

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-06-2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WRIT APPEAL Nos.1242 & 1243 OF 2018

Tamil Nadu Housing Board,
rep.by its Chairman,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

... Appellant in both appeals

-vs-

1.H.Sivanandan
2.Chennai Metropolitan Development Authority,
rep.by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore,
Chennai-8.

... Respondents in W.A.No.1242 of 2018

1.Arjunan
2.Rani
3.Villivakkam Town Panchayat,
rep.by its Commissioner,
Ambattur,
Chennai.
4.Chennai Metropolitan Development Authority,
rep.by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore,
Chennai-8.

... Respondents in W.A.No.1243 of 2018

W.A.No.1242 of 2018 is filed under Clause 15 of the Letters Patent, against the order, dated 08.04.2005, passed in W.P.No.11678 of 2005, on the file of this Court.

W.P.11678/2005:

Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent herein to process the petitioners application for planning permission and issue plan for the proposed construction at Plot No. 20 and 21 Sridevi Kuppam Main Road Valasarawakkam comprised in survey No.47/1A Chennai-87 without insisting upon No Objection certificate of letter of clearance from the 2nd respondent with regard to acquisition.

W.A.No.1243 of 2018 is filed under Clause 15 of the Letters Patent, against the order, dated 12.01.2011, passed in W.P.No.26622 of 2010, on the file of this Court.

W.P. 26622/2010:

Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Mandamus Directing the 1st and 2nd respondents to receive process and consider their application for Planning Permission for their proposed constructions at Plot Nos.267 and 268 in Sri Venkateswara Nagar 2nd Main Road Ramapuram Chennai comprised in Survey Nos.170 and 180/3 vide Patta No.1902 as per Patta S.No.170/2B and Old Survey No.170 New Survey No.170/2 Patta No.1903 as per Patta S.No.170/2C respectively of a total extent of 6115 sq. ft. or thereabouts in Ramapuram Village Ambattur Taluk Thiruvallur District without insisting on production of No Objection Certificate from the third respondent in accordance with law expeditiously.

For appellant : Mr.V.Ananda Murthy

For Respondent: No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by M.Sathyannarayanan,J.)

Appellant has filed these Writ Appeals aggrieved over the impugned order, dated 08.04.2005 passed in W.P.No.11678 of 2005 and also the order dated 12.01.2011 passed in W.P.No.26622 of 2010 on the file of this Court, in and by which, a mandamus was issued to the official respondents therein to process the application of the writ petitioners for planning permission without insisting on No Objection Certificate.

2. Respondents 1 and 2/writ petitioners filed W.P.No.26622 of 2010, praying for a writ of mandamus, directing respondents 3 and 4 therein to demolish, receive, process and consider their application for planning permission for the proposed construction at Plot Nos.267 and 268 in Sri Venkateswara Nagar, 2nd Main Road, Ramapuram, Chennai, comprised in Survey Nos.170 and 180/3 vide Patta No.1902 as per Patta Survey No.170/2B and old Survey No.170, New Survey No.170/2, Patta No.1903 as per Patta S.No.170/2C respectively, admeasuring to an extent of 6115 sq.ft. in Ramapuram Village, Ambattur Taluk, Tiruvallur District, without insisting on production of No Objection Certificate from the appellant/third respondent therein.

3. The learned single Judge, after taking note of the judgment passed in W.A.No.36111 of 2005 (Nalini v. Chennai Metropolitan Development Authority and Another), has allowed the

Writ Petition with a further direction, directing respondents 1 and 2 therein/ 3 and 4 herein to process the application of the writ petitioners for planning permission without insisting on No Objection Certificate from the appellant-Tamil Nadu Housing Board. Making a challenge to the said order, the present Writ Appeal is filed.

4. Heard the submissions of Mr.V.Ananda Murthy, learned counsel for the appellant.

5. Attention of this Court is drawn to a Full Bench decision of this Court reported in 2013 (3) CTC 129 (Tamil Nadu Housing Board rep.by its Managing Director v. Mary Rani Immanuel and Others), wherein, it has been held that insistence of No Objection Certificate from Tamil Nadu Housing Board for developing land appurtenant to the superstructure is not necessary. It is relevant to extract paragraph 15 of the said judgment as under :

"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 constructions 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."

6. In the light of the ratio laid down in the Full Bench decision of this Court referred to above, this Court is of the considered view that the appellant/Tamil Nadu Housing Board having not retained the land appurtenant to the common area, the question of obtaining No Objection Certificate from them will not arise and that the common area has to be enjoyed in common by the flat owners and a consensus has to be arrived at by the flat owners that they can utilise the land as the common land, without No Objection Certificate from the Tamil Nadu Housing Board. It is needless to say that the superstructure/construction is to be put up after obtaining planning permission and strictly in accordance with the same.

7. In view of the said decision, this Court does not find any infirmity with the reasons assigned by the learned single Judge for allowing the Writ Petitions. Accordingly, finding no merit, these Writ Appeals are dismissed. There shall be no order as to costs. Consequently, the connected C.M.P.Nos.10227 and 10228 of 2018 are also dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

dixit

To

1.The Commissioner,
Villivakkam Town Panchayat,
Ambattur,
Chennai.

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

3. M. Sivanandan (WA 1242/2018)
173-D, Chirai Street
Virugambakkam
Chennai 600 092.

4. Arjunan (WA 1243/2018)
S/o Mr. Murugan
No. 10/94 Eden Garden
Perambur Chennai 600 012.

5. Rani (WA 1243/2018)
W/o D. Varadhan
Flat No. B12, Pepopees Flat
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W.A.Nos.1242 & 1243 OF 2018

VSNII (CO)
SP(06/08/2018)

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