

In the High Court of Judicature at Madras

Dated : 28.12.2017

Coram :

The Honourable Mr.Justice M.S.RAMESH

and

The Honourable Mr.Justice G.R.SWAMINATHAN

Writ Petition No.34067 of 2017 & WMP.No.37804 of 2017

1. Amita Keshav
2. Shruti Gehenwar
3. Shashwat Gehenwar
4. B.Inderjit SinghPetitioners

Vs

1.Chennai Metropolitan Development Authority
rep. by its Member-Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
2. Government of Tamil Nadu, rep.by
its Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai-9.Respondents

PETITION under Article 226 of The Constitution of India
praying for issuance of a Writ of Mandamus, forbearing the
respondents from initiating any coercive action of locking and
sealing and demolition action with regard to the building put up
at 5th Floor of K.G.Eternia, 14/50, K.B.Dasan Road, Alwarpet,
Chennai-18, pending determination of Section 80-A Revision
Petition dated 21.12.2017 with the Government.

For Petitioners : Mr.R.Mohan
For Respondent-1 : Mr.A.Kumar
For Respondent-2 : Mr.T.N.Rajagopalan,
Special Govt. Pleader

[Order of the Court was made by M.S.RAMESH,J
Mr.A.Mohan, learned Counsel accepts notice for the first
respondent. Mr.T.N.Rajagopalan, learned Special Government
Pleader accepts notice for respondents 2 and 3.

2. The writ petition has been filed by the petitioner seeking to forbear the respondents from initiating any coercive action of locking and sealing and demolition action with regard to the building put up at 5th Floor of K.G.Eternia, 14/50, K.B.Dasan Road, Alwarpet, Chennai-18, pending determination of Section 80-A Revision Petition dated 21.12.2017 with the Government.

3. It stated by the petitioners that they are the original owners of the subject property. They had entered into a Joint Development Agreement with the Builder, namely, Kishore Kumar Gokuldas of K.G.Constructions on 19.10.1998 and executed a Registered Power of Attorney in his favour by allowing him to construct flats and to submit application for grant of planning permission and to sell the proportionate undivided shares of land to the individual flat owners. The Builder obtained planning permission from the 1st respondent herein for construction of stilt + 4 floors of residential flats. But the developer raised 5th floor and allotted the same to them considering the locality and space available. Subsequently, the Developer applied for regularisation of the 5th floor by submitting an application to the 1st respondent C.M.D.A. under Section 113-A of the Tamil Nadu Town and Country Planning Act on 31.10.2000 by remitting the initial fee of Rs.73,350/-. Thereafter, the CMDA scrutinized the application and issued a demand on 5.6.2002 claiming balance regularisation fee and other charges with regard to the 5th floor violation. Aggrieved over the same, the Builder preferred Appeal to the Government under Section 113-A (6) of the Tamil Nadu Town Planning Act. In fact, the said 5th floor of the building was assessed for payment of property tax by the Corporation of Chennai in the year 2000. Nearly 13 years, the petitioners or developer did not hear anything from CMDA with regard to the status of regularisation application. Suddenly, in the year 2013, the CMDA issued the locking and sealing notice by alleging that the 5th floor is unauthorized and not regularisable. Against the same, the petitioners preferred Special Revision Petition under Section 80-A of the Town and Country Planning Act along with Stay Application to the 2nd respondent on 13.12.2017. Now the grievance of the petitioners is that pending the same, the officials of the 1st respondent come to the petition premises and threaten to initiate locking and sealing action. Hence, the present Writ Petition has been filed.

4. Considering the facts and circumstances of the case, we direct the first respondent to consider the revision and the stay petition filed by the petitioner on 13.12.2017 and pass appropriate orders on merits and in accordance with law after affording an opportunity of hearing to the petitioner, within three months from the date of receipt of a copy of this order.

Till the disposal of the revision, no coercive steps shall be taken by the respondent authorities.

5. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.Member-Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

2. Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development
Department, Fort St. George,
Chennai-9.

+ 1 cc to Mr.R.Mohan Advocate, SR.92596
+ 1 cc to The Govt.Pleader, SR.92664

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