

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.14022 of 2016
and
W.M.P.No.12255 of 2016

Marina Square Flat Owners Association,
Rep. by its President.

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Dept.,
Fort St. George, Chennai-9.
2. The Chennai Metropolitan Development
Authority, Rep. by its Member Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai-8.
3. The Corporation of Chennai
Rep. by its Commissioner,
Ripon Buildings, Chennai-3.
4. Ferdous Estates Private Ltd.
Rep. by its Director, Mrs.Ferdous.
5. Ferdous Management Consultancy
Pvt. Ltd., Rep. by its Director.

6. M.M.Haneefa

7. Ferdous

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Letter No.8075/UDI/2015-12 dated 5.4.2016, quash the same and direct the 1st respondent not to hear and proceed with the said Appeal.

For Petitioner : Mr.T.Mohan
M/s.K.Sumathi

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader
For R-1
: Mr.N.Sampath for R-2
: Mr.G.Anantha Rangan or R-3
: No appearance for R-4
: Mr.S.R.Rajagopal
for Mr.B.Jeevan Kumar
for RR 5 to 7

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The dispute has had a chequered history. The challenge laid in this petition is to the order dated 05.04.2016 of the appellate authority post the double scrutiny by the Monitoring Committee. In terms of this order, the matter has been remitted to the CMDA.

2.We have heard the learned counsel for the parties at some length. But, a detailed examination is not necessary as the impugned order is not sustainable on a short ground. The appellate authority, at the second stage of the matter being remitted to the Monitoring Committee, participated in the proceedings and has signed the Minutes (unlike the first scrutiny by the Monitoring Committee). The same officer, thus, cannot be a party to the Monitoring Committee recommendations which are in favour of the view of the petitioner and then, sit as an appellate authority to remit the matter to CMDA. This position cannot really be disputed by any of the learned counsel for the parties before us.

3.The result of the aforesaid is that the order dated 05.04.2016 and any steps which may have been taken in pursuance thereto are set aside and the matter is remitted back for fresh consideration by the appellate authority post the stage of the second report of the Monitoring Committee dated 03.02.2016.

4.We are of the view that it would be appropriate for the Chief Secretary to nominate the Officer who would now hear the appeal in this regard. The needful be done within fifteen (15) days of the receipt of the order. The appellate authority would, then, endeavour to conclude the proceedings at the earliest, but not later than three (3) months from the date of appointment.

5.We, however, make it clear that the fact that the appellate authority has to re-hear the matter will not amount to a licence to the occupants to carry on non-residential activity since the regularisation has been claimed on the basis that the flats will be used for residential purpose.

Writ petition is, accordingly, allowed, leaving the parties to bear their own costs. Consequently, W.M.P.No.12255 of 2016 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Govt. of Tamil Nadu,
Housing and Urban Development Dept.,
Fort St. George, Chennai-9.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
3. The Commissioner,
Corporation of Chennai
Ripon Buildings, Chennai-3.

+1cc to Mr.N.Sampath, Advocate, S.R.No.6787

+1cc to Mr.G.Anantha Rangan, Advocate, S.R.No.6777

+1cc to Mr.B.Jeevan Kumar, Advocate, S.R.No.7160

+2cc's to M/s.K.Sumathi, Advocate, S.R.No.7020

+1cc to M/s.Hemalatha, Advocate, S.R.No.6912

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W.P.No.14022 of 2016

MG(CO)

CA(13/02/2017)