

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.07.2017

CORAM:

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

W.P.No.12757/2017
and
WMP.No.13608 & 13609/2017

M/s.First Capital Development India Pvt., Ltd.,
Represented by its Director,
Mr.JawaharHussain,
No.1, VenkatesaAgraharam Street,
Mylapore,
Chennai-600 004.

.. Petitioner

Vs

1. The Government of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development,
Secretariat, Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. The Corporation of Chennai,
Rep. By its Commissioner,
Ripon Buildings, Chennai-600 003.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records culminating in the order of the first respondent dated 07.03.2017 made in G.O. (3 D) No.53 Housing and Urban Development (UD-V) Department and quash the same and consequently direct the first respondent to reconsider the special revision petition filed under Section 80A of the Tamil Nadu Town and Country Planning Act in term of the additional representation made on 24.04.2017 by calling for necessary remarks from the second respondent to the revised plan to the impugned site at R.S.No.3151 Block No.28 of V.O.C Nagar village at Old No.111, New No.136, Coral Merchant Street, George Town, Chennai 600 001.

For Petitioner : Mrs.G.Thilagavathy, Senior Counsel.
Assisted by Mr.D.Kanagasundaram

For Respondents : Mr.R.Vijayakumar, Additional
Government Pleader for R1
Mr.C.Johnson, for R2
Mr.A.Nagarajan, for R3

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner, challenging the legality of the order of dismissal of the appeal filed under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971 (in short TCP Act), has filed this writ petition.

2. The deponent of the affidavit is the Managing Director of the petitioner's Private Limited Company and the petitioner/Company owns the property bearing R.S.No.3151 Block No.28 of V.O.C.Nagar Village at old No.111, New No.136, Coral Merchant Street, George Town, Chennai 600 001 and the said property is also subjected to Statutory levies and taxes are paid without any default. The petitioner would further aver that the petitioner/Company had applied for the planning permission from the Corporation of Chennai for putting up Ground, 1st and 2nd Floors and after obtaining planning permission, put up construction in ground, first and second Floor, strongly in accordance with planning permission and in the said construction, was also assessed to property tax. It is further stated by the petitioner that a Public Interest Litigation has been filed in W.P.No.16555/2014 for taking action against unauthorised/illegal construction in George Town area and this Court vide order dated 07.08.2014, stated that wherever it is compoundable, requisite charges can be collected and if it is not compoundable, deviations are entitled to further action, in the form of demolition.

3. The petitioner also expressed grievance that the 2nd respondent, without conducting any enquiry has issued a Lock and Seal and Demolition notice dated 30.01.2015 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, as amended by Act 61/2008. The 2nd respondent thereafter, effected inspection of the premises and submitted a report, resulting in the above said order and challenge was made to the said order by way of appeal before the 1st respondent.

4. The petitioner also filed W.P.No.5936/2015 directing the 1st respondent herein, forbearing the 2nd respondent-The

Member Secretary, Chennai Metropolitan Development Authority, in any manner interfering with his possession and enjoyment of the property in question in pursuant to the Lock and Seal and demolition notice dated 30.01.2015, during the pending disposal of the appeal dated 25.02.2015. This Court vide order dated 05.03.2015, had disposed of the writ petition by directing the 1st respondent/appellate authority to dispose of the appeal within the stipulated time and also ordered to maintain status quo for a period of two weeks from the date of this order.

5. The 1st respondent, vide communication dated 18.09.2015, stated that a person can make an application/appeal under 80-A of the TCP Act, only after his premises get sealed and therefore, since it is not yet sealed, it was a prematured one.

6. Subsequently, the 2nd respondent-CMDA has issued the De-occupation notice dated 03.06.2016 under Section 56[2]sub-clause[iii] and [2A] of the Town and Country Planning Act and requires the petitioner to discontinue the usage of unauthorised building and restore the land in original condition.

7. The petitioner also made a challenge to the Letter of the 1st respondent dated 18.09.2015 by filing W.P.No.30545/2016. The Division Bench of this Court, vide order dated 01.09.2016, has directed the petitioner to go before the 1st respondent and represent the Special Revision Petition, seeking appropriate relief within one month from the date of this order and upon receipt of the same, the direction shall be given to the 1st respondent to dispose of the same within two months after, giving sufficient opportunity to the petitioner.

8. Accordingly, the petitioner preferred the Special Revision Petition under 79/80A of the TCP Act, 1971 to the 1st respondent.

9. The 1st respondent, in pursuant of the order passed by this Court, has entertained the said petition and he has also afforded an opportunity for personal hearing to the Managing Director of the petitioner/Company viz., M.Jawahar Ussain and he has also sworn to the affidavit filed in support of this writ petition. The 1st respondent, after taking into consideration the records and the contents of the appeal/Special Revision Petition has noted that the planning permission was issued to the petitioner/Company for construction of Stilt Floor+2 Floors Office cum Residential Building with 2 dwelling units and whereas it has constructed Ground Floor + 5 Floors + 6th Floor (part) and therefore, 3rd, 4th, 5th and 6th Floors were unauthorisely constructed and the said construction had violated the Development Regulations in respect of Plot extent, Plot

Frontage, abutting road width, FSI, Coverage, Setbacks all-around and car & two wheeler parking requirement.

10. Therefore, the appellate authority citing the said reasons had dismissed the appeal/Special Revision Petition and also indicated that no further application shall lie with the Government. Thereafter, the petitioner submitted a representation dated 24.04.2017 for reconsideration of the appeal filed under Section 80-A of the Town and Country Planning Act, 1971 and in Paragraph 2 of the said petition, he has stated that

" I came to know that the revised plan submitted by me for revision of plan and for regularisation of the construction caused on the 3rd, 4th, 5th Floors and 6th Floor in part had not been considered in its proper perspective as no detailed consideration of the revised plan submitted along with the petition had been considered at all.

It is only now that I noted that No.[2] of you has thoroughly overlooked the revised plan submitted by me which was also annexed to the Special Revision Petition before No.[1] of you which was initiated against the order dated 18.09.2015 as per the directions contained in the order dated 01.09.2016 made in W.P.No.30545 of 2016".

11. The petitioner came forward to file this writ petition, challenging the legality of the impugned order dated 07.03.2017 passed by the 1st respondent and to direct the 1st respondent to reconsider the Special Revision Petition filed under Section 80-A of the Town and Country Planning Act.

12. Mrs.G.Thilagavathy, learned senior counsel appearing for the writ petitioner assisted by Mr.D.Kanagasundaram would submit that the 1st respondent/appellate authority without understanding the scope and purport of the order dated 01.09.2016 made in W.P.No.30545/2016, has erroneously rejected the appeal / Special Revision petition filed under Section 80-A of the TCP Act and would further contend that though in the appeal petition, it has been stated that the Corporation has issued planning permission to Ground Floor, 1st Floor, and 2nd Floor, it has been stated that the permission for Revised plan is sought only for Third Floor, Fourth and fifth Floor and sixth Floor (part), no consideration has been shown, with regard to the submission of the Revised plan and therefore, the petitioner once again brought to the knowledge of the 1st and 2nd respondent in the form of representation dated 24.04.2017 and hence, prays for setting aside the impugned order passed by the 1st respondent with a further direction, directing the respondents 1 and 2 to

consider and dispose of the representation dated 24.04.2017 for consideration of the Revised plan.

13. This Court paid its anxious consideration and best attention to the submission made by the learned senior counsel appearing for the petitioner and perused the entire materials placed before it.

14. It is an admitted fact that the petitioner was issued with a planning permission during the year 2013 for construction of Stilt Floor+2 Floors Office cum Residential Building with 2 dwelling units at R.S.No.3151 Block No.28 of V.O.C.Nagar Village at old No.111, New No.136, Coral Merchant Street, George Town, Chennai 600 001.

15. Subsequently, the 2nd respondent has issued a Stop Work Notice / notice calling for approved plan and it was followed by the 2nd respondent notice dated 30.01.2015.

16. The petitioner has invoked the jurisdiction of this Court by filing an appeal under Section 80-A of the TCP Act, 1971 and the 1st respondent has represented the same on the ground that it can be entertained only after the premises has been locked and sealed and challenging the same, the petitioner has also filed W.P.No.30545/2016, wherein this Court has directed the petitioner to approach the 1st respondent and represent the Special Revision Petition and seek appropriate relief and directed the 1st respondent to consider and pass appropriate orders after affording an opportunity to the petitioner.

17. In compliance of the order, the 1st respondent has entertained the Special Revision Petition/Appeal petition dated 14.10.2016 submitted by the petitioner/Managing Director of the petitioner's concern viz., M.Jawahar Hussain and was also afforded with an opportunity of personal hearing. The 1st respondent has noted that though the petitioner was granted planning permission for construction of the above said Floors, he has deviated and put up unauthorised construction of Ground Floor + 5 Floors + 6th Floor (part) commercial building and the said construction, is in violation of the Development Regulations in respect of Plot extent, Plot Frontage, abutting road width, FSI, Coverage, Setbacks all-around and car & two wheeler parking.

18. It is the primordial submission of the learned senior counsel for the petitioner that along with Special Revision Petition / appeal petition dated 14.10.2016, the petitioner has submitted the Revised plan seeking regularization of the said unauthorised construction. This Court has perused the appeal / Special Revision Petition submitted by the petitioner before the

1st respondent and as per the enclosure, no Revised plan has been enclosed.

19. The petitioner, after disposal of the appeal / Special Revision Petition by the 1st respondent vide G.O.(3D)No.53 dated 07.03.2017, submitted a representation dated 24.04.2017 for Reconsideration of appeal under Section 80-A of TCP Act and merely stated about the submission of the Revised plan, but he has not specifically indicated the date of submission of the Revised plan in the appeal petition.

20. The 1st respondent, while considering the appeal / Special Revision Petition dated 24.04.2017 submitted by the petitioner, has taken into consideration the Development Regulation and found that the petitioner, in utter violation of the planning permission issued to him during the year 2013, has put up unauthorised construction of Ground Floor + 5 Floors + 6th Floor (part) along with car parking facilities, extent of deviation, which is also indicated in Paragraph No.8 and 9 of the Abstract of Housing and Urban Development (UD-V) Department.

21. In the considered opinion of this Court, the petitioner in utter disregard and contempt of the Development Regulations, has brazenly put up unauthorised construction, and in any event, it will not come within the compoundable limits. Even otherwise, the petitioner is also not entitled to avail the benefits of G.O.Ms.No.110/111 of the Housing and Urban Development [UD4(3)] Department for the reason that the said guidelines are applicable in respect of the building developed on or before 1st day of July 2017. Admittedly, the petitioner was issued with a planning permission during the year 2013 and in total violation of the planning permission, he has put up unauthorised construction.

22 The Honorable Supreme Court of India had framed very many decisions and repeatedly frowned upon the putting up of unauthorised construction in deviation from the sanction plan.

[a] In Friends Colony Development Committee Vs. State of Orissa and others reported in 2004 [8] SCC 733, the issue relating to the unauthorised construction and regularisation of the same by levying compounding fees, came up for consideration and it is relevant to extract the following :-

"20 The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril

of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance. सत्यमेव जयते

21. The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built up area on each Floor but also added an additional fifth Floor on the building, and such a Floor was totally unauthorized. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the Floors, including the additional one.

Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to Floor area, the number of Floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values,

seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.]”

In paragraph No.25 of the said judgment, the Hon'ble Supreme Court also noted that “deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. Deviations by professional builders can safely be assumed to be deliberate and done with the intention of earning profits and hence, deserve to be dealt with sternly so as to act as a deterrent for future”

[c] In *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and others* reported in 2013 [5] SCC 336, a similar issue arose for consideration and it is relevant to extract the following observations of the Hon'ble Supreme Court of India:-

“Illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned

development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. Therefore, there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient.

....Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction, but also impose adequate penalty on the wrongdoer."

[d] It is also relevant to point out at this juncture that there is inaction on the part of the Enforcement machinery, viz., the Corporation of Chennai, as well as the Chennai Metropolitan Development Authority, which has resulted in an uncontrolled and mushrooming growth of unauthorised constructions throughout the Metropolitan City of Chennai.

[f] The Hon'ble Apex Court in the decision reported in 2009 [15] SCC 705 : AIR 2010 SC 443 [Shanti Sports Club Vs. Union of India] has observed that the Executive must take stringent action to curtail the menace of illegal construction and it was held that:-

"75 Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have

received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

[g] In yet another decision reported in 2010 [2] SCC 27 : AIR 2010 SC 1030 [Priyanka Estates International Private Limited V. State of Assam], the Hon'ble Apex Court taking into account the large scale unauthorised construction, has observed as follows:-

"55 It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the Builder.

56. Even though on earlier occasions also, under similar circumstances, there have been

judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is against the interest of society at large, but, no heed to it has been given by the builders. Rules, regulations and bye-laws are made by Corporation or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent."

23. In the case on hand, the petitioner, being a private limited company, supposed to be aware of the relevant norms and regulations and in grave violation and utter contempt of the same has put up unauthorised construction consisting of Ground Floor + 5 Floors + 6th Floor (part) along with parking slots and therefore, no sympathy can be shown to such kind of rank violation.

24. Though the learned senior counsel for the petitioner made a valiant attempt by persuading the Court to direct the 1st respondent to dispose of the representation submitted by the petitioner dated 24.04.2017 and to reconsider the Revision Plan, in the considered opinion of this Court, it cannot do so for the reason that such a kind of unauthorised / illegal construction cannot be regularised.

25. In the considered opinion of this Court, the writ petition lacks merits and substance and hence dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Housing and Urban Development,
Secretariat, Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. The Commissioner,
The Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

+1cc to Mr.D.Kanagasundaram, Advocate, S.R.No.47393
+1cc to Mr.C.Johnson, Advocate, S.R.No.47365
+1cc to Mr.A.Nagarajan, Advocate, S.R.No.46986
+1cc to the Government Pleader, S.R.No.47239

WP.No.12757/2017

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