

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.07.2017

CORAM:

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

WA.No.322/2012 & MP.No./12012

The Tamil Nadu Housing Board Ltd.,
rep. by its Managing Director,
No.48, Dr.Muthulakshmi Salai
Sastri Nagar, Adyar,
Chennai 600020.

Appellant / Respondent 2

Vs

1.Mr.V.Mohan Rao
2.V.Sampath Kumaran
3.T.Mayappan
4.M/s.Sri Ayyappa Builders Private Limited
N0.1, Krishna Iyer Street, 1st Floor
[Valluvar Kottam High Road]
Nungambakkam, Chennai-34.

5.S.Chandra Rao
6.P.S.L.Narasimhan
7.Raji Krishnaswamy
8.S.Venkatramani
9.M.Visalakshi
10.M.Vijayalakshmi
11.K.V.Narayan
12.V.R.Sabitha Neelakanthan
13.A.Thirumarul Selvan
14.S.Krishnamoorthy
15.Dr.P.Saraswathy
16.Arthi
17.N.Srinivasan
18.N.Ranjani

represented by their Power Agent
Mr.J.Seetharaman

..

Respondents 1 to
18 / writ petitioners

19.The Chennai Metropolitan Development
Authority rep.by its Member Secretary
No.1, Gandhi Irwin Road, Egmore,
Chennai 600 008.

.. Respondent
No.19 / 1st respondent in Writ
petition

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent
against the order passed in the writ petition in
WP.No.29877/2010 order dated 29.12.2010.

WP.29877/2010

Writ Petition filed under Article 226 of the constitution of
India, praying to issue a writ of mandamus to direct the 1st
respondent to entertain consider and grant approval to the
planning permission and building permit for putting up
construction in the property bearing Block No.M-36 East Avenue
Road Kamaraj Nagar Thiruvannamiyur together with all that piece
and parcel of land measuring around 19 300 sq.ft. and comprised
in S.No.97 Block No.28 Patta Ref:T.S.No.97/5 C.A.No.838/2010
dt.11.6.2010 Thiruvannamiyur Village Chennai as sought for
without insisting upon the No Objection Certificate from the 2nd
respondent or from any other authority so long as the new
construction activities are in accordance with the Development
Control Rules.

For Appellant : Mr.V.Anandamoorthy

For R 19th respondent : Mr.Raja Srinivas

JUDGMENT

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

The 2nd respondent / appellant, aggrieved by the order
passed in WP.No.29877/2010 vide impugned order dated
29.12.2010, has filed the present writ appeal.

2 The only question arises for consideration in this writ
appeal is whether the No Objection Certificate from the
appellant / Tamil Nadu Housing Board is required in respect of
the land appurtenant to the flats or common area. The said
issue is no longer res integra in the light of the decision
rendered a Full Bench of this Court reported in 2013 [3] CTC 129
[Tamil Nadu Housing Board rep.by its Managing Director, Anna
Salai, Nandanam, Chennai 600 035 Vs. Mary Rani Immanuel and

others], wherein, it has been held in paragraph No.15 as follows:-

"...

15 Thus, the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994, the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining "No Objection Certificate" from the Tamil Nadu Housing Board will not arise. In such circumstances, the allottees of the Flats, after execution of the Sale Deed in their favour have got every right to demolish the existing building and construct new Apartment blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the Rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got no say, even if additional dwelling units are constructed after demolishing the existing Flats. As stated already, the Tamil Nadu Housing Board loses its rights as soon as it executes the Sale Deed in respect of the Flats, appurtenant land and even in the areas earmarked for the common enjoyment of the Flat owners. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the Rules and Regulations of the CMDA. Even assuming that there are restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes Sale Deed in favour of the Allottees, it loses all its rights on the property and it cannot any more question the action of the Allottees by saying that the

Allottees have violated the conditions enumerated in the Sale Deed."

3 Thus it has been held by the Full Bench that "a reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994, the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining "No Objection Certificate" from the Tamil Nadu Housing Board will not arise" and that "the common area has to be enjoyed in common by the Flat owners and if a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without "No Objection Certificate" from the Tamil Nadu Housing Board."

4 In the light of the said decision, the writ appeal deserves to be dismissed and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Managing Director,
Tamil Nadu Housing Board Ltd.,
No.48, Dr.Muthulakshmi Salai
Sastri Nagar, Adyar, Chennai 600020.

2. The Member Secretary
Chennai Metropolitan Development
No.1, Gandhi Irwin Road, Egmore,
Chennai 600 008.

+1cc to M/s.A.Anandamoorthy, Advocate, S.R.No.54068
+1cc to M/s.K.Rajasrinivas, Advocate, S.R.No.53709

WA.No.322/2012

VG II(CO)
CU(28/08/2017)