,143.32 sq.m., comprised in 24 blocks with four floors of 22 flats each and also obtained planning permission in Permit No.2979 dated 23.03.2007 from the 1st respondent for the same. During the year 2011, the 2nd respondent constructed 344 flats as a part of Phase 1 of the project and the petitioners herein have purchased one flat each.

(ii) It is further stated that the 2nd respondent altered its plans of construction and sought to construct 422 flats instead of the balance 192 flats. The 2nd respondent filed application under the "EWS" Scheme to the Government and sought to revise the existing planning permit No.2979 dated 23.03.2007 in respect of Blocks 14 to 17 and 20 to 22, whereby instead of constructing the remaining 192 dwelling units in blocks of four floors each, the 2nd respondent sought permission to construct 422 flats in these blocks comprising of stilt plus seven floors. The 1st respondent granted revised planning permission in permit No.5935 dated 12.01.2011 for the same. However, for this purpose, the 2nd respondent removed some of the columns in the stilt floor, thus weakening the structure. The 1st respondent herein inspected the site on 03.07.2014 and 04.07.2014 and found that the construction by the 2nd respondent was in deviation to the approved plan in terms of size, location and spacing and some of the columns were removed. Therefore, the 1st respondent issued locking and sealing and demolition notice in Letter No.EC/CCW/N&C/10029/2014 dated 11.07.2014 to the 2nd respondent herein calling upon the 2nd respondent to restore the building as per the approved plan. Despite the said notice issued by the 1st

respondent, the construction activities by the 2nd respondent have continued; repeated complaints to the officers of the 1st respondent have evoked no response and rather people like the petitioner have only been stone walled by the 1st respondent; the unauthorized and illegal construction by the 2nd respondent and the dangerous results due to removal of columns has also been highlighted in the newspapers, but failed to move the concerned officials.

(iii) It is stated that the petitioners moved the National Green Tribunal, Southern Zone for appropriate action against the 2nd respondent and the application was numbered as Appl.No.293 of 2014. Before the National Green Tribunal, the 2nd respondent filed reply and it is stated that they had commenced construction activities without obtaining any clearances and in fact even the Environmental Clearance that the 2nd respondent has produced was obtained by the 2nd respondent only after filing of the case by the petitioners in the National Green Tribunal. It is the further case of the petitioners that the 2nd respondent has not obtained "consent for establishment" from the 3rd respondent i.e, the Tamil Nadu Pollution Control Board. Thus, according to the petitioners, the construction of additional 422 dwelling units by the 2nd respondent is unauthorized and thus sought for appropriate action against the 2nd respondent.

3. In the common counter affidavit filed by the Chennai Metropolitan Development Authority-1st respondent, it is stated that in the light of the Locking & sealing and demolition notice issued by them, Permission was issued in Lr.No.1969 of 2010 dated 11.01.2011, for the construction of special building Block "A" -13 Nos, Block "B" -2 Nos., & Block "C" -3 Nos., and MSB Building of EWS Block-14 (Ground Floor + 6 floor), Block E-15, E-16 (stilt + 7 floors), Block G-17 (stilt + 7 floors), Block 20, 21 (Stilt + 7 floors), BlockD-22 (stilt + 6 floors), Club house residential building for 422 dwelling units. Subsequently, the applicant/2nd respondent has applied for renewal of Planning Permission for the additional construction of Multi Storeyed Residential Buildings, Block 7 Nos., (EWS Block No.14- (Ground Floor + 6 Floors), Block No.D-22 & G-17 (Stilt + 6 floors) Block No.E15, Door No.20, 21 & F16 Stilt + 7 Floors) with 422 dwelling units over the earlier approved special buildings & Club house -17 blocks with 344 dwelling units, totally 766 dwelling units at S.No.3963/1, 3937/1, 3938/1 & 3, 2940/1, Tondiarpet Village, New Door No.75, Vaidhiyanathan Mudali Street, Chennai-18, was approved in Letter No.C3(N) / 21130/2013 dated 25.04.2014. It is also stated that so far, the 2nd respondent-M/s.Emmar MGF obtained partial Completion Certificate for existing 16 Blocks of Special Buildings and one Club House out of 24 Blocks. It is stated that the partial completion certificate for Block G17 & E15 as per Development

Regulations and as per completion Certificate Norms and in view of above partial completion certificate for blocks G17 & E15 could be considered after collection of additional Development Charges and I&A charges for the additional area constructed and CC1, CC2 and CC3 certifications. Further the consent order from the Chairman, Tamil Nadu Pollution Control Board has to be obtained and furnished along with the revised plans with reference to Environmental

Clearance obtained in letter dated 17.03.2015. If all the conditions for issue of Completion Certificate are complied, the completion certificate will be issued and the question of Locking and Sealing of the additional construction will not arise.

4. The 3rd respondent-Tamil Nadu Pollution Control Board has also filed its Report stating that the Unit of M/s.Emaar MFG Land Ltd.,-2nd respondent has obtained Environmental Clearance for its residential construction project at S.F.No.3936/1, 3937/1, 3938/1 & 3940/1, Tondiarpet village Fort-Tondiarpet Taluk, Chennai, vide GOI, MOE&F letter No.21-849/2007-1 A III dated 15.07.2008 for a plot area of 55930.09 sq.m., total built up area of 99143.32 sq.m., with total 536 flats. It is further stated that Consent to Establish was issued to the facility of M/s.Emaar vide Board's Proceeding dated 05.02.2010 under Water & Air Acts for the Residential complex of 99143.32 sq.m, (536 flats) Sewage: 358KLD. It is also stated that unit was inspected on 09.12.2014 and the unit has earlier obtained Environmental clearance for a total flat of 536 flats and consent to operate was issued to Phase-I for 344 flats. It is further stated that the unit has applied for fresh consent to establish for the Phase-2 project on 05.10.2015 and inspection report to consider the issue of CTE has been submitted to Board Office vide letter 07.11.2015 and consent to establish is yet to be issued and that the STP is under construction stage.

5. The apprehension of the petitioners is that the 2nd respondent commenced the activity of the construction in Phase-II without permission from Environmental Clearance Board and Tamil Nadu Pollution Control Board. Accordingly, the petitioners are before this court.

6. There is no appearance for the 2nd respondent-M/s.Emaar MFG Lands Ltd., against whom, the allegations are made in the present Writ Petitions.

7. Heard the learned counsel for the 1st and 3rd respondent, who are present before this court. In the counter affidavits filed by the 1st and 3rd respondent before this court, a detailed enquiry report on the various requirements had been set out. On going through all the above, we are of the considered view that the 2nd respondent is said to have complied with statutory clearances viz., Environmental Clearance and Pollution Board Clearance and the 2nd respondent had also applied for the said clearance in respect of Phase-II Project on 05.10.2015. The issue of inspection report shows that the issue of Environmental Clearance & CTE will be considered in respect of Phase-II Project. In the report submitted by 3rd respondent, it is also submitted that the report of analysis of the treated sewage collected from the Sewage Treatment Plant (STP) provided at EMAAR (Phase-I) on 10/06/2015, 07/09/2015 & 25/11/2015 satisfies the standards prescribed by the Board and renewal of consent was issued to the facility of 13/01/2016 is valid up to 31/03/2017. As regards the structural stability certificate for Block G-17 and Block E-15, it is stated by the 1st Respondent-CMDA that the same were certified by the Department of Civil Engineering, IIT Madras, Chennai-36.

8. In view of the stand taken by the 1st and 3rd respondent, in respect of the construction activity carried out by the 2nd respondent, we could not find any violation of the conditions stipulated by the 1st respondent and 3rd respondent Board. Since it is stated that only after conditions are complied with by the 2nd respondent, the completion certificate will be issued by the 1st respondent in respect of Phase-II Project, we are of the considered view that further certificates of clearance would be issued subject to compliance of conditions stipulated by the Boards. Accordingly, we do not find any force in the contention made by the petitioners herein. Further it is seen that further proceedings are pending before the 1st and 3rd respondent Board with regard to Phase-II Project and if there is any deviation in the construction, it is for the 1st and 3rd respondent to look into the matter and take appropriate action. Now, this court cannot express any opinion on the proceedings pending before the 1st and 3rd respondent Board. Further, we do not find any irregularity or illegality in the permission already granted by the 1st and 3rd respondent Board.

Accordingly, the Writ Petitions sans merit and accordingly, the same are dismissed. No costs. Consequently, connected MPs are closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Member Secretary
Chennai Metropolitan Development Authority
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3.The Tamil Nadu Pollution Control Board
950/1, P.H.Road, Arumbakkam
Chennai-600 106

+1cc to Mr.Muralikrishnan, Advocate (sr.31429)
+1 cc to Mr.K.Raja Srinivas, Advocate (sr.31497)

CTK(CO)
CP 23/07/2016

writ Petition Nos.37756
to 37759 of 2015
and connected MPs

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