

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No12455 of 2011 & MP.No.1/2011
and WMP.No.6594/2018

Life Insurance Corporation of India
Southern Zonal Office,
LIC Buildings,
153, Anna Salai,
Chennai-600 002.

...Petitioner

Versus

1.The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA)
Thalamuthu Natarasan Maligai
No.8, Gandhi Irwin Road,
Egmore, Chennai-600 008.

2.The Commissioner,
Ambattur Municipality,
Municipal Office,
Ambattur, Chennai-600 053.

3.The Secretary,
Jeevan Bhima Nagar Flat
Owners's Welfare Association,
Reg No.130/1995
Anna Nagar West Extension
Chennai-600 101.

4.Mohana Pillai
w/o N.T.Pillai

5.K.Tamil Selvan
S/o.A.Krishnasamy

6.P.Sundar
S/o A.T.Parthasarathy

7.A.Divya @ Saigeetha
W/o. A.H.Ashok

8.Kalai Selvi Viswanatham
W/O.D.Viswanatham

9.K.Nithya
W/O.S.Krishnamoorthy

10.Sanjay Lamba
S/O.D.K.Lamba

11.P.Mohankumar
S/O.S.Palaniyadi

Respondents

(R4 to R11 are impleaded as per order dt.04.04.2018 by MSNJ and PRMJ in WMPS 6594 to 6601/2018 in WP.NO.12455/2011)

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the 1st and 2nd respondents herein to immediately demolish all illegal constructions in Jeeva Bima Nagar, Anna Nagar West Extension, Chennai-101 and further direct the respondents herein to stop immediately any further illegal construction as prayed for in the petitioner's representation dated 28.03.2011.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.Rajasrinivas for R1
Mr.A.Nagarajan for R2
Mr.NGR Prasad, Senior Counsel
for Mr.R.Rajaram for R3
Mr.V.R.Kamalanathan for R4 to R11

सत्यमेव जयते
ORDER

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

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

2 The writ petitioner is Life Insurance Corporation of India, Southern Zonal Office, LIC Buildings, 153, Anna Salai, Chennai-600 002 and the Assistant Secretary in Legal Department of LIC has sworn to the affidavit filed in support of this writ petition. It is averred that LIC is a Public Sector Undertaking engaged in the business of insuring the lives and savings of Crores of Indians and they are also having several crores of

policy holders. It is further stated that as part of the benefits to be given to the policy holders, LIC conceived of a Model Housing Development in the name and style of Jeevan Bhima Nagar and the intention was to create a world-class living environments for policy-holders which would be mandate model for others to emulate and accordingly the land was provided by Tamil Nadu Housing Board to an extent of 282 Grounds and 1895 in Padi and after obtaining necessary approval and permission from the respondents 1 and 2 in the year 1994, 800 residential units were developed in the Jeevan Bhima Nagar and only policy holders were allotted and the said units were constructed strictly as per the plans approved by the respondents 1 and 2.

3 As per the said scheme, 50 Blocks of 16 flats each of different types namely single, double and triple bedrooms were constructed. In the Deeds of Conveyance to the respective end purchasers, there is a clear clause preventing the purchaser, from in any manner modifying the structure of the Unit or make any illegal encroachment on the common areas.

4 It is also pointed out in the affidavit that most of the occupants who acquired their respective units in the year 1994 and 1995, started violating the said conditions by encroaching on the common area or swallow up the set back area and the maintenance of these set back spaces is mandatory under the Development Control Rules and on account of the said act, Floor Space Index norms are also violated. It is further averred that the petitioner/Corporation is developing 144 Flats under Phase 2 and unauthorized constructions over set back area, common area and FIC violation hinder the progress and therefore, came forward to file the present writ praying for issuance of writ of mandamus directing the respondents 1 and 2 to immediately demolish all illegal constructions in Jeeva Bima Nagar, Anna Nagar West Extension, Chennai-101 and further direct the respondents herein to stop immediately any further illegal construction in terms of the petitioner's representation dated 28.03.2011. The writ petition was entertained and the notices were ordered.

5 The matter was listed for hearing on 01.11.2017 and the respondents 1 and 2 were directed to cause joint inspection of the Flats in Jeevan Bima Nagar after putting on notice, the petitioner as well as the 3rd respondent and to file a status report and the matter was listed on 12.12.2017 and on that date, this Court has taken note of the fact that 33 flats are remained unsold and still with the LIC and are yet to be allotted and further taken into consideration of the fact that the 3rd respondent/ Association moved the concerned authority seeking demolition of the flats and to obtain planning permission and granted time.

6 The learned counsel appearing for the petitioner would submit that admittedly, most of the owners of the Flats, had encroached upon the set back area, common place area and had put up additional construction and thereby reducing the width and FSI norms are also violated and since the set backs of the aforesaid owners are per se illegal, prays for appropriate direction directing the respondents 1 and 2 to proceed against the illegal/unauthorised construction in accordance with law.

7 Mr.Rajasrinivasan, learned standing counsel appearing for the 1st respondent has invited the attention of this Court to the counter affidavit dated 19.09.2017 would submit that the said house/building Units came into existence during the year 1991 and copy of the approved plan showing the approval issued to the building is not available with CMDA and in order to ascertain the encroachment, the writ petitioner was requested to furnish the copy of the approved plan and the approval details for the site vide communication dated 15.09.2017 and on receipt of the same, necessary enforcement action will be taken against the alleged offending construction. Since the 2nd respondent merged with Chennai City Municipal Corporation, Zone-VII has filed the counter affidavit, stating that in the light of the Circular dated 02.12.2016, issued by CMDA, the Chennai Corporation is not in a position to take action against alleged unauthorized construction/encroachment made by the third party Association.

8 The 3rd respondent has filed a detailed counter affidavit wherein it has been pointed out that poor quality of the construction had led to the filing of the cases before National Consumer Disputes Redressal Commission and the said Commission also appointed an Advocate Commissioner to note down the physical features of the construction and the Commissioner has also filed his status report pointing out the extensive cracks in R.C.C Columns, Lintels, Beams, Sunshade and Walls etc., and though the petitioner/Corporation agreed to carryout the repairs, it has failed to do so and once again, the said fact has been brought to the knowledge of the Consumer Commission, the Registrar of the State Consumer Disputes Redressal Commission was also directed to inspect and verify the same and submit the report confirming the poor quality of the construction. It is also pointed out that the National Consumer Disputes Redressal Commission vide order dated 02.01.2013 had directed the petitioner to carryout the repairs and also imposed cost of Rs.5 lakhs on the L.I.C and despite that, the said orders are yet to be complied with and also pointed out about the falling of the sunshade in Block No.47, which resulted in lodging of Criminal Complaint on the file of J.J.Nagar, Police Station. The 3rd respondent also took a stand that their

Association is concerned only with the maintenance of the electricity, water and sewerage system in the colony and did not carry out any construction whatsoever. If there are any construction by any Flat owners, the Association is no way responsible and also took a stand that in the light of the deficiency pointed out in the poor quality of the construction coupled with orders passed by the National Consumer Disputes Redressal Commission, the petitioner / Corporation has no locus standi to maintain this writ petition and prays for dismissal of this writ petition with exemplary cost.

9 Mr.V.R.Kamalanathan, learned counsel appearing for the petitioner in the impleadment petition would submit that none of them had violated the relevant norms and they are maintaining the respective Flats in their possession without adding or altering the structure.

10 This Court has carefully considered the rival submissions and also perused the materials placed before it.

11 Counter affidavit of the 3rd respondent would prima facie indicate that the Housing Units developed by the petitioner/Corporation, appeared to be of poor quality and despite the orders of National Consumer Disputes Redressal Commission dated 02.01.2013, the repairs have not been carried out.

12 The counter of the 1st respondent would disclose that unless the petitioner's Association furnished the relevant particulars, such as extent of encroachment, persons in occupation of the respective Flats, they may not be able to carry out any further action. The counter of the Corporation of Chennai, would disclose that the matter in issue falls within the helm of CMDA. Paragraph No.7 of the counter affidavit filed by the 3rd respondent disclose that their Association is concerned only with regard to maintenance of electricity, water and sewerage system in the Colony.

13 Mr.N.G.R.Prasad, learned senior counsel appearing for the 3rd respondent would submit that persons who are said to have violated the norms and put up extra construction are well within the knowledge of the petitioner/Corporation and it is for them to convey the said particulars to the 1st respondent/CMDA.

14 In the light of the above facts and circumstances, this Court directs the petitioner/Corporation to furnish the list of Flat owners who had put up additional / unauthorized construction over the set back area, common area, and thereby violated FSI norms within a period of twelve weeks from the date of receipt of a copy of this order to the 1st respondent/CMDA, as

well as to the Zonal Officer, Zone-VII, Greater Chennai Corporation. The 1st respondent as well as the Zonal Officer, Zone-VII, Greater Chennai Corporation on receipt of the particulars, shall carry out inspection, after putting on notice, the respective Flat owners and depending upon the result of the same, shall take appropriate action in accordance with law within a further period of twelve weeks thereafter and communicate the decision taken to the respective Flat owners who said to have violated the norms.

15 With the above direction, the writ petition is disposed of. No costs. Consequently the connected miscellaneous petition are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA)
Thalamuthu Natarasan Maligai
No.8, Gandhi Irwin Road,
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2.The Commissioner,
Ambattur Municipality,
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Ambattur, Chennai-600 053.

3.The Secretary,
Jeevan Bhima Nagar Flat
Owners's Welfare Association,
Reg No.130/1995
Anna Nagar West Extension
Chennai-600 101.

+1cc to Mr.Srinath Srideran, Advocate, S.R.No.25543
+3cc to Mr.R.Rajaram, Advocate, S.R.No.25152
+1cc to Mr.K.Raja srinivas, Advocate, S.R.No.25150
+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.25154

WP.No12455 of 2011

ss (CO)
GSP(07/06/2018)