

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.2484/2011 against WP No.5649 of 2011

The Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam.

Chennai 600 035

... Appellant / 3rd respondent

Vs

1. V.Ayyaswamy
2. S.Ganesh
3. V.Naveenchander,
4. Mrs.Radha Sivaraman,
5. S.Baskaran,
6. V.Nagarajan,
7. S.Ramasubramaniam,
8. P.Shanmugam,
9. S.Lakshminarayanan,
- 10.K.Shanthi,
- 11.K.Sairam,
- 12.K.Saranya
- 13.A.Sankaramma
14. K.R.Meenakshi
15. C.Ravi

All are residing in
Gem Colony, Anna Nagar,
West Extension, Chennai - 101

..Respondents 1 to 15/
Writ petitioners

16. The Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road,
Egmore, Chennai 600 008.

- 17.The Ambattur Municipality,
Represented by its Commissioner,
Ambattur.

..Respondents 16 & 17/
..Respondents 1 & 2

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated passed in the Writ Petition in the WP No.5649 of 2011 order dated 08.03.2011.

Prayer in W.P. No 5649/2011:

This Writ petition filed under article 226 of the constitution of India praying to issue a Writ of Mandamus Directing the 1st and 2nd respondents to entertain consider and grant approval to the Demolition plan Planning Permission Building permit for developing the lands at Block No.74 Gem Colony S.No.297 Part Mogappair Village Anna Nagar West Extention admeasuring about 12116 sq.ft. for putting up a multistoried residential building without insisting upon NOC from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules.

For Appellant : Mr.V.Anandhamurthy
For Respondents : Not ready in notice for
R1 to R15
Mr.N.Sampath,
Standing Counsel for R16
Mr.A.Nagarajan for
Standing Counsel for R17

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The facts leading to the filing of this Writ Appeal have been briefly narrated in detail and in extenso in the order dated 08.03.2011 in WP No.5649 of 2011 and therefore, it is unnecessary to reinstate the said facts once again.

2. The only issue arise for consideration in this Writ Appeal is whether the allotment is in whose favour and that the Sale Deeds said to have been executed by the appellant namely the Tamil Nadu Housing Board (TNHB), requires No objection certificate for the purpose of development / putting up new construction for which the Learned Judge in Paragraph No.6 of the impugned order had observed that the writ petitioners are at liberty to submit their applications along with a copy of the order with all relevant documents to show that the nature of right over the property and the authorities / respondents 1 and 2 shall consider the same as and when presented without insisting on No objection Certificate from Tamil Nadu Housing Board, if the applications are otherwise in order.

2. The very same issue has been considered by the Hon'ble Full Bench of this Court Judgment reported in 2013(3) CTC 129 [Tamil Nadu Housing Board Vs.Mary Rani Immanual] and it is relevant to extract the same :

" Thus the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994 the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining "No objection Certificate" from the Tamil Nadu Housing Board will not arise. In such circumstances, the Allottees of the Flats, after execution of the Sale Deed in their favour have got every right to demolish the existing building and construct new Apartment Blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got no say, even if additional dwelling units are constructed after demolishing the existing Flats. As stated already, the Tamil Nadu Housing Board loses its rights as soon as it executes Sale Deed in respect of the Flats, appurtenant land and even in the areas earmarked for the common enjoyment of the Flat owners. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the Rules and Regulations of the CMDA. Even assuming that there are restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes Sale Deed in favour of the Allottees, it loses all its rights on the property and it cannot any more question the action of the Allottees by saying that the Allottees have violated the conditions enumerated in the Sale Deed.

In view of the discussions made above, We hold that the Allottees of the Flats in a scheme implemented by the Tamil Nadu Housing Board, after execution of the Sale Deed in their favour by the

Tamil Nadu Housing Board are entitled to demolish the existing the superstructure and put up new Apartment Blocks with additional dwelling units and sell the same to the third parties without obtaining No Objection Certificate from the Tamil Nadu Housing Board, as long as the construction are within the parameters of the Rules and Regulations of the CMDA.

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.

3. In the light of the above said ratio laid down by the Hon'ble Full Bench of this Court in above cited decision, the Writ Appeal is dismissed. However, no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road,
Egmore, Chennai 600 008.

2.The Ambattur Municipality,
Represented by its Commissioner,
Ambattur.

3.The Managing Director, Tamil Nadu Housing Board,
Nandanam.
Chennai 600 035

+1 CC to Ms.V. Anandha Murthy, advocate sr 75666.

+1 cc to Ms.A. Nagarajan, Advocate sr 75780.

WA.No.2484 of 2011

SP(07/12/2017)