

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

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

W.A.No.1321 of 2018
and
C.M.P.No.10516 of 2018

The Tamil Nadu Housing Board
Represented by its Managing Director/
Chairman, Nandanam,
Chennai - 600 035. ...Appellant/Respondent

Vs.

1.Mr.G.A.Nasiruddin Khan
2.K.Chandravadhana
3.S.Jayaraman
4.S.Vijayalakshmanan
5.V.K.Subramanian
6.J.Shravana Reddy ..Respondents 1to6/Writ Petitioners

7.Chennai Metropolitan Development Authority
Represented by its Member Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

8.The Corporation of Chennai,
Represented by its Commissioner,
Rippon Building,
Chennai - 3. ..Respondents 7&8/Respondents 1 and 2

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in the Writ Petition in the W.P.No.668 of 2011 order dated 18.01.2011. This petition filed under Article 226 of the constitution of India Praying to issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondents 1 and 2 to receive consider process and approve the petitioners application for demolition and reconstruction by issuing planning permission to construct residential flats in the property situated at Block No.103 Anna Main Road K.K.Nagar Chennai-78 comprised in S.No.416 (part) of Kodambakkam Village Mambalam-Guindy Taluk Chennai District without insisting or production of No Objection Certificate from the 3rd respondent or any other authorities concerned and to

accord sanction for the same in accordance with law expeditiously.

For Appellant : Mr.V.Anandhamurthy
For Respondents : M/s.K.Sountharajan, Standing Counsel
for R7
Mrs.Veena Suresh, Standing Counsel
for R8

JUDGMENT

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

By consent, this Writ Appeal is taken up for final disposal. The 3rd respondent in W.P.No.668 of 2011 is the appellant herein.

2. The respondents 1 to 6/writ petitioners filed the said writ petition praying for issuance of Writ of Mandamus directing the Chennai Metropolitan Development Authority (CMDA) and Corporation of Chennai to receive, consider and approve their application for demolition and reconstruction by issuing planning permission to construct residential flats in the property in Block No.103, Anna Main Road, K.K.Nagar, Chennai-600 079 comprised in S.No.416(part) of Kodambakkam Village, Mambalam-Guindy Taluk, Chennai District without insisting No Objection Certificate from the appellant / Chennai Metropolitan Development Authority or any other authorities and to accord sanction for the same in accordance with law expeditiously.

3. The learned Single Judge has taken note of the judgment in W.A.No.1052 of 2007 [The Managing Director, Tamil Nadu Housing Board, Nandanam, Chennai 600 035 Vs LANCOR G CORP Properties Ltd and others] and disposed of the said writ appeal, vide order dated 18.01.2017 by directing the 1st respondent /CMDA to proceed with the application submitted by the petitioner without insisting No Objection Certificate from the appellant, subject to the condition that the property will be developed only for residential purpose with a further direction to the writ petitioner to submit necessary individual Sale Deeds of land acquisition for the purpose of getting sanctioned plan. The 3rd respondent/TNHB, aggrieved by the disposal of the said writ petition, came forward to file this writ appeal.

4. The learned counsel appearing for the appellant has invited the attention of this Court to the Full Bench decision rendered by this Court 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] and would submit that in the light of the said decision, No Objection

Certificate from the Tamil Nadu Housing Board is not necessary and however would submit that any development to be made by the writ petitioner shall be strictly in accordance with the law.

5. This Court heard the submissions of Mr.K.Sountharajan, learned Standing Counsel, who accepts notice on behalf of the 7th respondent and Mrs.Veena Suresh, learned Standing Counsel, who accepts notice on behalf of the 8th respondent.

6. It is relevant to extract Paragraph No.15 of the above cited Full Bench Judgement reported in 2013 (3) CTC 129:

'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 loosed 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 looses 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''

7. In the light of the ratio laid down by the Full Bench of this Court in the decision cited supra, this Court is of the considered view 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. 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, subject to obtaining planning permission / building permit and putting up a construction in accordance with law. Therefore, it is made clear in the event of obtaining any planning permission, the respondents 1 to 6 shall develop the property strictly in accordance with the sanctioned plan and if respondents 7 and 8, noted any infractions, they are always at liberty to take action in accordance with law after putting the petitioner or other encroachers, if any, on notice.

8. This Writ Appeal stands disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

1.The Member Secretary, सतयमेव जयते
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road, Egmore, Chennai - 600 008.

2.The Commissioner,
The Corporation of Chennai,
Rippon Building, Chennai - 3.

1 cc to Mr. K. Soundararajan, Advocate Sr.42858
+ 1 cc to MR. V. Anandmurthy, Advocate Sr.42045

W.A.No.1321 of 2018

RJ(CO)
EU(16/07/2018)