

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A No.875 of 2013

M.P.No. 1 of 2013

The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008. ...Appellant/5th Respondent

Vs

1. Rajgharana Housing Limited,
Rep. by its Director Mahaveer Chand Nahar.

...Respondent/Petitioner

2. The Chairman,
Tamil Nadu Electricity Board,
No.800 Anna Salai, Chennai 600 002.

3. The Chief Engineer(Commercial),
Tamil Nadu Electricity Board,
No.800, Anna Salai, Chennai 600 002.

4. The Superintending Engineer,
Tamil Nadu Electricity Board,
C.E.D.C./South, Anna Main Road,
K.K. Nagar, Chennai 600 078.

5. The Executive Engineer,
Tamil Nadu Electricity Board,
O&M, South Tambaram, Chennai. ...Respondents/Respondents

Prayer:

Writ Appeal filed under clause 15 of the Letter Patent
against the order made in W.P.No.7983 of 2008 dated 01.04.2008.

Prayer in WP.No.7983 of 2008:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 4 to forthwith provide permanent electricity connection of 60 individual service connections and 2 common electricity service connections for the Residential Apartment of the petitioner situated at S.No.15/1A3 and 15/1A4 of Selaiyur village Tambaram Municipality Tambaram

Taluk Kancheepuram District without insisting completion certificate from the 5th Respondent following the earlier orders passed by the Division Bench of this Honourable Court

For Appellant : Mr.K.Raja Srinivas
For Respondents : No Appearance (for R1),
Mr.S.K.Raameshuwar (for R2 to R5)
Senior Counsel for TNEB.

J U D G M E N T
(Order of the Court was made by M.DHANDAPANI, J.)

The writ appeal is filed against the order made in W.P.No.7983 of 2008 dated 01.04.2008, wherein, the learned Single Judge allowed the writ petition filed by the respondent herein.

1. The facts of the case are as follows: The writ petition was filed by the first respondent seeking to direct the respondents 2 to 5 to provide electricity service connection to the respective flats and for the common areas of the building put up by the petitioner forthwith for the residential flats put up at Old No.6, New No.11, Gajapathy Road, Kilpauk Garden, Chennai 600 010 comprised in R.S.No.3130/79 Block No.52 of Purasawakkam Village without insisting upon completion certificate from the fifth respondent.

2. The learned Single Judge after hearing the parties issued a direction by following the earlier order passed by this court and disposed of the writ petition in terms of W.P. No.2973 of 2008 decided on 28.02.2008.

3. Per contra the learned counsel appearing for the appellant relied upon the decision reported in S.Prakash Chand Jain vs. State of Tamil Nadu reported in (2014) 2 MLJ . The relevant portions of the same reads as follows:

27. We have put a question to the learned counsel of CMDA as to how the developer got electricity, water and sewerage connection without obtaining completion certificate from CMDA. The Learned Standing Counsel submitted that the builders have now invented a novel device by filing writ petition directing the authorities to provide electricity, water and sewerage connection without insisting completion certificate from CMDA.

28. Regulation No. 4(5) of Development Regulations approved by the Government of Tamil Nadu in G.O. Ms. 190, Housing and Urban Development dated 2 September 2008 reads thus:

"Completion Certificate:

(a) The Applicant / owner / Builder / Promoter / Power of Attorney Holder and any other person who is acquiring interest shall not put the building to use without obtaining Completion Certificate from CMDA for 'Special buildings', Group Developments, Multi-storied Buildings, and Institutional buildings (exceeding 300M2 in floor area) and such other developments as may be notified by the Chennai Metropolitan Development Authority from time to time.

(b) The Applicant / Owner / Builder / Promoter / Power of Attorney Holder and any other person who is acquiring interest shall submit application in complete shape for issue of Completion Certificate before probable date of completion, and CMDA/Local Body concerned, which had issued PP, shall dispose of such application".

29. The Division Bench in Consumer Action Group, rep. by its Trustee v. State of Tamil Nadu, by its Secretary to Government, Law Department, 2006 (4) CTC 483 : LNIND 2006 MAD 1863 : (2007) 1 MLJ 897, 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 connection, without insisting completion certificate from CMDA.

32. We, therefore, by following Consumer Action Group, hold that writ petition for issuance of a Writ of Mandamus to direct TANGEDCO and TNWSS Board to provide electricity, water and sewerage connection and the Corporation/local body to assess the building and to provide door number, without insisting Completion Certificate from CMDA is not maintainable.

4. In view of the above categorical position, the prayer sought for by the first respondent cannot be granted. Consequently, the order passed by the Learned Single Judge is set aside. Accordingly the writ appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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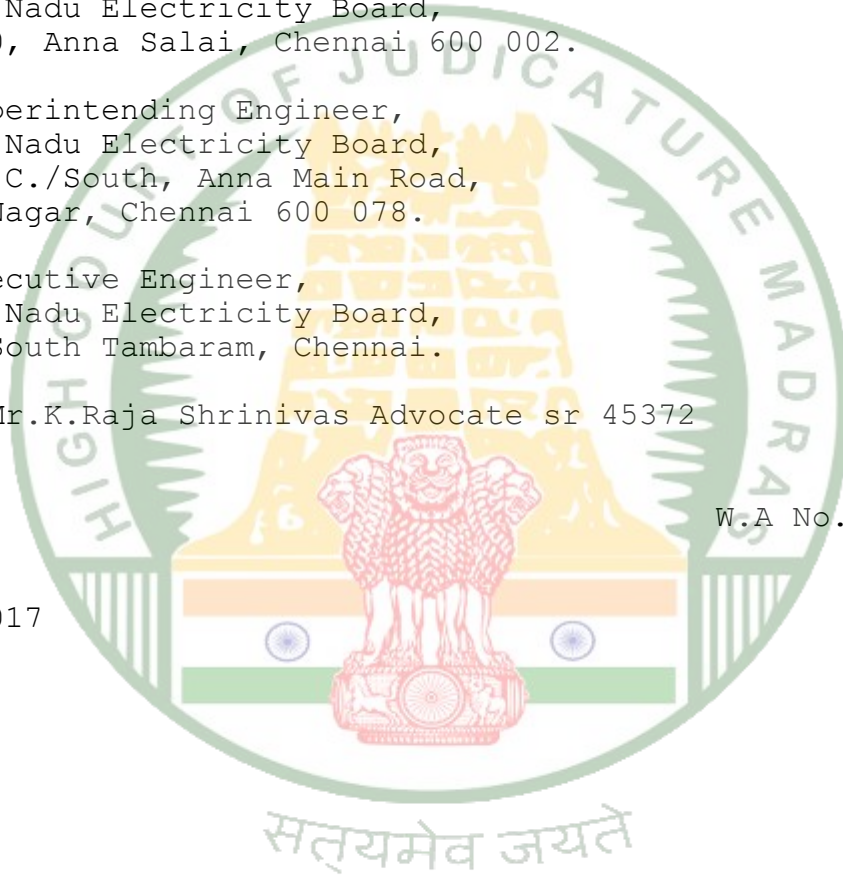
To

1. The Member Secretary
Chennai Metropolitan Development Authority
NO.1, Gandhi Irwin Road, Egmore Chennai-8
2. The Chairman,
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5. The Executive Engineer,
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+1 cc to Mr.K.Raja Shrinivas Advocate sr 45372

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