

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

O.S.A.No.96 of 2018
and
C.M.P.No.6189 of 2018

1. M.S.Niranjhan
2. Lavanya R.Niranjhan ... Appellants/Appellants/Plaintiff
Vs.

Vishwakamal Residents' Welfare Association,
Rep. by its President Mr.Rajendran Ponnambalam,
Vishwakamal Apartments,
62/245, RK Mutt Road,
Mylapore, Chennai-600 004. ... Respondent/Respondent/Defendant

Original Side Appeal filed against the order dated
01.03.2018 passed by the learned Single Judge in O.A.No.101 of
2018 in C.S.No.82 of 2018 on the file of this Court.

For appellant : M/s.S.P.Arthi

JUDGMENT

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

Heard the Learned counsel for the Appellants. Since this
Court is disposing of the present Original Side Appeal (O.S.A)
at the admission stage itself, this Court is not ordering any
notice to the respondent.

2. The Appellants/plaintiffs have preferred the instant
O.S.A. being aggrieved by the order dated 01.03.2018 in
O.A.No.101 of 2018 in C.S.No.82 of 2018 passed by the learned
Single Judge of this Court in dismissing the said O.A. with
costs.

3. Earlier, the Learned Single Judge, while passing the
impugned order dated 01.03.2018 in O.A.No.101 of 2018 in
C.S.No.82 of 2018, in paragraphs 12 to 14, had observed the
following and ultimately dismissed the said O.A:

"12. In the present case, the plaintiff had
suppressed the fact that on 02.02.2018, the CMDA had
issued notice to the first plaintiff under Sections 56
and 57 read with Section 85 of the Tamil Nadu Town and

Country Planning Act, 1971 and which is as follows:-

Your construction at the site under reference was inspected. No approved plan has been exhibited at the site or produced when called for. Therefore, you are requested to produce a copy of approved plan in original for verification and if no approved plan is available or the construction is in deviation to the approved plan, you are requested to stop the work immediately and confirm in writing the fact of having done so, within 3 days from the date of receipt of this notice.

If you fail to comply with this notice within the stipulated time, this Authority will be constrained to taking legal action against the construction, including locking and sealing of the premises, seizure and confiscation of construction materials, auction of the materials seized, demolition of the building, prosecution of the owner, discontinuance of usage, recovery of cost of expenses as arrears of land revenue etc., under the provisions of the Town and Country Planning Act, 1971, as amended by Act 61 of 2008.

You may also note that once the building is sealed, it is the responsibility of the owner/occupier to provide security for such sealed premises, as per the provisions of the said Act.

13. Again, the plaintiff had filed the suit and the suit had been presented on 02.02.2018 and came up for consideration before this Court on 5.02.2018. The fact of this notice was not informed to the Court. It is also to be mentioned that under Section 101 of the Tamil Nadu Town and Country Planning Act, 1971, once the notice is issued by the CMDA, the jurisdiction of the Court is specifically barred. Section 101 of the Act, reads as follows:

101. Bar of jurisdiction of Courts.--Any decision or order of the Tribunal or the Government or the planning authority or other authority or of any officer under this Act shall, subject to any appeal or revision or review provided under this Act, be final and shall not be liable to be questioned in any Court of law (and no injunction shall be granted by any court against the notices served to any person by the planning authority under section 56 or under section

57 of this Act).

14. Even on facts, I am not able to convince myself that the plaintiff is an innocent purchaser. He has deliberately purchased the property, which is unauthorised and which is, to his knowledge unauthorised and illegal. It is further to his knowledge that the CMDA had issued notice in exercise of their powers. There are litigations pending. Consequently, this Court cannot come to the assistance of the plaintiff. Accordingly, the application is dismissed with costs."

4. Assailing the correctness, validity and legality of the impugned order dated 01.03.2018 passed by the Learned Single Judge in O.A.No.101 of 2018 in C.S.No.82 of 2018, the Appellants/plaintiffs have preferred the present O.S.A. before this Court by taking a plea that the impugned order passed by the learned Single Judge in dismissing the O.A., is against the well settled principles of law, besides the same was passed on mis-appreciation of the facts of the case and the submissions made on behalf of the appellants.

5. The learned counsel for the appellants/plaintiffs contends that non-application of mind to the dispute in hand, is quite obvious from the fact that the impugned order finds no reference to the contention of the appellants that their property bearing Flat No.1A is distinct from Flat Nos.1B and 1C and resultantly, there is no finding on this aspect.

6. It is represented on behalf of the appellants/plaintiffs that similar is the case with the contention of the appellants that the respondent-Association has chosen to improve its case, as made out in the Writ Petition in 1990 and has now chosen to baselessly include the suit subject property within the ambit of the order passed by this Court in W.P.No.18723 of 1990.

7. The Learned counsel for the appellants/plaintiffs projects an argument that the finding of the learned Single Judge to the effect that the appellants having purchased the unauthorised and illegal construction put up by their predecessor-in-title, have no right to approach the Court of Law for their rescue, is baseless and erroneous one. Per contra, it is the version of the appellants that the subject property is duly authorised and constructed as per the approved plan.

8. Yet another submission of the learned counsel for the appellants is that the appellants/plaintiffs do have title to the suit schedule property, being in possession of the same and

the admission of the respondent that they seek to interfere with such possession, is sufficient ground for grant of interim injunction.

9. The Learned counsel for the appellants proceeds to point out that the construction of the subject property had been carried out and put up subject to the sanctioned and approved plan issued by the competent authorities concerned and the same cannot be treated as violation. Moreover, the appellants cannot be found fault with and their peaceful possession cannot be disturbed in any manner.

10. The Learned counsel for the appellants comes out with a plea that the bifurcation of Flat No.1 into Flat Nos.1A, 1B and 1C is very critical to the case and the learned Single Judge has failed to take note of the said aspect.

11. Lastly, it is the submission of the learned counsel for the appellants that the appellants are not challenging the notice dated 02.02.2018 issued by the authority concerned and the learned Single Judge is not correct in dismissing the O.A. by placing reliance upon the judgment of a Division Bench and rendering a finding that no Civil Court shall entertain any suit or proceedings or application in respect of action taken by CMDA or Corporation regarding illegal construction and dismissing the application on this premise is wholly erroneous.

12. At the outset, this Court relevantly points out that the Appellants/plaintiffs in the suit, have averred that they are the absolute owners of the property bearing No.1A, Vishwakamal Apartments, 62/245, R.K.Mutt Road, Mylapore, Chennai-600 004 and they have purchased the said property by virtue of registered sale deed dated 13.12.2017, measuring an extent of 497 Sq.Ft., which property is morefully set out in the schedule to the plaint. Further, it is their case that they have taken possession of the plaint schedule property from the date of purchase and they have made requisite application for mutation of Revenue Records.

13. The Appellants/plaintiffs in the plaint at 'cause of action' paragraph at 20, had averred that the cause of action for the present suit had arisen when Vishwakamal Apartments were developed after obtaining sanctioned plan and planning permit in and around 1987 and subsequently when a portion in the ground floor referred to as Flat No.1, was sold to T.S.Sivam and when the same, along with other portions, was let out to Syndicate Bank and subsequently when the Residents' Welfare Association was formed and registered and later when the defendant filed W.P.Nos.18723 and 18724 of 1990 seeking restoration of common areas and subsequently when this Court passed orders in 1998 and subsequently when Syndicate Bank vacated the premises in 2015

and subsequently when Chandrakala Lodha purchased Flat No.1 from T.S.Sivam and his family members and later when the defendant claimed the entire Flat No.1 to be an encroachment into common areas and subsequently when the defendant filed O.S.No.5044 of 2016 in the City Civil Court, Chennai and later when the plaintiffs have purchased the schedule mentioned property on 13.12.2017 and subsequently when the plaintiffs started renovation on 14.12.2017, objection was made by the defendant for renovation activities and brought the Police, etc. In short, the appellants/plaintiffs, in the plaint, sought for passing of judgment and decree by this Court in regard to the following reliefs:

(a) granting permanent injunction restraining the defendant, their men, agents, servants, members, office bearers, representatives and anybody claiming through the defendant, from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property and its easements, including but not limited to the right to renovation, excepting by due process of law, and

(b) directing the defendant to pay the costs of the suit.

14. At this juncture, learned counsel for the appellants/plaintiffs points out that on account of the numerous complaints and grievances lodged by the defendant, CMDA inspected the entire ground floor of the apartment complex including the suit schedule property on 02.01.2018. Further, no notice of such inspection was given to the plaintiffs and in fact, the first plaintiff was not even in town on the said day. Only after inspection, the CMDA had issued lock and seal notice to two occupants on the Western and Southern side of the schedule mentioned property, while clearing the schedule mentioned property. Obviously, CMDA, according to the appellants, had opined that the schedule mentioned property is not unauthorised and has been duly provided for under the sanctioned plan.

15. Learned counsel for the Appellants/plaintiffs brings it to the notice of this Court that Crl.O.P.No.1256 of 2018 was filed by the first plaintiff before this Court praying for direction to the Police not to harass under the guise of enquiry, and this Court has allowed the said Crl.O.P.on 19.01.2018.

16. In the suit, the Appellants/plaintiffs filed O.A.No.101 of 2018 (in C.S.No.82 of 2018) against the respondent/defendant seeking the relief of interim injunction restraining the respondent, its men, agents, servants, members, office bearers, representatives and anybody claiming through the respondent from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property and its

easements, including but not limited to the right of renovation, excepting by due process of law, pending suit.

17. A careful perusal of the contents of the said O.A.No.101 of 2018 filed by the Appellants/plaintiffs indicate that according to the appellants, the entire apartment complex, of which the schedule property is a part, is called Vishwakamal Apartments comprising of 58 units, split over ground + 7 floors, with 2 units in the ground floor and the plan sanction from the CMDA and building permit from the Corporation were duly obtained prior to construction. As per the said plan, the ground floor area includes a small office space, which has a carpet area of 417 Sq.Ft. and common areas of 80 Sq.Ft. and is the subject matter of the present suit.

18. The Learned Counsel for the Appellants points out that one T.S.Sivam purchased a unit in the ground floor having an area of 4066 Sq.Ft. comprising 3395 Sq.Ft. plinth area and 671 Sq.Ft. common area, together with proportionate undivided share in the land, as early as in 1988. The said portion which was purchased by T.S.Sivam included the office space and the entire portion purchased by him, came to be referred to as Flat No.1 and the said Flat No.1, along with the other unit in the ground floor, had been let out to M/s.Syndicate Bank.

19. It comes to be known that nine of the then owners of the apartment complex joined together to form Vishwakamal Residents' Welfare Association, which was registered under the Societies Registration Act, bearing No.263/1989. The said Association, being aggrieved by the encroachments into the common areas in the premises, filed W.P.Nos.18723 and 18724 of 1990 complaining against the banking activities in the premises and sought a direction that such activities be discontinued forthwith, while seeking restoration of the common areas. It was contended that the caretaker's booth, covered car park, transformer room and toilet, measuring 1647 Sq.Ft., had been encroached upon in the ground floor of the said apartment complex and restoration thereof was also sought for. This Court, by order dated 08.10.1998, has directed the CMDA and the Corporation to take appropriate action with regard to the construction of the buildings in the ground floor covering an area of 1647 Sq.Ft. meant for common facilities, after following due process in that regard. Ultimately, the Bank vacated the larger portion occupied by it with effect from November 2015.

20. It transpires that during the interregnum, T.S.Sivam, along with his sons, had conveyed the entire area referred to as Flat No.1, having a super built up area of 4066 Sq.Ft. in the ground floor of the said apartment complex, together with the proportionate undivided share in the land, to and in favour of Mrs.Chandrakala Lodha, under registered sale deed dated

16.12.2013. As a matter of fact, Mrs.Chandrakala Lodha subdivided the unit so purchased by her into three smaller units comprising of Flat Nos.1-A, 1-B and 1-C. Flat 1-A which is the subject property of the present suit, is an office area on the Northern side of the said unit and is duly provided for in the sanctioned plan. In reality, the schedule property was assessed to property tax independently and likewise, assessment of water supply was separately made and the same is distinct in respect of the schedule mentioned property, as is the electricity connection.

21. The Learned counsel for the appellants drew the attention of this Court to the fact that W.P.No.24038 of 2017 was filed by the first plaintiff's father, owner of Flat No.2 in the same apartment complex and the said Writ Petition is pending before this Court. Further, some of the occupants/owners of the apartment complex continue to function under the name of the Association and have also assumed various offices, including that of President, Secretary and Treasurer. Besides the above, according to the appellants, the respondent/Association has been making unreasonable demand on the first plaintiff and his family as well as other owners and occupants of the apartment complex.

22. The Learned counsel for the appellants/plaintiffs referred to O.S.No.5044 of 2016 on the file of VII Assistant City Civil Court, Chennai, filed by the respondent/Association, in which, relief of declaration was sought for to declare the area mentioned for common usage as set out in the plaint could be used for the purpose mentioned therein, and for other consequential reliefs. The first plaintiff's predecessor-in-title is a party to the said proceedings, which is pending disposal. In the said suit in O.S.No.5044 of 2016, the first plaintiff's father and his predecessor-in-title have both filed applications for rejection of the plaint. W.P.No.32038 of 2017 was filed before this Court by one Thiagarajan, at the behest of the respondent/defendant, and the same is pending.

23. The prime plea taken on behalf of the appellants is that the property having been cleared by CMDA and when the Court has directed the Police not to interfere, the first plaintiff has commenced renovation activities in the premises on 22.01.2018. However, when the workmen gathered at the schedule mentioned property, self-proclaimed office bearers of the respondent-Association gathered around the premises and informed the local Police to rush there for taking necessary action. Ultimately, the Police had asked the appellants/plaintiffs not to carry on the renovation activities in the premises.

24. The Appellants/Applicants in O.A.No.101 of 2018 have categorically averred that the respondent/Association has no authority or basis to prevent the plaintiffs from using,

enjoying and renovating the property/premises, which cannot be used unless renovated and the investment had turned into a dead investment merely because the plaintiffs refused to genuflect to the defendant's diktat.

25. A mere running of the eye over the contents of the counter affidavit projected by the respondent/defendant in the said O.A.No.101 of 2018 in C.S.No.82 of 2018 indicates that the property is under litigation for nearly 28 years and this Court has passed order in W.P.No.18723 of 1990 confirming that unauthorised construction in the ground floor including Flat No.1 by annexing the common area earmarked for transformer room, meter room, covered car park, caretaker's rest room, office room and open to sky, is illegal and has further directed CMDA to take enforcement action, namely locking and sealing and demolition of the unauthorised construction. Indeed, the CMDA has issued notice in Ref.1742, dated 02.02.2018 to the first plaintiff who had purchased the dwelling unit 1A carved out of Flat No.1, which is an unauthorised construction, and hence, the plaintiffs are not entitled to seek the relief of interim injunction.

26. The respondent/defendant had taken a plea in the counter that the approval was for construction of 58 units consisting of ground + 7 floors with only 2 units in ground floor, namely Flat No.1 and Flat No.2 of plinth area 1180 Sq.Ft. (built up area 1400 Sq.Ft.) and 817 Sq.Ft. (built up area 950 Sq.Ft.) respectively. However, T.S.Sivam, the erstwhile buyer of Flat No.1, in collusion with the builder, had wrongfully annexed to Flat No.1 - 2660 Sq.Ft. of common area earmarked for transformer room, meter room, covered car park, caretaker rest room, office room and open to sky. Furthermore, Shakuntala Sivam, in collusion with the builder, had wrongfully annexed to Flat No.2 - 450 Sq.Ft. of common area earmarked for multi-purpose hall and open to sky.

27. The primordial plea taken on behalf of the Respondent/defendant in the counter affidavit is that the 'office room' is not meant for carrying out any commercial activity, but it is a common area that belongs to all the 58 members and is to be used as the office room for conducting activities relating to the welfare of the residents and conduct resident meeting.

28. The version of the Respondent/defendant is that Vishwakamal Residential Apartments Complex was approved for construction in the year 1988 by MMDA (as it was then known) for purely residential use with G + 7 floors as per the plan approval numbered as:

(i) C/PP/143 A-H/86/PP 2201 - Plan Permit No.2201, dated 25.09.1986 - C/1941/86.

(ii) Plan Layout Approval No.70/1987.

(iii) C/PP/151A-E/88/PP 5737 along with - Plan Permit No.5737 dated 08.07.1988 - C/17482/87.

29. In short, it is the stand of the respondent/defendant in the counter that as per the plan approved by CMDA, certain portions of lands in ground floor, were earmarked as common area for utilities like transformer room, meter room, covered car park, care taker rest room, office room, open to sky and multi-purpose hall. M/s.Kapali Promoters, in complete deviation from the plan approved by CMDA, built two flats in the ground floor, totally measuring 5466 Sq.Ft. illegally appropriating and occupying the common area earmarked for transformer room, open to sky and multi-purpose hall and sold the illegally constructed area along with Flat No.1 and Flat No.2 in favour of T.S.Sivam and S.Shakuntala, W/o T.S.Sivam, respectively. In fact, this unauthorised construction came to be noticed by CMDA during their inspection in 1989 and immediately CMDA sent a letter dated 15.12.1989 to M/s.Kapali Promoters with instructions to restore the ground floor for the purpose approved by CMDA. From 15.12.1989, the property has been under dispute and litigation.

30. Since no action was taken by CMDA to demolish the illegal construction, the respondent/defendant/Association had filed W.P.Nos.18723 and 18724 of 1990 to direct the CMDA to take action in respect of the violation and deviation from the permitted use of residence in respect of the apartment complex Vishwakamal Apartments at No.245, R.K.Mutt Road, Mylapore, Chennai-4. On 08.10.1998, the said Writ Petitions were disposed of by this Court and appropriate directions were issued to CMDA and Corporation of Chennai to take necessary action in accordance with law with regard to the unauthorised construction of the ground floor. For fuller and better appreciation of the tenor and spirit of the order passed by this Court in the said Writ Petitions, paragraph 8 therein runs as under:

"8. It is clear that there has been construction made on the ground floor to the extent indicated above while narrating the facts in violation of the sanctioned plan. If that be the position, the respondent No.1 (MMDA) having initiated action earlier was not justified in becoming lethargic or inactive at subsequent stage. In the light of the facts stated above, the respondents 1 (CMDA) and 2 (Chennai Corporation) are under the statutory obligation under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 and Section 256 of the Madras City Municipal Corporation Act, 1919, to act in accordance with law in dealing with the unauthorised construction or constructions made against the sanctioned plan. "

31. Subsequent to the aforesaid order of this Court in the said Writ Petitions, CMDA had sent a letter to the parties for hearing on 02.12.1998. After hearing the parties, CMDA, by letter dated 16.12.1998, issued direction to comply with the use as approved by CMDA. Subsequently, the Syndicate Bank which was occupying the unauthorised construction in the ground floor as tenant, filed W.P.No.20480 of 1998 on 21.12.1998 for staying the proceedings of the CMDA. On 24.12.1998, this Court granted stay and it was subsequently vacated on 24.11.2006 granting six months' time to the petitioner-Bank to vacate the premises to enable the CMDA to take action on the unauthorised construction in accordance with law. In the meanwhile, T.S.Sivam filed an application for regularisation of unauthorised construction on 27.05.1999 with CMDA under the provisions of Section 113-A of the Town and Country Planning Act. Ultimately, the CMDA rejected the application for regularisation of T.S.Sivam's unapproved flat situated in the ground floor, by order dated 20.08.2014. However, to the utter shock and surprise, T.S.Sivam, along with his sons, had sold the property in Flat No.1 along with unauthorised construction in the common area earmarked for transformer room, meter room, covered car park, caretaker rest room, office room and open to sky, to Mrs.Chandrakala Lodha, vide registered sale deed dated 16.12.2013. The CMDA has issued letter dated 20.02.2015 directing the Syndicate Bank to de-occupy the building, enabling the authority to carry out further enforcement action, namely locking and sealing and demolition of the unauthorised apartment. After Syndicate Bank vacating the premises, it is the version of the respondent/defendant that the CMDA had not taken any further action to restore the area to its original use.

32. It is further stated by the respondent/defendant that the new owner Mrs.Chandrakala Lodha, in complete violation of the approved plan, was endeavouring to convert such unauthorised construction into multiple dwelling units (1A, 1B and 1C) by wrongfully appropriating the common area earmarked for transformer room, meter room, covered car park, caretaker rest room, open to sky and office room of the respondent-Association. On 01.02.2016, the respondent sent a detailed representation to CMDA to take necessary action for the enforcement of the order passed by this Court in W.P.No.20480 of 1998, dated 24.11.2006 and further take preventive steps to ensure that the common area of the premises is not used for unauthorised purpose. However, the new owner Chandrakala Lodha went ahead with the unapproved construction of the multiple dwelling units, namely 1A (by occupying office room), 1B (by annexing open to sky) and 1C (by occupying transformer room, meter room, cover car park, caretaker rest room and open to sky), which were conversion of common area space for their own use, which would affect the welfare of 58 residents and the public in general. The Chennai

Corporation caused two notices in this regard, namely one notice on 21.07.2016 to Chandrakala Lodha and another notice is 'stop work notice' on 26.10.2016 to M.A.Srinivasan, but had not taken any further action to restore the area to its original use. Only after lapse of almost eight months, the Corporation referred the matter to CMDA on 20.03.2017 citing an order from CMDA, dated 01.12.2016 requesting them to take enforcement action.

33. It is further stated by the respondent/defendant in the counter that the Chennai Corporation made a site visit on 20.07.2016 and after seeing the illegal construction which is proceeded thereto, had issued 'stop work notice', calling for approved plan under Sections 56 and 57 of the Town and Country Planning Act and stated that if they fail to comply with the notice within the stipulated time, the authority will be constrained to take legal action against the constructions including locking and sealing of the premises under the provisions of the Town and Country Planning Act, 1971. M/s.Vishwakamal Residents' Welfare Association filed a suit in O.S.No.5044 of 2016 before the City Civil Court, Chennai to restrain Mrs.Chandraka Lodha from putting up any further construction and to hand over the land earmarked for common purpose as per the sanctioned plan. Notice was issued to the defendants and when the matter came up for hearing, the counsel for Chandrakala Lodha informed that they have filed appeal before the Secretary, Housing and Urban Development Department, under Section 79 of the Tamil Nadu Town and Country Planning Act, seeking for regularisation, which came to be rejected on 10.05.2017.

34. It is further stated that after inspection of the property, the Assistant Commissioner, Zone-9, Greater Chennai Corporation wrote a letter to the Member Secretary of CMDA to take necessary enforcement action on 20.03.2017. In the meanwhile, the appeal filed by Chandrakala Lodha before the Secretary, Housing and Urban Development Department, under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, came up for hearing on 17.04.2017 and after hearing both the parties on 17.04.2017, the Secretary rejected the appeal in Appeal No.14740 of 2016 on the ground that the ownership rights over the undivided share of the other residents would be affected, as the land forms part of the area reserved for common area and orders were passed on 10.05.2017 bearing G.O.Ms.No.81, which has become conclusive and final and binding between the parties.

35. The grievance of the respondent/defendant, as seen from the counter affidavit filed in O.A.No.101 of 2018 is that even after passing of the order in the appeal by the competent authority, no action has been taken by the CMDA to demolish the illegal construction and restore it to its original use. Hence, the respondent/defendant sent a detailed representation to the Secretary of Housing and Urban Development Department, with a

copy being marked to CMDA, on 29.11.2017. While that being the fact situation, one Dr.K.Thiagarajan, one of the residents of Vishwakamal Apartments, filed a Writ Petition in W.P.No.32038 of 2017 and this Court, by order dated 11.12.2017, ordered private notice returnable by 04.01.2018 and the private notice was sent to Chandrakala Lodha. Chandrakala Lodha sold a portion of the unauthorised construction, which is common area earmarked for office room of the Residents Welfare Association to the first plaintiff on 13.12.2017, who is holding illegal portion in Flat No.2 to drag on the proceedings. However, Mr.M.A.Srinivasan, being the owner of Flat No.2, who is the father of the first plaintiff, according to the respondent, is well aware that the property dwelling unit 1A was under litigation, but still went ahead with the purchase of the same from Chandrakala Lodha in the name of his son. The CMDA issued 'stop work notice' on 02.02.2018 under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, to the plaintiff(s).

36. The pith and substance of the plea taken by the respondent/defendant/Association is that the so-called dwelling Unit 1-A claimed to be owned by the plaintiffs, is the common area earmarked for office room of the respondent/Association and when the plaintiffs had purchased the property in question which is under litigation for nearly 20 years, it is the stand of the Respondent/defendant that the plaintiffs cannot claim any balance of convenience in their favour for grant of interim injunction.

37. When the property in question is under 'Lis' for quite a long period, the Appellants/Plaintiffs purchasing the same by means of Sale Deed dated 13.12.2017, cannot plead ignorance. As a matter of fact, when the property in 'Lis' was declared to be an unauthorised area, then, the Appellant's/Plaintiff's purchase of the same is hit by the principles of 'Lis Pendens' as per Section 52 of the Transfer of Property Act, 1882. The plea of 'Lis Pendens' is based on Equity, Good Conscience or Justice. A transferee pendente lite is bound by the decree as if he was a party to the concerned litigation. Transferees pendente lite are not supposed to claim rights in the suit property stating that they are the bona-fide purchasers for value without notice, because of the simple reason that there is an absolute fetter to transfer a suit property pending litigation, by means of the ingredients of Section 52 of the Transfer Property Act, 1882. The defence of bona-fide of transferees for value without notice, is not available to the Appellants/Plaintiffs in the present case on hand.

38. Moreover, the notice dated 02.02.2018 was issued by the CMDA to the first plaintiff under Sections 56 and 57 read with 85 of the Tamil Nadu Town and Country Planning Act, 1971. As far as the present case is concerned, even though strenuous efforts were made on behalf of the appellants/plaintiffs through the learned counsel that the appellants/plaintiffs that they are not

assailing the said notice issued by the CMDA, dated 02.02.2018, yet this Court is of the considered view that even the said notice issued by the CMDA cannot be assailed by the appellants/plaintiffs or anyone else for that matter, in view of the ingredients of Section 101 of the Tamil Nadu Town and Country Planning Act, 1971, which reads as under:

"Section 101: Bar of jurisdiction of Courts: Any decision or order of the Tribunal or the Government or the planning authority or other authority or of any officer under this Act shall, subject to any appeal or revision or review provided under this Act, be final and shall not be liable to be questioned in any Court of law and no injunction shall be granted by any Court against the notices served to any person by the planning authority under section 56 or under section 57 of this Act."

39. As per Section 101 of the Act, 1971, any question/issue pertaining to the activities of the authorities ought to be determined as per the provisions of the Act and the jurisdiction of Civil Courts are specifically barred.

40. In an injunction application, an Applicant is to establish the right breached and the fact of its violation by the Defendant. The Plaintiff is to establish a prima facie case, Balance of Convenience and likelihood of irreparable injury for the grant of relief of transitory injunction.

41. Undoubtedly, an injunction is not a matter of right, but of discretion. No wonder, the relief of an injunction is a Judicial Process operating 'in personam' and requiring a person to whom it is directed to do or refrain from doing a certain thing. An injunction is an equitable relief, to be adjusted in aid of Equity and Justice to the facts of a particular case.

42. An injury is deemed to be an irreparable one and the mischief is said to be irremediable, when having regard to the nature of the act and from the circumstances relating to the threatened harm, the apprehended damage cannot be adequately compensated in terms of money.

43. To put it succinctly, this Court, on a careful consideration of the contentions advanced on behalf of the Appellants/plaintiff, is of the prima-facie view that the purchase of the property in question by the Appellants/plaintiffs, is an unauthorised one and when the same is unauthorised to the knowledge of the appellants and is all the more when the CMDA has exercised its requisite powers under the Tamil Nadu Town and Country Planning Act, 1971 and also this

Court, taking note of the fact that numerous litigations are pending between the parties, comes to an inevitable and irresistible conclusion that the Appellants/plaintiffs are not entitled to seek interim injunction in O.A.No.101 of 2018 in C.S.No.82 of 2018 because of the latent and patent reason that they do not have a prima-facie case for grant of such relief and also that the "Balance of Convenience" is also not in their favour, and as such, this Court, without any haziness, holds that the view taken by the Learned Single Judge in O.A.No.101 of 2018 in C.S.No.82 of 2018 in dismissing the application, is free from any material irregularity and patent illegality in the eye of law. Resultantly, the O.S.A. fails.

44. In fine, the O.S.A. is dismissed, leaving the parties to bear their own costs. The impugned order, dated 01.03.2018 passed by the learned Single Judge in O.A.No.101 of 2018 in C.S.No.82 of 2018 is affirmed by this Court for the reasons assigned in this O.S.A. Consequently, C.M.P. is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

CS

To

The Sub Assistant Registrar(OS)
High Court, Madras 104.

+1 CC to Mr.S.P. Arthi, Advocate sr 23552.

सत्यमेव जयते

O.S.A.No.96 of 2018

RSK(CO)
SP(13/04/2018)

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