

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.Nos.25649 to 25651/2017 & WMP.Nos.27039 to 27044/2017

Tmt.Pooja Rani ..Petitioner in WP.No.25649/2017
Tmt.Rakha Jain ..Petitioner in WP.No.25651/2017
Tmt.Mamta Mehta ..Petitioner in WP.No.25650/2017

Versus

- 1 The Secretary
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St George
Chennai.
- 2 The Member Secretary
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road
Egmore, Chennai-8.
- 3 The Commissioner
Corporation of Chennai
Rippon Building, Park Town
Chennai-3.
- 4 The Executive Engineer,
Corporation of Chennai,
Zone V, No.3, Vadivel 2nd Cross St.,
Perambur, Chennai 600011. ..Respondents in all WPs

Common 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 of the 4th respondent in Notice No.DN.58/050-1/2017 dated 11.09.2017, quash the same and consequentially direct the respondents 2 to 4 to abstain from initiating any coercive steps in de-occupation, sealing and locking of the premises at Flat No.101, No.16, Vadhiyar Kandha Pillai Street, Choolai, Chennai 600 112, till the disposal of the statutory appeal dated 14.10.2017 is pending on the file of the 1st respondent.

For Petitioners in
all WPs : Mr.M.L.Ramesh

For R1 in
all WPs : Mr.A.N.Thambidurai, Spl.GP

For R2 in
all WPs : Mr.N.Sampath

For RR 3&4 in
all WPs : Mr.A.Nagarajan

COMMON ORDER

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

By consent, the writ petition is taken up for final disposal. Since the issue involved and to be adjudicated in all the writ petitions is one and the same, the writ petitions are taken up together for hearing and are disposed of by the following common order.

2 Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent ; Mr.N.Sampath, learned Standing counsel accepts notice on behalf of the 2nd respondent and Mr.A.Nagarajan, learned Standing counsel accepts notice on behalf of the respondents 3 and 4.

3 WP.No.25649/2017:-

The petitioner would state that the property situate at Old Door No.13/14, New Door No.16, Vadhiyar Kandha Pillai Street, Choolai, Chennai-112, in OS.No.959, RS.No.874, CC.No.490, in Vepery Village, admeasuring to an extent of 2625 sqft., was owned by Tmt.Indira R.Jain and her children and a portion of the property and another portion of the property also belonged to one Tmt.Kanchan Devi and her children and they had decided to develop and construct a Multi-Storeyed Building, consisting of residential flats and for sale of each individual flat to the purchasers and also entered into a Joint Venture Development with the intending purchasers of the undivided share of land for the purpose of construction. The petitioner would state that she had purchased the undivided share of 328 sq.ft. out of 2625 sq.ft. of land, through a registered Sale Deed bearing Document No.2185/2011 registered on the file of the Sub Registrar, Periamet, Chennai and also entered into a Construction Agreement with the owners of the land for the floor space measuring 1500 sq.ft and the owners had also applied for necessary planning permission for construction of Stilt floor, 1st floor and 2nd floor and it was granted on 13.02.2009. The petitioner would further aver that it appears that the owner as well as the

developer had put up two additional floors and also in respect of the portion where permission has been given, some deviation also took place and the Corporation of Chennai, took action for demolition of the same and therefore, one of the owners, namely, Kanchan Devi, had filed SLP.No.37800/2013 before the Hon'ble Supreme Court of India and taking note of the submissions made by the owner of the premises that in the event of de-sealing, the removal /demolition of the offending construction will be done within a period of three months, the Hon'ble Apex Court had disposed of the Special Leave Petition and also granted liberty to her to file an appeal and also indicated that it should be disposed of on its own merits. One Tmt.Chandra Devi, also filed WP.No.22187/2016 before this Court, praying for quashment of the order relating to the rejection of the statutory appeal and this Court, vide order dated 28.06.2016, granted liberty to the petitioner therein to submit that the deviation pointed out are minimal in nature and within the condonable limit in the form of projection such as balcony etc., and in the light of the observation made by the Hon'ble Supreme Court of India, in the above cited Special Leave Petition, the appeal filed by the petitioner is to be disposed of on its own merits and it is pending for nearly one year and prays for appropriate orders and also prays for leave of this Court to file a petition for stay pending disposal of the said appeal.

4 WP.No.25650/2017:-

The petitioner would state that the property situate at Old Door No.13/14, New Door No.16, Vadhiyar Kandha Pillai Street, Choolai, Chennai-112, in OS.No.959, RS.No.874, CC.No.490, in Vepery Village, admeasuring to an extent of 2625 sq.ft., was owned by Tmt.Indira R.Jain and her children and a portion of the property and another portion of the property also belonged to one Tmt.Kanchan Devi and her children and they had decided to develop and construct a Multi-Storeyed Building, consisting of residential flats and for sale of each individual flat to the purchasers and also entered into a Joint Venture Development with the intending purchasers of the undivided share of land for the purpose of construction. The petitioner would state that she had purchased the undivided share of 328 sq.ft. out of 2625 sq.ft. of land, through a registered Sale Deed bearing Document No.588/2011 registered on the file of the Sub Registrar, Periamet, Chennai and also entered into a Construction Agreement with the owners of the land for the floor space measuring 1500 sq.ft and the owners had also applied for necessary planning permission for construction of Stilt floor, 1st floor and 2nd floor and it was granted on 13.02.2009. The petitioner would further aver that it appears that the owner as well as the developer had put up two additional floors and also in respect of the portion where permission has been given, some deviation also took place and the Corporation of Chennai, took action for

demolition of the same and therefore, one of the owners, namely, Kanchan Devi, had filed SLP.No.37800/2013 before the Hon'ble Supreme Court of India and taking note of the submissions made by the owner of the premises that in the event of de-sealing, the removal /demolition of the offending construction will be done within a period of three months, the Hon'ble Apex Court had disposed of the Special Leave Petition and also granted liberty to her to file an appeal and also indicated that it should be disposed of on its own merits. One Tmt.Chandra Devi, also filed WP.No.22187/2016 before this Court, praying for quashment of the order relating to the rejection of the statutory appeal and this Court, vide order dated 28.06.2016, granted liberty to the petitioner therein to submit that the deviation pointed out are minimal in nature and within the condonable limit in the form of projection such as balcony etc., and in the light of the observation made by the Hon'ble Supreme Court of India, in the above cited Special Leave Petition, the appeal filed by the petitioner is to be disposed of on its own merits and it is pending for nearly one year and prays for appropriate orders and also prays for leave of this Court to file a petition for stay pending disposal of the said appeal.

5 WP.No.25651/2017:-

The petitioner would state that the property situate at Old Door No.13/14, New Door No.16, Vadhiyar Kandha Pillai Street, Choolai, Chennai-112, in OS.No.959, RS.No.874, CC.No.490, in Vepery Village, admeasuring to an extent of 2625 sqft., was owned by Tmt.Indira R.Jain and her children and a portion of the property and another portion of the property also belonged to one Tmt.Kanchan Devi and her children and they had decided to develop and construct a Multi-Storeyed Building, consisting of residential flats and for sale of each individual flat to the purchasers and also entered into a Joint Venture Development with the intending purchasers of the undivided share of land for the purpose of construction. The petitioner would state that she had purchased the undivided share of 328 sq.ft. out of 2625 sq.ft. of land, through a registered Sale Deed bearing Document No.1627/2011 registered on the file of the Sub Registrar, Periamet, Chennai and also entered into a Construction Agreement with the owners of the land for the floor space measuring 1500 sq.ft and the owners had also applied for necessary planning permission for construction of Stilt floor, 1st floor and 2nd floor and it was granted on 13.02.2009. The petitioner would further aver that it appears that the owner as well as the developer had put up two additional floors and also in respect of the portion where permission has been given, some deviation also took place and the Corporation of Chennai, took action for demolition of the same and therefore, one of the owners, namely, Kanchan Devi, had filed SLP.No.37800/2013 before the Hon'ble Supreme Court of India and taking note of the submissions made

by the owner of the premises that in the event of de-sealing, the removal /demolition of the offending construction will be done within a period of three months, the Hon'ble Apex Court had disposed of the Special Leave Petition and also granted liberty to her to file an appeal and also indicated that it should be disposed of on its own merits. One Tmt.Chandra Devi, also filed WP.No.22187/2016 before this Court, praying for quashment of the order relating to the rejection of the statutory appeal and this Court, vide order dated 28.06.2016, granted liberty to the petitioner therein to submit that the deviation pointed out are minimal in nature and within the condonable limit in the form of projection such as balcony etc., and in the light of the observation made by the Hon'ble Supreme Court of India, in the above cited Special Leave Petition, the appeal filed by the petitioner is to be disposed of on its own merits and it is pending for nearly one year and prays for appropriate orders and also prays for leave of this Court to file a petition for stay pending disposal of the said appeal.

6 The Court heard the submissions of Mr.M.L.Ramesh, learned counsel appearing for the petitioners ; Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent ; Mr.N.Sampath, learned Standing Counsel appearing for the 2nd respondent and Mr.A.Nagarajan, learned Standing counsel appearing for the respondents 3 and 4 and perused the materials placed before it.

7 Though the petitioners have prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners, permits the petitioners to file petitions for stay under section 80-A[iii] of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and the 1st respondent, upon receipt of the said stay petitions, is at option, either to dispose of the petitions for stay within a period of two weeks thereafter or the main appeal petitions dated 14.10.2017 itself on merits and in accordance with law and pass appropriate orders within a period of ten weeks thereafter and till such time, the respondents 3 and 4 shall defer further decision in terms of the impugned reminder notice dated 11.09.2017. It is made clear that petitioners till such time, shall not alter the physical features and shall not create third party rights in respect of buildings.

8 The writ petitions stand disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP
To

- 1 The Secretary
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St George
Chennai.
 - 2 The Member Secretary
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road
Egmore, Chennai-8.
 - 3 The Commissioner
Corporation of Chennai
Rippon Building, Park Town
Chennai-3.
 - 4 The Executive Engineer,
Corporation of Chennai,
Zone V, No.3, Vadivel 2nd Cross St.,
Perambur, Chennai 600011.
- + 3 ccs to Mr. M.L. Ramesh, Advocate SR.70055, 70054, and 70053
+ 3 ccs to Mr. N. Sampath, Advocate Sr.69723
+ 1 cc to Mr. A. Nagarajan, Advocate Sr.70428
+ 1 cc to Government Pleader SR.70669

APWP.Nos.25649 to 25651/2017

CS-IV
EU(05/10/2017)