

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.715/2018 & CMP.No.6903/2018

Tamilnadu Housing Board
rep.by its Chairman, Nandanam
Chennai 600 035.

... Appellant / 1st Respondent
in Writ Petition

Vs

1.Ammi
2.Elvis Fernandez
3.Sandra Fernandez
4.S.R.Venkatraman
5.S.Swaminathan
6.Gayathri Muthukumaran
7.M.C.Muthiayan

... Respondents /
Writ Petitioners

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

9.The Commissioner
Ambattur Municipality
Ambattur, Chennai.

.. Respondents /
RR 2 and 3
in Writ Petition

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in Writ petition in WP.No.5071/2011 order date 02.03.2011 by the learned Single Judge.

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, Directing the respondents 2 & 3 to entertain, consider and grant approval of petitioner's planning permission and building permit for putting up a construction on the property Block No.HIG, 67, East Avenue,

Korattur, N.H.Scheme, Chennai-80, comprised in Old S.No.1189 Part, 1190 Part, 1191 Part, New Survey No.32/3, Ambattur Taluk, Thiruvallur District, within registration District Villivakkam Sub-Registrar without insisting upon the No Objection Certificate from Tamil Nadu Housing Board namely the 1st respondent so long as the proposed new construction activities is in accordance with the Development Control Rules and Town and Country planning Act.

For Appellant	: Mr.V.Anandamurthy
For R8	: Mr.Raja Srinivas
For R9	: Mr.P.Srinivasan

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the writ appeal is taken up for final disposal. Mr.Raja Srinivas, learned Standing Counsel accepts notice on behalf of the 8th respondent and Mr.P.Srinivas, learned Standing Counsel accepts notice on behalf of the 9th respondent.

2 The 1st respondent in WP.No.5071/2011 is the appellant herein.

3 The private respondents herein had filed WP.No.5071/2011 praying for issuance of a writ of mandamus directing the respondents 8 and 9 herein / respondents 2 and 3 in the writ petition, to consider and grant approval of planning permission and building permit for putting up a construction on the property in Block No.HIG 67, East Avenue, Korattur, NH Scheme, Chennai-80, comprised in Old S.No.1189 part, 1190 part, 1191 part and New S.No.32/3, Ambattur Taluk, Tiruvallur District.

3 The learned Single Judge, vide impugned order dated 02.03.2011, had taken into consideration the earlier judgment in WA.No.1052/2007 [The Managing Director Vs. Lancor G:Crop Properties Limited and another], and subsequent orders dated 20.07.2010 and 06.08.2008 in WP.Nos.15170/2010 and 14784/2008 respectively and directed the 2nd respondent therein to proceed with the application submitted by the writ petition without insisting the No Objection Certificate from the 1st respondent therein - Tamil Nadu Housing Board [TNHB] / appellant herein, subject to the condition that the property will be developed only for residential purpose and with further directions and aggrieved by the said order, the 1st respondent has preferred the writ appeal on 25.04.2011 and it came to be numbered on 05.04.2018.

4 Mr.V.Anandamurthy, learned Standing Counsel appearing for the appellant has invited the attention of this Court to the decision of the Full Bench of this Court reported 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 the said judgment of the Full Bench, has been subsequently followed in WA.No.322/2012 [TNHB rep.by its Managing Director Vs. V.Mohan Rao and others], which came to be disposed of on 27.07.2017 and submitted that in the light of the said decisions, appropriate orders may be passed.

5 The Court heard the submissions of Mr.Raja Srinivas, learned Standing counsel appearing for the 8th respondent and Mr.P.Srinivas, learned Standing Counsel appearing for the 9th respondent and perused the materials placed before it.

6 It is relevant to extract paragraph 15 of the above cited Full Bench Judgment, which reads thus:-

".... 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 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."

7 In the light of the said Full bench decision, this Court is of the view that TNHB having not retained 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" and that "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.

8 In the result, the writ appeal stands dismissed, confirming the order dated 02.03.2011 made in WP.No.5071/2011. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

सत्यमेव जयते Assistant Registrar (CO)

//True Copy//

WEB COPY

Sub Assistant Registrar

AP
To

1.The Chairman
Tamilnadu Housing Board
Nandanam, Chennai 600 035.

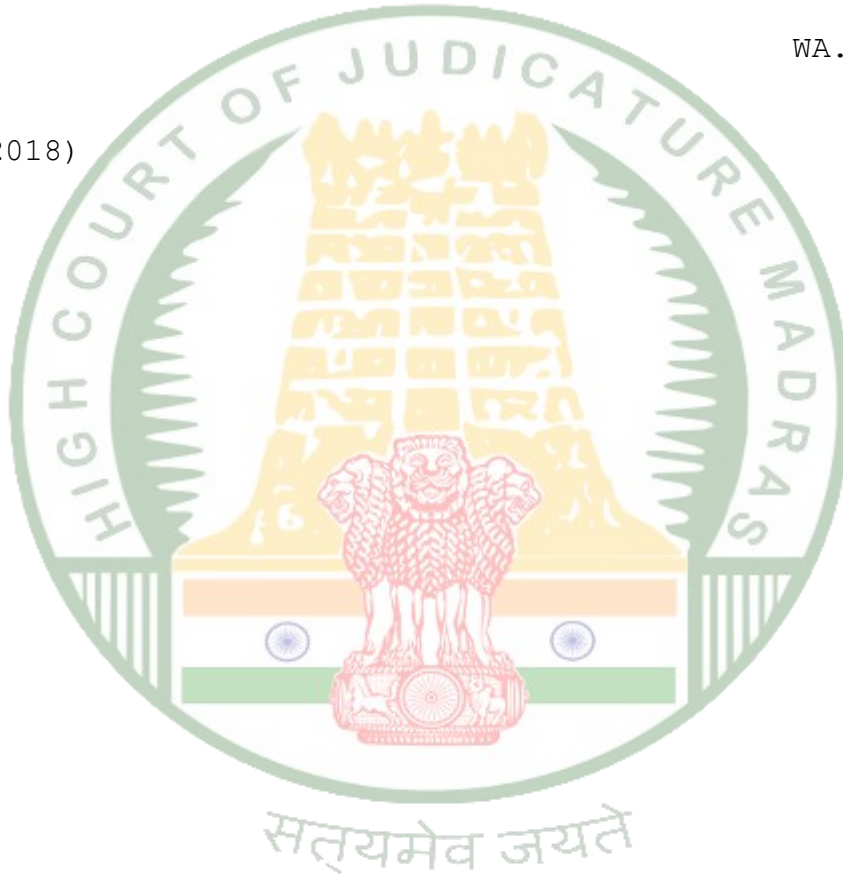
2.The Member Secretary
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

3.The Commissioner
Ambattur Municipality
Ambattur, Chennai.

+1cc to Mr.K.RAJASRINIVAS, Advocate, S.R.No.27069
+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No. 26198

WA.No.715/2018

PPA(CO)
TR(28/04/2018)



WEB COPY