

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.07.2017

CORAM:

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

W.P.No.12812/2017 & WMP.Nos.13665 & 13666/2017

A.Marimuthu

..Petitioner

Vs

- 1.The Secretary
Government of Tamil Nadu
Housing and Urban Development
Fort St George, Chennai.
- 2.The Member Secretary
Chennai Metro Development Authority
Thalamuthu Natarajan Building
Gandhi Irwin Road, Chennai.
- 3.The Commissioner
Corporation of Chennai
Ripon Building, Chennai-3.
- 4.The Executive Engineer
[Enforcement Region Central]
- 5.The Assistant Executive Engineer
Unit 26.
- 6.The Junior Engineer
Division 117.

Respondents 4 to 6 are having office at
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai.

.. 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 in G.O.[3D] No.76, dated 26.04.2017 on the file of the 1st respondent and quash the same as illegal, incompetent and wholly without jurisdiction and further direct the respondents 4 to 6 to remove the lock and seal.

For Petitioner : Mr.V.Raghavachari
For R1 : Mr.R.Vijayakumar, AGP
For R2 : Mr.C.Johnson
For RR 3 to 6 : Mr.R.Arunmozhi

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The present litigation is having a long and chequered history and the repeated attempts made by the petitioner to stall the demolition of the unauthorised construction, so far, ended in failure. It is the last ditch attempt made by the petitioner to save the unauthorised construction from demolition.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that the property situate at 56, 56A, Thirumalai Pillai Road, T.Nagar, Chennai-600017, originally belong to M/s.Bommidala Realty Limited and they earlier envisaged construction of seven Apartments and Supermarket on the ground floor and obtained Planning Permission for that purpose. Thereafter, commercial construction was sought to be raised and an application was submitted for regularisation in Regularisation No.29734 dated 29.06.2002 and at that point of time, one Mr.Sampath had purchased the said property on 19.02.2007 and the petitioner had purchased the said property from Mr.Sampath through a registered Sale Deed bearing Doc.No.473/2010 dated 05.03.2010 registered on the file of the office of the Sub Registrar, T.Nagar.

3.1 The petitioner would further aver that M/s.Bommidala Realty Limited has raised construction in full and sold the property and the subsequent purchaser, namely, Mr.Sampath, had made all statutory payments reflecting the nature of the property as commercial and no objection was raised and no rejection was received from the respondents with regard to the payment of statutory levies and the petitioner was also under the legitimate impression that the application for regularisation will be favourably considered. However, to the shock and surprise of the petitioner, the respondents 5 and 6 had issued Notice dated 31.07.2014, calling upon the petitioner to furnish the approved plan and the petitioner has submitted his response and the approved plan on 17.08.2014.

3.2 Subsequent to that, the jurisdictional Zonal Officer of the Corporation of Chennai, had also issued

directions to make a road cut to effect water and sewerage connections and the usage of the building as a commercial one, has been reflected in all applications. However, the officials of the Corporation of Chennai had proceeded to issue the Lock and Seal notice dated 26.08.2015 and also threatened to demolish the property on account of the non-compliance. The petitioner, challenging the legality of the same, filed an appeal on 19.09.2015 along with an application for stay, restraining the officials of the Corporation of Chennai, from taking any precipitative action and since, neither the appeal nor the stay petition was taken up for hearing, the petitioner was constrained to file WP.No.30287/2015 before this Court, praying for appropriate direction to dispose of the appeal at an early date and during the pendency of the writ petition, the Government sent a reply on 28.09.2015, stating that the appeal was not maintainable. The petitioner would further state that the 5th respondent visited the premises on 27.01.2016 and threatened to demolish the superstructure and fearing coercive action, the petitioner filed WP.No.3822/2016 and went for amendment of prayer to quash the Letter dated 28.09.2015 and pendency of the writ petition, de-occupation notice was issued on 07.01.2016 and challenging the said notice, once again the petitioner filed an appeal on 20.02.2016. The Appellate Authority also indicated that the appeal will be heard and decided on merits and accordingly, the hearing was fixed on 29.02.2016 and on that day, two Advocates, claiming to represent the interested parties, raised objections.

3.3 The petitioner would further aver that the 1st respondent, after considering the materials, has allowed the appeal on technical grounds and set aside the impugned notice and directed the concerned authority to consider the matter afresh. The petitioner would also state that the respondents 4 to 6 have inspected the premises on 11.04.2016 and once again, issued the lock and seal notice on 20.04.2016 and the contents of the notice would disclose that there was no approved plan received by the respondents and therefore, the whole building is to be treated as an illegal structure and it is the stand of the petitioner that despite the submission of the approved plan on more than one occasion, such a material fact has not been noted.

3.4 Once again, the petitioner filed an appeal on 06.05.2016 challenging the lock and seal notice and the 1st respondent has entertained the appeal and issued notice of hearing and the petitioner was present along with his Advocates. However, the 1st respondent, without due and proper application of mind, has passed an order in G.O.[3D] No.175 dated 19.10.2016 and according to the petitioner, the said order is per se in violation of principles of natural justice.

3.5 Insofar as the Regularisation application is concerned, the 1st respondent had stated that it was dismissed

on 28.10.2014 for non-production of the evidence as to the date of construction and according to the petitioner, he has never been issued with any notice of hearing or orders of rejection. The petitioner also expresses his grievance that three commercial establishments, viz., Hotel Benz Park, Quality Inn Sabari and Hotel Chariot, have smaller set back and also put up unauthorised constructions and very many number of commercial structures are unauthorised and the respondents without taking action against them, had chosen to initiate action only against the petitioner.

3.6 The petitioner also filed a review petition, challenging the said order and pending disposal of the same, had filed an application for stay and pendnecy of the same, the petitioner was issued with de-occupation notice dated 05.11.2016 by the 5th respondent calling upon the petitioner to vacate and deliver the premises within seven days from the date of receipt of the notice and in addition to that, once again, a lock and seal notice was also issued by the 2nd respondent. The petitioner filed WP.No.40924/2016, praying for appropriate direction, directing the 1st respondent to dispose of the review petition and this Court, vide order dated 05.12.2016, stating among other things, that the petitioner may be permitted to appear with all relevant documents with the 2nd respondent on 19.12.2016 and the issue to be examined would be whether any regularisation of the building is permissible or not and if anything is permissible on payment of regularisation charges, the needful can be done and the decision taken thereon, shall be communicated to the petitioner within a period of fifteen days from that date. Accordingly, the petitioner appeared before the Reviewing Authority and subsequently, he was issued with a notice dated 21.12.2016, calling upon him to produce the evidence to prove that the building was completed prior to 1999 and the 2nd respondent, without considering the relevant materials and facts, has dismissed the review application vide impugned G.O. [3D] No.76 of the 1st respondent Department, dated 26.04.2017 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4 The writ petition was entertained on 17.05.2017 and the said writ petition along with the Miscellaneous Petitions were listed for hearing on 06.06.2017 and this Court, taking note of the submissions made by the learned counsel for the petitioner that the property has been sealed on 12.05.2017 and that nobody is using the building and nobody is staying in the property, has granted an order of status quo for a period of three weeks or until further orders, whichever is earlier and directed the listing of the matter on 30.06.2017.

5 The 1st respondent has filed a counter affidavit, refuting the averments made in the writ petition and would submit that consequent upon the rejection orders,

the officials of the 2nd respondent had issued the lock and seal notice and demolition notice of the above building, wherein deviations and violations with reference to the approved plan has been observed and noted down the deviations and violations. The regularisation application was rejected on 02.02.2017 on the ground that the particulars furnished were examined and found to have not furnished any credible evidence as prescribed by this Court vide order dated 23.08.2016 and therefore, the petitioner was called upon to furnish additional evidence within fifteen days from the date of the letter of the 2nd respondent dated 21.12.2016 and despite that, the petitioner did not furnish any materials and after considering the application with the available particulars, it was found that the regularisation application does not satisfy the orders passed by this Court dated 23.08.2016 and 05.12.2016 respectively and therefore, it was rejected.

5.1 The petitioner, challenging the order of rejection passed vide G.O.[3D] No.175, of the 1st respondent Department dated 19.10.2016 and the consequential rejection of the regularisation application dated 02.02.2017, filed a review petition by invoking section 81 and 113[A] of the Tamil Nadu Town and Country Planning Act, 1971, and the 1st respondent, after careful consideration, had found that the petitioner did not put forward any new grounds of violations in the review petition and the building contains large scale violations in respect of Floor Space Index, parking, usage, setback all around, floor etc and though it is the claim of the petitioner that the construction was completed in the year 2002, he did not submit any credible evidence to prove that the construction was completed before 28.02.1999 and as such, came to the conclusion that the building cannot be regularised and citing the said reasons, has rejected the review application and therefore, the 1st respondent prayed for dismissal of the writ petition.

6 The 2nd respondent / CMDA has filed a counter affidavit and they would aver that the deviated construction of the commercial building comprising of Basement Floor + Ground Floor + 3 Floors + 4th Floor [part] for Hotel use exists at new Door No.56, 56-A, S.No.81/1, Block No.108B, TS.No.6869/1, Thirumalai Pillai Street, T.Nagar, Chennai-17 and based on the representation submitted by one Mr.Murali, on 16.06.2015, alleging large scale violation and putting up of unauthorised construction, the said premises was inspected by the officials of the 2nd respondent / CMDA on 06.08.2015 and a notice calling for approve plan was issued on 06.08.2015 to the petitioner - owner of the building and in response to the same, the owner / petitioner has furnished the copy of the approve plan along with his letter dated 09.08.2015 and also stated that the regularisation application submitted by the earlier owner, viz., M/s.Bommidala Realty Limited, under Regularisation Scheme of the year 2002 on 29.06.2002, has been

rejected. It is further averred by the 2nd respondent / CMDA that the 2nd respondent has issued planning permission for the proposed construction of Basement Floor + Ground Floor + 3 Floors, Departmental Store-cum-Residential building with 7 dwelling units in Planning Permission dated 03.05.1999 in favour of M.Kumbesulu, General Power of Attorney of M/s.Bommidala Realty Limited, and having noted the violation, the Greater Chennai Corporation, had issued Stop Work Notice and also called upon the petitioner to produce the approved plan and also issued the lock and seal notice and demolition notice dated 26.08.2015 under section 56 and 67 of the Tamil Nadu Town and Country Planning Act, 1971. One more representation has been received from Mr.T.Saravanan, Advocate, on 16.06.2015, to take action against the unauthorised construction.

6.1 The 2nd respondent would further aver that the appeal petitions submitted by the petitioner herein have been considered and rejected. In pursuant to the directions given by this Court on 10.05.2017, the building was once again inspected to find out

whether the petitioner herein made any efforts to rectify the defects or set right the unauthorised construction by bringing the construction within the ambit of the approved plan and it was found that he has failed to do so. Insofar as the allegation made by the petitioner that in respect of the other commercial structures/buildings, CMDA did not take any action, the 2nd respondent would submit that appropriate action has been taken against the three hotels and the appeals have been preferred against the action taken and also one of the commercial units of the Hotels, has also sought for regularisation, in terms of G.O.Ms.Nos.110 and 111 dated 22.06.2017 under section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, and the said proceedings are pending and as such, they are not in a position to take any action and prays for dismissal of the writ petition.

7 On behalf of the Corporation of Chennai / respondents 3 to 5, a counter affidavit has been filed and after extracting various orders passed by this Court and the orders passed by the 1st respondent, it is stated that the action could not be initiated against the three hotels, said to have violated approved plans by putting up unauthorised structures for the reason that the proceedings are pending for regularisation and hence, prays for dismissal of the writ petition.

8 Mr.V.Raghavachari, learned counsel appearing for the petitioner would strenuously contend that despite repeated directions passed by this Court in the writ petitions, the 1st respondent has failed to apply his mind to the relevant materials and also not considered the fact that the construction of the superstructure was completed prior to

the cut-off date and therefore, ought to have considered the regularisation application favourably. It is the further submission of the learned counsel for the petitioner that despite the fact that very many commercial buildings in T.Nagar area with deviations and unauthorised constructions are in existence, the respondents 1 and 2, for the best reasons known to them, did not initiate any action at all and for obvious reasons, they are targeting the petitioner alone. It is also submitted by the learned counsel for the petitioner that if sufficient time is given, the petitioner will set right the deviations and bring the construction within the ambit of the sanctioned plan and prays for interference.

9 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 1st respondent ; Mr.C.Johnson, learned Standing Counsel appearing for the 2nd respondent ; and Mr.R.Arunmozhi, learned Standing Counsel appearing for the respondents 3 to 6 would submit that the petitioner is guilty of suppressing the material fact and even as per the schedule in his own Sale Deed, he has purchased the unfinished superstructure and in utter disregard and in violation of the planning permission, has completed the construction and started using it as a Hotel and in the light of the representations received from the residents as well as from an Advocate, the building was inspected and having noted the illegal acts done by the petitioner in the form of unauthorised construction, action has been taken strictly in accordance with law and therefore, the petitioner is not entitled to seek any relief and pray for dismissal of the writ petition.

10 This Court paid its anxious consideration and best attention to the rival submissions and carefully scanned and analysed the materials placed before it.

11 As per the counter affidavit of the 2nd respondent, they issued the planning permission to M/s.Bommidala Realty Limited for the proposed construction of Basement Floor + Ground Floor + 3 Floors, Departmental store-cum-Residential Building with 7 dwelling units in Planning Permission No.B/26377/121/99 in Letter No.B1/23227/98 dated 03.05.1999 in favour of the General Power of Attorney of the said Promoter and after receipt of various representations, the building was inspected and the following deviations were noted:-

Sl. No	Parameter	As per Approved Plan	As on site	Deviation to approved plan
1	Length	22.86 m	27.40 m	Excess by 4.54 m
2	Width	7.24m	10.84 m	Excess by 3.60 m
3	FSI	1.484 [78.73 sq.m]	2.60 [1371.87 sq.m.]	1.116 [590.14 sq.m]

Sl. No	Parameter	As per Approved Plan	As on site	Deviation to approved plan
4	Usage	Residential	Commercial [Lodge]	Residential converted into Lodge
5	Floors	BF+GF+3F	BF+GF+3F+4F [part]	Unauthorised 4 th Floor part
6	SSB [S]	3.51 m	1.40 m	Less by 2.11 m
7	SSB [N]	4.95 m	3.58 m	Less by 1.37 m
8	RSB	4.50 m	0.80 m	Less by 3.70 m
9	Car Parking	Required for commercial 10 Nos	Feasible 4 Nos	Less by 6 Nos.

12 As per the averments made by the petitioner in the affidavit filed in support of this writ petition, M/s.Bommidala Realty Limited, has executed a registered Sale Deed dated 19.02.2007 in favour of Mr.V.Sampath, S/o.G.Viswanathan, conveying right, title and possession of the land admeasuring to an extent of 5734 sq.ft. inclusive of a passage of 1080 sq.ft., and an unfinished superstructure measuring to an extent of 11000 sq.ft. in Plot No.105, Old Door No.16, New Door Nos.56 and 56-A, Thirumalai Pillai Road, T.Nagar, Chennai-17, comprised in S.No.81/1, Block No.21, New Block No.108-B, TS.No.6869/1. Mr.V.Sampath, who purchased the said property from M/s.Bommidala Realty Limited, has sold the said property in favour of the petitioner through a registered Sale Deed dated 05.03.2010 bearing Document No.473/2010. The description of the property in the said Sale Deed executed in favour of the petitioner would also disclose that the petitioner has purchased the unfinished superstructure.

13 However, the petitioner, in paragraph 3 of the affidavit, in contrary to the recitals and the description of the property given in the Sale Deed dated 05.03.2010, took a stand that the Developer, viz., M/s.Bommidala Realty Limited, has raised the construction in full and sold the property in favour of Mr.V.Sampath. In the considered opinion of the Court, the said averment/statement in the affidavit filed in support of this writ petition, is per se false.

14 The petitioner's appeal petition dated 06.01.2016 was considered by the 1st respondent and vide communication dated 04.03.2016 in Letter No.760/UD-VI[1]/2016-5, has allowed the appeal and remanded the matter by taking into consideration the discrepancies in the notice, vis-a-vis, the site.

15 Thereafter, the petitioner was once again issued with a lock and seal notice on 20.04.2016 pointing out the extent of deviations and once again, he filed an appeal dated 06.05.2016 to the 1st respondent and the 1st respondent, after affording fair and reasonable opportunity to the petitioner, has rejected the appeal vide G.O.[3D] No.175 dated 19.10.2016. In paragraph No.6 of the said order, it was observed that personal hearing was afforded to the petitioner, wherein the petitioner did not deny the fact that he is running a hotel in the said premises and has also admitted the said fact even in the appeal petition itself. The Appellate Authority / 1st respondent also noted that the building plan approval was obtained only for residential purpose and the site also lies in the residential zone where a hotel building cannot be permitted and the regularisation application of the petitioner [filed by the original promoter] filed in the year 2002, was already rejected by the 2nd respondent vide communication in Letter No.RGI/B4/BCs/34437/2003 dated 28.10.2014 and it was informed to the petitioner during the hearing held on 29.02.2016. The Appellate Authority further pointed out that the building to be run as Hotel, requires minimum all around set back of 7 meters which is not available in the present building besides zone violation and citing the said reasons, has rejected the appeal.

16 In page No.132 of the typed set of papers, the regularisation application submitted by M/s.Bommidala Realty Limited, was considered by the 2nd respondent / CMDA and it was pointed out among other things, that if the construction / building / sub-division is completed prior to 28.02.1999, the evidences such as the date of Planning Permission and proof of completion, Electricity Service Connection, Water connection and Registration of Sale Deed conveying constructed area/plot etc., are to be furnished within thirty days from the date of public notice notified through newspapers dated 02.12.2006. It was further pointed out that an individual opportunity letter was also sent to the petitioner for the production of credible evidences to prove that the construction was completed prior to 28.02.1999; but it was returned "undelivered" noting that "No such company in this address, returned to sender" and in the light of the fact that such materials have not been furnished, the application was rejected.

17 It is very pertinent to point out at this juncture and as already noted by this Court in the earlier paragraphs, the description of the property given in the registered Sale Deed dated 19.02.2007 executed by M/s.Bommidala Realty Limited in favour of the predecessor in title to the petitioner, viz., Mr.V.Sampath, as well as the description of the property in the registered Sale Deed dated 05.03.2010, executed by Mr.V.Sampath in favour of the

petitioner, would reveal and disclose tha the petitioner had purchased unfinished superstructure measuring about 11,000 sq.ft.

18 If at all the petitioner is entitled to avail the scheme of regularisation, sufficient proof should have been produced to show that the construction was completed prior to 28.02.1999 and from the facts and circumstances, it will not be possible for the petitioner to produce the same for the reason that he purchased the premises in question on 05.03.2010 and the counter affidavit of the respondents 2 and 3 would reveal that after effecting purchase, in utter violation of the sanctioned plan, he has completed the construction and started using it as a Hotel - commercial purpose. The conduct of the petitioner would also reveal that he has failed to approach the Court with clean hands and made repeated attempts to stall the demolition in the form of series of litigations.

19 It is also relevant to consider some of the judgments rendered by the Hon'ble Supreme Court of India dealing with unauthorised constructions.

[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.

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"

[b] In R.K.Mittal and others Vs. State of Uttar Pradesh and others reported in 2012 [2] SCC 232, the Hon'ble Apex Court, after taking note of its decision reported in 2004 [6] SCC 588 [M.C.Mehta Vs. Union of India], has observed in paragraphs No.41 and 42 as follows:-

"....

41 This Court also held that the land cannot be permitted to be used contrary to the stipulated user except by amendment of Master Plan, after due consideration of the provisions of the Act and the Rules. Inaction by the Government authorities means permitting the unauthorised use, contrary to law.

42 The authorities while reconsidering such matters are expected to act reasonably and cautiously. They deal with larger public interest and, therefore, have a responsibility to act with greater degree of sensitivity and proper application of mind. If the Development Authority aids the violation of the statutory provisions, it will be a perversity in the discharge of statutory obligations on the part of the Development Authority. The public interest, as codified in the statutory regulations and the provisions of the Act, should control the conduct of the Development Authority and its

decision making process, rather than popular public demand guiding the exercise of its discretion, that too, in a somewhat arbitrary manner."

[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 always 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 mushroom growth of unauthorised constructions throughout the Metropolitan City of Chennai.

[e] In S.Prakash Chand Jain V. The State of Tamil Nadu rep. by its Secretary, Housing and Urban Development Department, Fort St George, Chennai and others reported in 2014 [2] MLJ 551, a Division Bench of this Court, after placing reliance upon the decision rendered by the Hon'ble Apex Court, has observed as follows:-

"19 The unholy nexus between the builder and certain officials of the CMDA and Corporation gives encroachment to more and more people to violate the building laws with impunity.....

29 The Division Bench in Consumer Action Group, rep. by its Trustee vs. The State of Tamil Nadu, by its Secretary to Government, Law Department, 2006 (4) CTC 483, held that water and electricity connection should be contingent on completion certificate. Sl.No.(ix) of the direction reads thus:-

(ix) To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

30 The Development Control Rules prohibit use of building without obtaining completion certificate. The direction to provide electricity, water and sewerage connection without insisting Completion Certificate from CMDA would amount to permission to put the building to use which is prohibited by statute. The Electricity, Water and Sewerage Boards are not bound to entertain application for such amenities without submitting the Completion Certificate issued by CMDA.

31 The authorities exercising statutory functions under various enactments must assist

CMDA to implement the Development Control Rules. If such authorities entertain request and provide electricity, water and sewerage connection, it would help the builder to bypass the mandatory requirement of the Statute, requiring completion certificate to occupy the building. We therefore hold that the Chennai Metro Water Supply and Sewerage Board and Tamil Nadu Electricity Board, have no authority to issue electricity, water and sewerage connection without producing of the Completion Certificate from CMDA. We are therefore of the view that the builders have no right to approach the Court for mandamus to provide electricity, water and Sewerage connections, without insisting Completion Certificate from CMDA."

[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."

20 The facts projected by the official respondents in their respective counter affidavits reveal a very sorry state of affairs and on account of inaction on the part of the officials of CMDA and as observed in the decision reported in

2014 [2] MLJ 551 [cited supra], the petitioner with impunity and no fear, proceeded with the construction without any authorisation and completed it and also using it for commercial purpose in the form of hotel and only on the representations received from an Advocate and the local residents, the 2nd respondent / CMDA has woken up from deep slumber and started initiating action.

21 Though an attempt was made by the learned counsel for the petitioner by submitting that since the property has been subjected to statutory levies, the deviations if any, has been condoned, in the considered opinion of the Court, lacks merit and substance for the reason that mere payment of statutory levies will not vest the petitioner any right to claim unauthorised construction put up by him, to be given ratification or sanctity. Admittedly, the regularisation application submitted by the Developer, viz., M/s.Bommidala Realty Limited, has been rejected.

22 The learned counsel for the petitioner also made an attempt by submitting that in the light of the regularisation scheme issued by the 1st respondent in G.O.Ms.Nos.110 and 111 dated 22.06.2017, he may be permitted to work out his remedy. However, the petitioner failed to produce any material before this Court as to the date of completion of the construction and the cut-off date for regularisation prescribed as per the said Government Orders is 'on or before 01.07.2007'.

23 The conduct of the petitioner would also disclose that he has no regard for the Rules and Regulations and in utter violation of the relevant norms and regulations, has finished the construction and started using it as a commercial purpose and now, it is under lock and seal.

24 This Court, after careful scrutiny and analysis of the entire materials is of the view and opinion that there is no merit in this writ petition and deserves dismissal.

25 Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary
Government of Tamil Nadu
Housing and Urban Development
Fort St George, Chennai.

2.The Member Secretary
Chennai Metro Development Authority
Thalamuthu Natarajan Building
Gandhi Irwin Road, Chennai.

3.The Commissioner
Corporation of Chennai
Ripon Building, Chennai-3.

+2cc to Mr.V.Raghavachari,Advocate sr.46639,46227

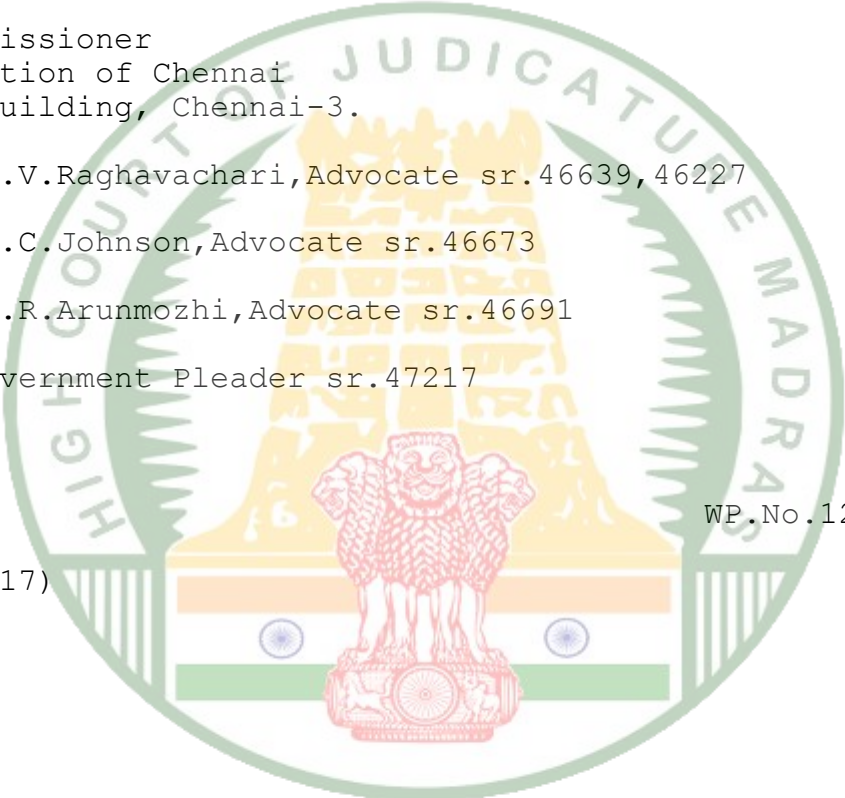
+1cc to Mr.C.Johnson,Advocate sr.46673

+1cc to Mr.R.Arunmozhi,Advocate sr.46691

+1cc to Government Pleader sr.47217

ss (20/7/2017)

WP.No.12812/2017

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital standing on a base. The capital is set against a background of a yellow and orange striped field. The entire emblem is encircled by a green border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is inscribed in Devanagari script.

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