

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

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

W.P.No.23918 of 2007 & M.P.No.1 of 2007

M/s.Krishna Builders

By its Successors-in-interest

Krishna Enterprises, No.3,

Anna Salai, Chennai 600 002.

... Petitioner

Versus

1. The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St George, Chennai 600 009.

2. The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai 600 008.

3. The Corporation of Madras
Rippon Buildings, Chennai 600 003.

... 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 of the 1st respondent relating to its proceedings G.O.[D] No.435, dated 11.08.2005 and quash the same and direct the 2nd respondent to grant the permission for the construction of the 4th and 5th floors in premises bearing Door No.3, Anna Salai, Chennai 600 002.

For Petitioner : Mr.Irwin Aaron

For R1 : Mr.R.Vijayakumar,
Additional Government Pleader

For R2 : Mr.N.Sampath

For R3 : Mr.A.Nagarajan

ORDER

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

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

2. The petitioner, who is a Builder, aggrieved by the dismissal of the appeal by the 1st respondent vide G.O.[D] No.435 dated 11.08.2005, has filed the present writ petition.

3. It is relevant to extract the violation pointed out in the said Impugned Order:-

Sl. no	Development Control Rules	Required/ Permitted	Provided	Excess / % of violation	
1	17[1]1	Site Extent	15000 sq.m.	1165.89 sq.m. Less by 334.11 sq.m.	
2	17[a]1	Min.length of shortest side	30.00 m	16.46 m Less by 13.54 m	
3	17[a]3[b]	Clear set back ground			
		North	7.000 m	Nil	Less by 7.00 m
		South	7.000 m	Nil	Less by 7.00 m
		East	7.000 m	Nil	Less by 7.00 m
		West	7.000 m	Nil	Less by 7.00 m
4	17[a]2	Plot Coverage	50%	100% Excess by 50%	
5	17[a][2]	Floor Space Index	2.25	5.08 Excess by 2.83	
6	17[a]5	Parking Cars	45 Nos. Car Space	13 Nos. Feasible Car Space	Less by 32 Nos. Car Space
7	17[a]5[5]	Driveway for basement	7.20 m	5.64 m	Less by 1.56 m
8	17[a] 5[8]b [ii]	Stand by Generator is not provided			
9	17[a]5[8]b [iii]	Transformer room in Ground Floor is not provided			
10	17[a]5[8]b [iv]	Meter Room is not provided			
11	Architect has not signed the plan				
12	The plan submitted is no as per site condition				

4. It is the case of the petitioner that in the year 1973, a plan was prepared in accordance with the prevailing rules, viz., the Chennai City Corporation Building Rules, 1972, for construction of a building with Ground + 6 Floors. However, planning permission was accorded to put up construction up to three floors only. The petitioner having finding it extremely difficult to store the building materials, on the arterial road, viz., Mount Road [presently known as "Anna Salai"] and further that it may take considerable time for construction of the entire building and also for other uses, thought fit to apply for approval for the remaining floors and however, they could not do so on account of the then contemplated Urban Land Ceiling Legislation. The then Planning Approval Authority, viz., the Corporation of Madras [now known as "Corporation of Chennai"] did not entertain the Planning Permission between December 1975 and 02.04.1976.

5. The petitioner, despite the absence of Planning Permission for additional construction, proceeded with the construction of 4th and 5th Floors and submitted an application for approval on 05.04.1976, seeking approval of the remaining four floors.

6. However, the 2nd respondent - Chennai Metropolitan Development Authority [CMDA] had rejected the Planning Permission sought for by the petitioner vide order dated 27.07.1976, by applying the Development Control Rules, which came into force on 21.12.1976. It is the case of the petitioner that since the construction was completed during the year 1973, the said rules have no application and challenging the legality of the rejection, the petitioner has filed a statutory appeal to the 1st respondent contending among other things that the Development Control Rules, 1976, have no application and the Madras City Municipal Building Rules, 1972, would apply.

7. The petitioner would further aver that pendency of the statutory appeal, an attempt was made to demolish 4th and 5th floors notwithstanding the fact that the said floors have been assessed to statutory levies in the form of property tax etc.

8. The petitioner also filed a suit in OS.No.10064/1976 on the file of the Court of II Assistant City Civil Court Judge, Chennai, praying for judgment and decree for permanent injunction restraining the Corporation of Madras-3rd respondent herein, from entering into the said premises and demolish certain portions of the premises and also for cost and an order of ad-interim injunction was granted and the said suit was decreed ex-parte on 26.07.1977 and no steps have been taken by the 3rd respondent either to set aside the exparte decree or to

prefer an appeal and therefore, the said judgment has become final.

9. The Appellate Authority, viz., the 1st respondent, vide proceedings dated 28.07.1976 has dismissed the statutory appeal and challenging the same, the petitioner filed WP.No.7825/1983 and a Single Bench of this Court, vide order dated 02.09.1991, found that since no opportunity has been afforded to the petitioner herein to make his representation before passing the impugned order, has held that the said impugned order deserves to be quashed and accordingly, quashed the same and granted liberty to the 1st respondent / Government to restore the appeal and dispose of the same after giving an opportunity to the petitioner herein.

10. In pursuant to the liberty granted, the plea made by the petitioner was once again considered by the 1st respondent and vide G.O.[D] No.111, dated 19.02.1997, has rejected the appeal.

11. The petitioner also submitted an application dated 28.05.1999, praying for regularisation with regard to the parking space provided in the premises bearing Door No.3, Anna Salai, Chennai - 2. The 2nd respondent, vide communication dated 14.06.2003 has acknowledged the receipt of the regularisation application/petition and called upon the petitioner to furnish the Structural Stability Certificate within fifteen days. The petitioner has submitted the same on 05.07.2003. The petitioner also filed WP.No.5911/1997 challenging G.O.[D] No.111 of the 1st respondent Department dated 19.02.1997. A Single Bench of this Court, vide order dated 17.04.2004, has observed that the objections submitted by the petitioner have not been considered and therefore, set aside the order with a direction, directing the 1st respondent to give a personal hearing to the petitioner after fixing the date of hearing and the petitioner was granted liberty to appear and submit his objections / representation and on receipt of the objections and fullfledged hearing, the 1st respondent was directed to pass a detailed order dealing with all the objections/clarifications made by the petitioner within a stipulated time.

12. In pursuant to the said order, on remand, the objections raised by the petitioner, vis-a-viz, the response submitted by the 2nd respondent has been considered by the 1st respondent, who vide G.O.[D] No.435 dated 11.08.2005, has rejected the appeal. Aggrieved by the dismissal of the same, the petitioner is before this Court by filing the present writ petition.

13. The 2nd respondent, after the rejection of the appeal by the 1st respondent, vide order dated 11.08.2005, sent a communication dated 18.06.2007 in the form of Notice under section 56 read with 85 of the Town and Country Planning Act, 1971, informing the petitioner that the entire building of Basement Floor + Ground + 4 Floors - Commercial building, is treated as unauthorized and therefore, called upon the petitioner to restore the land to its original condition before the said construction took place, within thirty days from the date of receipt of the notice, failing which, action will be taken under section 56[5][b][i] and [ii] of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner, aggrieved by the said notice, filed an appeal under section 79 of the said Act before the 1st respondent and the same is pending disposal.

14. This Court, has admitted the writ petition on 24.04.2008 and in MP.No.1/2009, has granted an order of ad-interim injunction as prayed for, until further orders.

15. The matter was listed for hearing before this Court on 18.08.2017 and having found that no steps have been taken by the 2nd respondent to file a counter, this Court has imposed cost of Rs.10,000/- and granted further time to file counter and accordingly, cost ordered by this Court, has been deposited by the 2nd respondent.

16. The 2nd respondent has filed a counter affidavit dated 24.07.2017, contending among other things that the regularisation application submitted by the petitioner is under process and based upon a common decision taken to provide another opportunity, the petitioner was issued with the letter dated 21.07.2017, calling for the revised plan as on site condition. Insofar as not taking action, the 2nd respondent took a stand that the Government has promulgated an Ordinance in Ordinance No.1 of 2007 on 27.07.2007 to suspend the enforcement act on the buildings constructed up to 01.07.2007 for a period of one year and it has been continuously extended up to 2011 till a status quo order passed by the Hon'ble Supreme Court of India on 14.12.2007, while granting leave in SLP [Civil] No.23098/2007 against the judgment of a Division Bench of this Court dated 13.11.2011 which was vacated on 15.03.2011 and as such, no enforcement action could be taken and also indicated that further enforcement action will be taken based on the disposal of the regularisation application submitted by the petitioner.

17. The 3rd respondent did not file counter affidavit.

18. The learned counsel for the petitioner made the following submissions:-

- The construction was completed during the year 1973 and the Development Control Rules came into force only on 21.12.1976 and as such, the special rules have no application and only the Madras City Municipal Corporation Rules, 1972 alone have application.
- The area in which the site and building is located within the building line and street alignment under section 208 of the Chennai City Municipal Corporation Act, 1919 and as such, there is no necessity on the part of the petitioner to leave any set back.
- The petitioner had given up the construction of 6th and 7th floors and as a consequence, the retention of the built up area got reduced by 9000 sq.ft. and however, the floor area ratio has been calculated as 2.5.
- The regularisation is sought only in respect of car parking space and as per the counter affidavit of the 2nd respondent, the application is pending and therefore, there is no necessity to Lock and Seal and Demolish the building and hence, prays for interference.

19. The learned standing counsel for the 2nd respondent - CMDA made his submissions based on the counter affidavit and would submit that though the regularisation application was rejected on 09.01.2006, a common decision was taken to reconsider the same and accordingly, a communication was sent on 21.07.2017, calling upon the petitioner to submit the revised plan on site condition and subject to the result of the same, further enforcement action will be taken.

20. The learned counsel appearing for the 3rd respondent - Corporation of Chennai, would submit that depending upon the result of the regularisation application by the 2nd respondent, action will be taken in accordance with law, within the shortest possible time.

21. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

22. It is relevant to extract the letter of the petitioner dated 05.04.1976, addressed to the 2nd respondent :

KRISHNA BUILDERS
Sole Prop: Hotel Staylonger [P] Limited,
Bangalore,
"CITY CENTRE PLAZA" - Shop No.14
3, ANNA SALAI, MADRAS 600 002.

5th April 1976

The Madras Metropolitan Development
Authority, 464, Poonamallee
High Road, Madras-600 010.

Through:-
The Corporation of Madras
Madras.

Dear Sirs,

We inform you that we have submitted our building plan for 3, Anna Salai, Madras-600 002 for Basement, Ground Floor with Seven Floors at the time of starting our construction. As we are unable to pay the huge license fees for the entire plan at one time, we are advised to take the plan sanction for three storeys by paying the fees of Rs.23,890/- [Sanction Plan No.1995/73]. We have laid the foundation for seven floors, thinking of taking the sanction for further floors afterwards.

Due to cement shortage and not proper supply in time, we are unable to complete the construction in time. Moreover, when the cement supply was inadequate after the lifting of cement control order by the Government, we are unable to get our sanction for further floors as the Corporation Authorities have stopped receiving planning applications. As explained above we are very much handicapped and could not proceed in the matter in time.

There are no proper storage facilities to lift the materials to the top floors afterwards and also out pre-commitment with our parties, we are forced to construct further floors. We have un-authorisedly constructed the 4th and 5th floors, thinking of submitting the revised plans soon as the Corporation Authorities revise the procedure.

Now we are herewith submitting the revised plans for our building at 3, Anna Salai, Madras-600 002 for the additional floors and request you to kindly sanction the same at your earliest.

Sd/-
Sole Prop.
Hotel Staylonger [P] Ltd.,
Bangalore.

Managing Director

23. Admittedly, the petitioner was accorded with the sanction plan to put up construction of Ground + 3 floors and the justification for putting up additional construction from

the above cited letter appears to be due to cement shortage and on account of non-processing of the sanction plan for putting up further floors on the part of the 3rd respondent, viz., the Corporation of Chennai.

24. The 1st respondent, vide communication dated 20.06.1983 in Letter No.128020/MCII/78-22, has dismissed the appeal petition on the ground that the construction has been put up in violation of the Development Control Rules. The petitioner made a challenge to the said order by filing WP.No.7825/1983 and pending disposal of the same, filed Civil Miscellaneous Petition in CMP.No.17819/1983, praying for permission to blaster the outer side walls and colour wash the premises bearing Door No.3 to 44, Anna Salai, without materially altering the building pending SR.No.7825/1983. This Court, vide interim order dated 09.03.1984, has permitted the petitioner to do so at his risk subject to the result of the writ petition. The petitioner, armed with such an order, not only plastered the outer side walls and colour washed the premises, but also started using it for commercial purposes either for its own use or leasing it out in favour of third parties. The above said writ petition was disposed of on 02.09.1991 on the ground of non-providing of an opportunity to the petitioner to make his representation before passing the impugned order. The endeavour made by the petitioner to set the deviation right in the form of appeal, once again came to be rejected by the 1st respondent vide G.O.[D] No.111 dated 19.02.1997 and again he made a challenge by filing WP.No.5911/1997 and the said writ petition was disposed of on 17.04.2004, by directing the 1st respondent to afford personal hearing and consider the petitioner's objection with a further direction to pass a detailed order. The 1st respondent, in compliance of the said order, has passed the impugned order vide G.O.[D] No.435 dated 11.08.2005. The objections raised by the petitioner have been furnished to the concerned statutory/implementation authority, viz., CMDA, who in turn, furnished their remarks to the 2nd respondent. It is relevant to extract paragraph 4 of the impugned order, which reads thus:-

4 The objections of the petitioner and the remarks of the Chennai Metropolitan Development Authority are as follows:-

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Sl.No	Objections of the Petitioner	Remarks of Chennai Metropolitan Development Authority
1	CMDA failed to note that the PPA was filed before the advent of DCR and also failed to note that the proposal for 6 th and 7 th floor was dropped by the petitioner.	The proposal was examined as per the rules in force at that time. The fact is that the petitioner himself had modified the proposal for BF+GF+5F and the same attracts the MSB Rules.
2	The objection was that the Government accepted the remarks of the Chennai Metropolitan Development Authority, in a routine manner.	As there was no scope for minimizing the deviations made in the then existing building, the rules in force were taken into account. The appeal was examined in detail by the Appeal Committee and also adn final orders were issued rejecting the appeal on 19.02.1997. Hence, it is not correct to say that the proposal was gone through in a routine manner.
3	While disposing of the second appeal the reasons for rejection has been increased from 5 to 12 thereby 7 additional reasons given in the rejection order was not according to law.	In the second appeal additional violations were noticed and the petitioner had not minimized those to consider the case afresh and so the proposal was treated under MSB norms, which resulted in the detection of additional number of deviations. Hence, this objection has no force and it has to be over ruled.
4	Three decades of delay was caused and the rules in force after 05.04.1976 cannot be made applicable.	In 1976, the proposal was examined by Chennai Corporation and during the pendency of the PPA the DCR came into effect and consequently the papes came to the hands of CMDA which had duty examined the proposal with reference to DCR and therefore, rules existed prior to 05.04.1976 cannot be made applicable.

Sl.No	Objections of the Petitioner	Remarks of Chennai Metropolitan Development Authority
5	Retrospective effect of the provisions of the Act was not follows as the DCR was notified only on 15.12.1976 as a part of Master Plan.	The CMDA applied the DC Rules prevailing at the time of receipt of PP application by it and it was found that the proposal was having almost all violations of DC Rules and therefore, there is no question of giving any concession to the petitioner on retrospective effect, until the PPA was cleared which was said to be pending with planning authority. The Master Plan was published on 15.12.1976.
6	Only the provisions of the MCMC Act were applicable and not DCRs.	The Master Plan came into effect on 15.12.1976 and u/s.48 of the Act, no person can carry on development of his land without prior permission of the planning authority and therefore, MCMC Act was not applicable and also it cannot be made applicable for the simple reason that DC Rules came into force by then.
7	Due to sub-division of the plot prior to 05.08.1975 the rule regarding the size of the plot is less than the minimum 1784 sq.mt. And the plot frontage is less than 4.8 mts., are not viable. CB provisions not extended.	The benefit under rule 17[a] relating to CBA cannot be extended to the petitioner as he sought for regularisation of BF+GF+5F which falls under rule 4[iv] of DCR can be applied to his case is not acceptable for the reason that as he sought approval for BF+GF+5F instead of GF+3F and the requirement of plot extent is 1500 sq.m., against which the petitioner's site is having only 1165 sq.m. The rule 4[iv] is applicable to ordinary building only but the proposal is for MSB for which the said rule cannot apply.

Sl.No	Objections of the Petitioner	Remarks of Chennai Metropolitan Development Authority
8	As per the MCMC Act, there is no need to provide frontage as the area falls under CBA and therefore, non-provision of set back is incorrect.	As per rule 17[a] of DCR a minimum of 7m set back is to be provided for MSB to facilitate snorkel movement for emergency rescue operation and therefore, the petitioner's contention that there is no need to provide 7 Meter of open space on all sides is not acceptable. The minimum length of the shortest site was in force under DCR at that time.
9	The proposal should be examined under the provision according to which the permissible FSI was 2.50 instead of as of now.	As the proposal is for MSB for BF+GF+5F and relates to the coverage according to which the plot extent of the petitioner is 1165.89 x 1.50=1748.88 sq.m. whereas, the petitioner has constructed a floor area of 4925.24sq.m. Hence, the achieved FSI is 5.08 which is in excess by 3.58 and also the objection cannot sustain.
10	As of now 29 car parking is available and if this is taken under the previous rule it is enough and so the proposal be accepted.	The petitioner applied for regularisation scheme in 1999 and it was returned for regularisation to him in 2000. Hence, the proposal cannot be examined now as he had not submitted necessary application under Regularisation Scheme 2001 or 2002.

25. The primordial submission made by the learned counsel for the petitioner is that at the time of completion of the construction during the year 1973, the Development Control Rules have not come into play and further that the petitioner has clearly indicated his intention, not to proceed with the construction of the 6th and 7th floors and in that event, the deviation / unauthorised construction is enumerable. As per the counter affidavit of the 2nd respondent, though the regularisation application was rejected, pursuant to the decision taken, it is under due consideration.

26. The Chennai City Corporation Building Rules, 1972, provide for the nature, manner and conditions for putting up "Building - Business ; Building - Domestic ; Building - industrial ; Building - Public and Building - Residential". Rule 19 speaks about the open space in building and Rule 19-A speaks about the provision for parking space and parking facilities. Rule 31 provides for grant of exemption by the Government - exemption from operation of all or any of the provisions of these rules to any building or any specified class of buildings for reasons to be recorded in writing.

27. The 3rd respondent, in exercise of powers conferred under section 230 and 347 [1] of the Chennai City Municipal Corporation Act, 1919, had framed Special Rules for Multi-Storeyed and Public Buildings, 1974 and the said rules are in addition to the Chennai City Corporation Buildings Rules, 1972. This Court has already pointed out that as per the own admission of the petitioner in his letter dated 05.04.1976 addressed to the 2nd respondent with regard to the further construction despite the absence of planning permission / authorisation. Though the petitioner has obtained interim orders to plaster outer walls and colour wash the premises/building in pursuant to the interim order 09.03.1984 in WP.No.7825/1983, it appears that he has completed the construction and started using it as a commercial building either for its own use or leased out the same in favour of third parties. The Appellate Authority in the impugned order, has called for remarks from the concerned Statutory Authority, viz., the 2nd respondent and after going through the materials, observed that the appeal filed by the petitioner deserves rejection and accordingly, rejected.

28. The primordial question arises for consideration is that the petitioner who, on its own admission, had violated the planning permission / authorisation and also the rules prevailing at the relevant point of time, is entitled to any indulgence from this Court?

29. This Court, often come across the submission made by the learned counsel appearing for the violators like the petitioner insisting that the official respondents have to follow the law. It is pertinent to point out at this juncture that the concerned petitioners / violators before insisting the official respondents to follow the law, shall respect and adhere to the relevant provisions and in most of the cases, they have failed to do so and in violation of the relevant statutory provisions and regulations, had put up buildings without obtaining any sanctioned plan or in deviation of the sanctioned plan / authorisation.

30. In most of the cases, the concerned official respondents, viz., CMDA and the Corporation of Chennai, have turned a blind eye to such violation which happened in front of their eyes.

31. 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 several decisions rendered by the Hon'ble Supreme Court of India, has observed that "the unholy nexus between the builder and certain officials of the CMDA, Corporation [Corporation of Chennai] gives encroachment to more and more people, to violate building laws with impunity."

32. Incidentally, a question also arises for consideration that despite such a violation on the part of the petitioner, is it entitled to any indulgence from this Court?

33. 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 same:-

The 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. 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. 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.

In the present case, the builder added an additional fifth floor on the building which was

totally unauthorised. 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.

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. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. The 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."

34. In Consumer Action Group rep.by its Trustee Vs. State of Tamil Nadu rep. by its Secretary to Government, Law Department, Secretariat, Chennai-9 and others reported in 2006 [4] CTC 483 [DB], it is 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."

35. In *Santhi Sports Club Vs Union of India*, reported in 2009 [15] SCC 704 : AIR 2010 SC 433, the Hon'ble Apex Court observed that the Executive must take stringent action to curtail the menace of illegal construction and in paragraph 75 observed as follows:-

"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."

36. 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, once again sounded a note of caution by taking into consideration large scale unauthorised construction and in paragraphs 55 and 56, 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."

37. Thus, despite repeated pronouncements of the Hon'ble Supreme Court of India, coming down heavily upon the violators and inaction on the part of the statutory authorities, the unauthorized constructions continue to take place and the statutory authorities, viz., the Corporation of Chennai as well as the Chennai Metropolitan Development Authority [CMDA] are not conducting periodical inspection as to whether the construction being put up, is in accordance with the sanctioned plan. It is also to be noted at this juncture that the violators had gone to the extent of putting up constructions without any planning permit / permission and in spite of such a violation, the electricity service connection and water supply and sewerage connection are also being provided. The Local Bodies for the purpose of augmenting their revenue, are also collecting property taxes and it has become a standard practice on the part of the said violators to pay and since the Local Bodies are collecting statutory levies in the form of property tax etc., the unauthorized constructions put up by them, has been regularised.

38. As a result of mushrooming growth of unauthorized constructions, it is impossible for this Court to pass orders for demolition of the entire structure for the reason that in the City of Chennai alone, such a kind of unauthorized construction had reached an alarming level and it may not be practically possible to demolish the same and the only course that may be open is to direct the concerned authority to disconnect the electricity supply as well as the water and sewerage connection, so that the violators may feel the pinch of their sinful act.

39. The Government has also brought forth amendment in the form of section 113-C in the Tamil Nadu Town and Country Planning Act, for the purpose of framing guidelines and also issuing Government Orders, which have been quashed by this Court and thereafter, in exercise of the powers conferred by Clause [bb] of sub-section 2 of section 122 read with 113-C, the rules may be called as Tamilnadu Assessment and Collection of Amount for Exemption of Building Rules, 2017 and Guidelines for Exemption of Buildings, 2017 came to be formulated through G.O.Ms.Nos.110 and 111, of the 1st respondent Department dated 22.06.2016 and the cut-off date has been prescribed and the

applicability of the said rule is in respect of completion of the construction on or before 01.07.2007. The concerned authority started receiving on-line applications and in the light of the huge number of unauthorized constructions mushroomed throughout the State, it may not be possible for the concerned authority to process the applications and pass final orders in the near future.

40. As we have already pointed out, the petitioner who is a Builder, is very well aware of the consequences of putting up unauthorized constructions in gross violation of the sanctioned plan/authorisation and therefore, it has to face the consequences for doing such an act. The learned counsel for the petitioner would state that the 1st respondent did not independently applied his mind to the report of CMDA/2nd respondent herein. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that the 2nd respondent, after carrying out inspection, has noted down the violations which include the set back violation and accordingly, submitted the report to the 1st respondent who, in exercise of the statutory power, has considered the same and thought fit to reject the appeal.

41. It is also pertinent to point out at this juncture that the building is a contiguous one and it is also a commercial building, having many commercial entities and in the event of fire accident or mishap, it is impossible to douse the fire and it may lead to catastrophic consequences in the form of loss of lives and property and there is likelihood of causing damage to the adjacent buildings also.

42. The plea made by the petitioner is since he has given up the construction of 6th and 7th floors, the deviation in car parking space as well as FAR is to be regularised. However, this Court is of the view that as of now, there is no enough parking space and therefore, the vehicles have to be necessarily parked on the public road which would in turn, lead to traffic congestion and inconvenience to the travelling public and the building is located on the very main arterial road, viz., Anna Salai [previously known as Mount Road], Chennai-2, and the 1st respondent, after taking note of the relevant factors and on proper application of mind, has rightly reached the conclusion to reject the appeal.

43. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no perversity or infirmity attached to the said findings and as such, the impugned order does not warrant interference.

44. In the result, the writ petition deserves dismissal and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government of Tamil Nadu
Housing and Urban Development Department
Fort St George, Chennai 600 009.
2. The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai 600 008.
3. The Corporation of Madras
Rippon Buildings,
Chennai 600 003.

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.62515
+1cc to Mr.N.Sampath, Advocate, S.R.No.62576
+1cc to Mr.Pais, Lobo & Alvares, Advocate, S.R.No.63285
+1cc to the Government Pleader, S.R.No.63377

W.P.No.23918 of 2007

MSM(CO)
CA(04/10/2017)

सत्यमेव जयते

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