

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE S.BASKARAN

W.P.Nos.18716 & 18717 of 2018
&
W.M.P.Nos.22066 to 22069 & 22950 of 2018
and
Sub Application No.630 of 2018

W.P.No.18716 of 2018

Kannan Balachandran
S/o.T.Balachandran

...Petitioner

-Vs.-

1.Chennai Metropolitan Development Authority
Through its Member- Secretary
Thalamuthu-Natarajan Maaligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

2.The Tamil Nadu Fire and Rescue Services Department,
Represented by its Joint Director
No.17, Rukmani Lakshmipathy Salai
Egmore, Chennai - 600 008.

3.M/s.The Chennai Silks
Rep by Mr.T.K.Chandran
No.67, Usman Road,
T.Nagar, Chennai - 17.

...Respondents

R2 suo motu impleaded as per order dated 03.08.2018
by NKKJ and KRJ in W.P.Nos.18716 & 18717 of 2018.

R3 suo motu impleaded as per order dated 07.08.2018
by NKKJ and SBJ in W.P.No.18716 of 2018.

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a writ of
certiorarified mandamus calling upon the records of the

respondent relating to the Tamilnadu Government Notification No.VI(1)/143/2018 dated 18.04.2018 and quash the same as null and void and to consequently forbear the Respondent from in any manner granting any permission that allows commercial use of the area comprised in Old Door Nos.24, 35 (previous Door No.23), Present Door Nos.35, 36 & 39, Pinjala Subramanian Street, T.Nagar, Chennai - 17.

[illegible]

For Respondents :: Mr.P.H.Arvind Pandian, A.A.G.,
 Asst by Mr.Karthik Rajan,
 for R1

Mr.R.Udhaya Kumar, A.G.P.,
for R2

Mr.Mohan Parasan, Senior Counsel
for Mr.N.Senthil Kumar,
for R3

W.P.No.18717 of 2018
Kannan Balachandran
S/o.T.Balachandran

...Petitioner

-VS. -

- 1.State of Tamil Nadu
Represented by its Secretary to Government
Housing and Urban Development Department
Secretariat, Chennai - 600 009.
- 2.Corporation of Chennai
Represented by its Commissioner
Rippon Buildings
Chennai 600 003.
- 3.Chennai Metropolitan Development Authority
Represented by its Member- Secretary
Thalamuthu-Natarajan Buildings
Egmore, Chennai-8.
- 4.M/s.The Chennai Silks
Represented by Mr.T.K.Chandran
No.67, Usman Road,
T.Nagar, Chennai - 17.

5.The Tamil Nadu Fire and Rescue Services Department,
Represented by its Joint Director
No.17, Rukmani Lakshmipathy Salai
Egmore, Chennai - 600 008. ...Respondents

R5 suo motu impleaded as per order dated 03.08.2018
by NKKJ and KRJ in W.P.Nos.18716 & 18717 of 2018.

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a writ of
certiorari calling for the records of the 3rd respondent
relating to planning permission (pp) No.11912, dated 21.06.2018
vide file no.c3(s)/16275/2017 with respect to the property
situate at old No.67, Usman Road, T.Nagar, Chennai and quash the
same.

For Petitioner :: Mr.T.Mohan
for Mr.Swarnam J.Rajagopalan

For Respondents :: Mr.R.Udhaya Kumar, A.G.P.,
for R1 and R5

Mr.C.Mani Shankar, A.A.G.,
Asst by Mr.K.Soundararajan,
for R2

Mr.P.H.Arvind Pandian, A.A.G.,
Asst by Mr.Karthik Rajan,
for R3

Mr.Mohan Parasan, Senior Counsel
for Mr.N.Senthil Kumar,
for R4

COMMON ORDER

N.KIRUBAKARAN, J

The petitioner claiming to be a resident of T.Nagar has
approached this Court by way of this Public Interest Litigation
in W.P.No.18716 of 2018 challenging the notification dated
18.04.2018 by which the third respondent reclassified the usage
of the property in Old Door No.24, 35 (Previous Door No.23),
Present Door No.35, 36 & 39 comprised in R.S.No.6153 to 6157
from primary residential/institutional usage to commercial
usage.

2.The writ petition in W.P.No.18717 of 2018 has been filed challenging the planning permission dated 21.06.2018 granted by the 4th respondent in respect of the property situated at Old Door No.67, Usman Road, T.Nagar, Chennai.

3.The case of the petitioner is that he is a resident of T.Nagar. The 4th respondent had put up construction and was doing business at Old Door No.67, Usman Road, T.Nagar, Chennai in violation of the rules and regulations and subsequently, the said building was destroyed in fire. Thereafter, it seems that the 4th respondent obtained demolition permission and started demolishing the building and after demolition, started to put up new construction, even before the building license could be granted by the 2nd respondent/Corporation of Chennai. Further, it is the case of the petitioner that T.Nagar area is a residential area, especially Pinjala Subramaniyan Street, whereas the property comprised in Old No.24, 25 (Previous Door No.23), Present Door No.35, 36 and 39, Pinjala Subramanian Street in R.S.No.6153 to 6157 have been converted from primary residential and primary institutional to commercial, without inviting objections from the local residents through paper publication. Therefore, the reclassification notification made by the third respondent has to be quashed, as the same is contrary to the rules and regulations affecting the residents of Pinjala Subramaniyan Street. No proper procedure was followed and rules have been violated in granting planning permission to the 4th respondent. Further, it is contended that even before the building license could be issued by the Corporation of Chennai, the 4th respondent hurriedly commenced the construction and only after starting the work, the building license was issued and therefore, the construction is unauthorized. Therefore, the present writ petitions have been filed.

4.However, the respondents including the private respondents filed counter affidavits and contended that only as per the rules and regulations, the reclassification of usage of the 4th respondent's property has been done, after making paper publication. Similarly, all procedures have been duly complied with while approving the plan and issuing license to put up construction by Corporation of Chennai.

5.There is no substance in the allegations that the 4th respondent without even obtaining plan approval and building license has started the construction. The old building was destroyed in the fire accident and hence, after obtaining permission to demolish the remaining portion of the old building and after obtaining plan approval and building license only, the work on the new building has been started.

6.Mr.T.Mohan, learned counsel appearing on behalf of the

petitioner would submit the following:-

1. Reclassification of plots cannot be done in cherry picking manner and reclassification can be done only zone wise, as per Tamil Nadu Town and Country Planning Act, 1971.
2. Reclassification has to be done after making publication and inviting objections from the public. However, in the instant case, without following the due process of law, reclassification has been done violating the existing rules and regulations and the principles of natural justice.
3. Reclassification would affect the residents of Pinjala Subramaniyan Street a more vehicles would start plying through the said street causing noise pollution as well as air pollution.

7.Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing for the CMDA would submit that the reclassification has been done by following the due procedure of law. In fact paper publication has been made inviting objections from the public. Since no objection was received from the public, reclassification was done under the provisions of Tamil Nadu Town and Country Planning Act, 1971. Mr.C.Manishankar, learned Additional Advocate General appearing on behalf of the Chennai Corporation would support the contention made by Mr.P.H.Arvinth Pandian.

8.Mr.Mohan Parasaran, learned Senior Counsel instructed by Mr.N.Senthil Kumar, learned counsel for the petitioner would put forth the following contention:

1. The 4th respondent had properly applied for reclassification of the plot from primary residential and institutional to commercial zone.
2. Major extent of the property of the 4th respondent is having access to the proposed multi storied building from Usman Road which has already been classified as Commercial zone. Only a minor portion of the property is having access from the Pinjala Subramaniyan Street and Venkatesan Street which have been reclassified from primary residential zone and institutional zone respectively to commercial zone. Thus, the main entry is gained only through the Usman Road and the vehicles could use the access from the Pinjala Subramaniyan Street and Venkatesan Street only for exit purpose.
3. Only after following the norms and procedures laid down under the law, the CMDA had varied the usage to Commercial purpose, in so far as the particular survey numbers of the Pinjala Subramaniyan Street and Venkatesan Street.
4. The Corporation of Chennai and the CMDA had caused paper publication on 12.11.2016 inviting objections for reclassification and thereafter only reclassification was done. Hence, there is neither violation of procedures nor

violation of principles of natural justice.

5. The Government is empowered to vary or revoke the second master plan by notification in the Government Gazette under Section 32 of the Tamil Nadu Town and Country Planning Act and the same was duly followed.

9. Everyone knows that the T.Nagar is a commercial hub. Though it was once a residential area, presently it is becoming a commercial area dotted with many commercial/business houses. It is admitted by all the parties that the 4th respondent is the owner of the property bearing Old Door Nos.66 & 67, New No.55, Usman Road, T.Nagar, Chennai - 600 017, wherein the 4th respondent was having a multi storied textile showroom which was destroyed in the fire accident in the year 2017. For demolishing the remaining superstructure and to put up new construction necessary permission was said to have been obtained from various government authorities. Though major portion of the property at Door Nos.66 & 67, Usman Road is located in the Commercial Zone, the properties bearing Door No.35, 36 and 39 at Pinjala Subramaniyan Street, T.Nagar, Chennai - 600 017 comprised in Pymash No.1125, 1126, 1127 and 1130 are also owned by the 4th respondent. The usage of the said properties is sought to be reclassified and therefore, the 4th respondent applied to the 3rd respondent for reclassification of the above mentioned land from partly primary residential use and partly institutional use zone to Commercial use zone for construction of the textile showroom and for having exit ways. It is evident from the paper publication [Indian Express and Dinamani dated 12.11.2016] that the reclassification proposal was published inviting objections. It is stated by the 3rd respondent as well as the 4th respondent that no objections or suggestions were received for the said proposal. Further, the petitioner has also not filed any proof for having sent objections/suggestions for the proposal for reclassification.

10. In paragraph 5 of the counter affidavit filed by the 3rd respondent, it is stated that the proposal for reclassification was placed before the technical committee of CMDA on 13.03.2017 and the committee deferred the subject for detailed examination with respect of parking requirement and congestion in the abutting road and in the surrounding area for promoting the showroom in the site under reference. Subsequently, on 02.01.2018, the Committee recommended for reclassification of the site under reference from partly residential use zone and partly institutional use zone to Commercial use zone, on filing undertaking accepting to take development in the site under reference along with parcel of land in the western side which lies in T.S.No.6149, 6150/1 and 7748 as single development gaining access from Usman Road. The resolution passed under Resolution No.19/18 passed on 31.01.2018 resolving to reclassify

the land use of the site, subject to the certain conditions and the same is usefully extracted hereunder:-

"7.After due consideration, the Authority in resolution no.19/2018, dated 31.01.2018 resolved to reclassify the land use of the site under reference from partly Institutional Use Zone and partly Primary Residential Use Zone to Commercial Use Zone subject to the following conditions:

(i) to take up development in the site under reference along with the parcel of land in the western side which lies in T.S.No.6149, 6150/1 & 2 and 7748 as a single development gaining access from Usman Road, and

(ii)Reclassification of the site under reference into Commercial Use Zone will become invalid if the site under reference alone is sold out in whole or part in the future, even by the prospective buyers, while retaining the large parcel of land in the western side abutting Usman Road."

11.Thereafter, only the variation notification of the reclassification was published in Tamil Nadu Government Gazette in Issue No.16, dated 18.04.2018 occurring at Page Nos.110 to 118 in the combined typed set Volume II.

12.From the above, it is clear that the reclassification of land use for the site under reference was done only after following the due process of law.

13.Apart from that, the Tamil Nadu Government has got power under Section 32(4) of the Tamil Nadu Town and Country Planning Act, for varying the master plan by notification in the Tamil Nadu Gazette and in respect of the Chennai city, the CMDA has got power to do the same.

14.In paragraph 10 of the counter affidavit in W.P.No.18716 of 2018, it is stated by the CMDA that it has been delegated the powers by the Government of Tamil Nadu in G.O.Ms.No.419, Housing and Urban Development Department, dated 1st June 1984 issued under Section 91(1) of the Tamil Nadu Town and Country Planning Act, to make variations in the master plan under Section 32(4) of the Act. The said provision is usefully extracted hereunder:

"For CMDA. -In its application to Chennai Metropolitan Development Area, Section 32 shall be read as follows:

32.Variation, revocation and modification of Master Plan, new town development plan and detailed development plan.- (1) A Master Plan, a new town development plan or a Detailed Development Plan of the Metropolitan Development Authority approved under section 28 or may, at any time, be varied or revoked

by a subsequent Master Plan, as the case may be, prepared and approved under this Act. New town development plan of Detailed Development Plan.

(2) Once in every five years after the date on which the Master Plan for the Chennai Metropolitan Planning Area comes into operation, the Metropolitan Development Authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the local authorities concerned, review the Master Plan and make such modifications in such plan wherever necessary and submit the modified Master Plan for the approval of the Government.

(3) The provisions of Sections 26, 28 and 30 with such modifications as may be necessary shall apply to such modified Master Plan.

(4) The Government may, at any time by notification in the Tamil Nadu Government Gazette, vary or revoke the Master Plan, the new town development plan or the Detailed Development Plan, as the case may be, prepared and approved under this Act."

Therefore, the contention of the petitioner that the zonal reclassification alone is possible and conversion of individual plots is against law does not hold good, as there is no prohibition under the Act to reclassify the use of individual plots.

15. Though it is contended by Mr. T. Mohan, learned counsel for the petitioner that in violation of status quo order passed by the Hon'ble First Bench of this Court in W.P. Nos. 26132 & 26133 of 2017, the reclassification has been made, a perusal of the order of this Court would make it clear that the order is confined only to Mahalakshmi Street and Mangesh Street. Hence, there is no violation of the order passed by this Court. Relevant paragraph 7 of the Order dated 06.10.2017 passed by the First Bench of this Court is usefully extracted here under:-

"7. There shall be a direction to the first respondent to maintain status-quo as of today with regard to:

(i) Notification No. VI(1)346/2013, dated 23.8.2013, pertaining to re-classification of Old Door No. 23/2 & 3, 24 & 25, New Door No. 6, 8 & 10/2 & 3, Mangesh Street, T. Nagar in T.S. No. 5435, 5443, 5444/3 & 4, Block No. 125 of T. Nagar Village, Mambalam-Guindy Taluk, Chennai District, as "Commercial Use Zone"; and

(ii) Notification No. VI(1)/338/2016, dated 21.10.2016, pertaining to reclassification of Old Door No. 48, New Door No. 19, Mahalakshmi Street, T. Nagar, Chennai - 600 017, comprised in Old S. No. 6028 Part,

present T.S.No.9267, Block No.134 of T.Nagar Village, Mambalam-Guindy Taluk, Chennai District, as "Mixed Residential Use Zone".

List the matter on 30.10.2017."

16.The further contention of the petitioner that the property is surrounded by residential area and nature of the area has to be maintained is also liable to be rejected as the entire stretch of Usman Road from which Pinjala Subramaniyan Street and Venkatesan Street shoots off is a commercial zone. Moreover, the entry of vehicles is from Usman Road only and Pinjala Subramaniyan Street and Venkatesan Street are to serve only as an exit way of the vehicles.

17.From the above narrated facts, it is proved that invoking powers under Section 32(4) of Tamil Nadu Town and Country Planning Act, the Government by notification reclassified the site in the rear in T.S.Nos.6152, 6153/1&2 to an extent of 2102 sq.m partly institutional use and partly primary residential use as Commercial use zone, after making publication and invited objections. There is no violation of procedure and illegality in reclassification notification.

18.Therefore, the writ petition filed by the petitioner in W.P.No.18716 of 2018 is dismissed.

19.With regard to the challenge to the planning permission granted to the 4th respondent in W.P.No.18717 of 2018 is concerned, Mr.T.Mohan, learned counsel appearing for the petitioner would submit the following:-

1. The access road width opposite to the 4th respondent's property is only 7.20 M including the foot path of 2.50 M and effectively only 4.70 M is actual access road available on site. The measurements of 23.15 M of the South Usman Road placed in the MSB meeting is made without proper inspection at the site.
2. CMDA office order 1/2015, dated 17.01.2015 stipulates while calculating the width of the road, temporary structures such as transport, electrical junction boxes, telephone junction boxes, foot path, bus shelter to be excluded.
3. The fly over occupies major portion of the road and therefore, the width of the fly over should not be included in the width of the road.
4. The fire and rescue services department in their NOC dated 10.01.2018 has not mentioned the road width of the site under reference as per Tamil Nadu Fire Services Act, 1985 and the details have not been properly given in Form of Inspection - Report-I - Appendix VI of Tamil Nadu Fire Service Rules to be filled up at the time of inspection for granting of NOC.

5. The NOC is contrary to the details given by the Fire services in their counter affidavit filed in Writ Petition No.28083 of 2014 giving the difficulties faced by the department in case of emergency.
6. Turning radius of 9 M to any site is prescribed under the National Building Code only for the reason that ample space is a must for effective turning of the fire extinguishers and the same has to turn with heavy load of water.
7. With only 4.7 M access road width available, the 3rd respondent is not justified in granting FSI of 2.5 + 1 to the 4th respondent, especially with 2.5 FSI is allowed providing access road width as 18M.
8. The Director of Fire and Rescue Services has categorically stated before this Court in W.P.No.28083 of 2014 that only 4.9 M and 3.7 M are available near Usman Road on either side of flyover near Chennai Silks and therefore, the road width taken for grant of planning permission is not the access road actually available.
9. Even before obtaining plan approval from the CMDA and building license from the Corporation of Chennai, the 4th respondent commenced the construction as early as April 2018, whereas the 4th respondent obtained planning permission from CMDA only on 21.06.2018 and building license from Corporation of Chennai on 29.06.2018. The Advocate Commissioner's report filed in O.S.No.2382/2018 filed against the Chennai Silks would prove that the construction was under progress and therefore, the construction is without any approved plan.
10. Even after an interim order was granted by this Court on 24.07.2018, the 4th respondent continued to construct the basement floor reinforcement works in violation of the orders of this Court. After the modification order was passed by this Court on 29.08.2018 also, the 4th respondent continued to undertake reinforcement works and therefore, the 4th respondent is a contemnor. Making the above submissions, Mr.T.Mohan, learned counsel for the petitioner would submit that the planning permission granted to the 4th respondent is liable to be quashed.

20. Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for CMDA and Mr.C.Manishankar, learned Additional Advocate General appearing for Corporation of Chennai would submit that only after getting proper application for planning permission and after following the due process of law, the CMDA granted plan approval and the Corporation of Chennai granted building license. They would submit that the 4th respondent obtained planning permission for the proposed construction of double basement floor [second basement - mechanised parking : first basement - two wheeler parking] + Ground floor + 8 floors - Commercial [Textile showroom and 14

levels of MLCP] and adjoining to main building at Old Door Nos.66 & 67, New Door No.55, Usman Road; Pinjala Subramaniyan Street; Venkatesan Street, T.Nagar, Chennai - 600 017 bearing T.S.No.6147, 6149, 6150/1,2, 6152, 6153/1,2, 7748/1,2, Block No.136, T.Nagar Village, Guindy Taluk, Chennai District, after following the due process of law.

21.It is stated by the Respondents that the original site abutting Usman Road in T.S.Nos.6147/1&2, 6149, 6150/1&2 and 7748/2 of extent of 2135.50 sq.m is classified as commercial zone. CMDA vide order dated 31.01.2018 reclassified the site in the rear in T.S.No.6152, 6153/1&2 of an extent of 2102 sq.m partly in institutional zone and partly in primary residential zone to commercial zone which was duly published in the Government Gazette dated 18.04.2018. Before that, the site was inspected on 27.11.2017 which abuts 23.15 M wide Usman road [including Grade separator and service road] on the West and 12.5 M wide Pinjala Subramaniyan Street on the North and 8.90 M wide Venkatesan Street on the South. The proposal satisfied the planning parameters such as FSI coverage, set back all around the building, parking and height of the building, after getting NOC from all the authorities.

22.In the meeting held on 19.04.2018, the Multistoried Building Panel, convinced with the development parameters, forwarded the proposal to the Government with certain conditions on 03.05.2018 which was approved by the Government on 24.05.2018. Thereafter, the planning permission was issued on 21.06.2018 and the building license was granted by the Corporation of Chennai on 29.06.2018.

23.Therefore, the learned Additional Advocate Generals would submit that all the procedures have been duly followed as per law and safety measures have been taken into consideration while granting plan approval and building permission.

24.Mr.Mohan Parasaran, learned Senior Counsel appearing on behalf of the 4th respondent would also argue in consonance with the arguments put forth by the learned Additional Advocate Generals. Apart from the points urged by the learned Additional Advocate Generals, the learned Senior Counsel would submit that the major extent of the property which has got entry from Usman Road was already classified as Commercial zone and the change of use with regard to a minor portion of the property which has got entry from either side through Pinjala Subramaniyan Street and Venkatesan Street will not affect or cause inconvenience to the residents of the locality.

25.The main access is only from the Usman Road and the access to the property from Pinjala Subramaniyan Street and

Venkatesan Street will be utilised only for the exit purpose of the vehicles. The CMDA and Corporation of Chennai only after thoroughly verifying the above aspects had reclassified the property.

26.The learned Senior counsel would also submit that the application was made on 02.11.2017 and after passing through various stages and in compliance of all procedures, the 1st respondent Government approved the planning permission based on the recommendations of the Multistoried Building Panel and directed the 3rd respondent on 24.05.2018 to grant planning permission. Thereafter only the 3rd respondent granted planning permission on 21.06.2018 and 2nd respondent granted building license on 29.06.2018.

27.Only after getting building permission, MS safety sheet piling work was fixed on the sides in order to prevent the mud sliding. The construction of the Multi Storied Building is done adopting pre-cast technology and only 24.38% of the construction activity was over.

28.With regard to the road width, the requirement as per Rule 28(b) of the Development Regulations has been complied with. The entire width of the road alone has to be taken into consideration as per Rule 28(b). The details given in paragraph 8 of the affidavit filed by the Director of Tamil Nadu Fire and Rescue Services in W.P.No.23083/2014 would show that the access road width to the places at T.Nagar, especially Ranganathan Street, Usman Road are very narrow with heavy congestion and it measures 3.7 M and 4.9 M at the entrance of the Usman Road on either side of the flyover near the Chennai Silks and it would be difficult to take fire fighting vehicles, whereas the details given in the NOC of the Tamil Nadu Fire and Rescue Services Department are contrary to the details given by the Senior Planner (MSB), after making inspection on 27.11.2017.

29.Therefore, the planning permission has been granted by making appropriate inspection of the site and surrounding areas and following the due process of law. Thus, the learned Senior Counsel appearing for the 4th respondent seeks for dismissal of the writ petition.

30.The following events as given in the counter affidavit filed by the 4th respondent are not disputed. In paragraph 7 of the counter affidavit, it has been stated as follows:-

DATE	EVENTS
02.11.2017	Application made for planning permission with the 3rd respondent through online.

DATE	EVENTS
17.11.2017	The 3rd respondent acknowledged the application for planning permission.
23.11.2017	The 3rd respondent called upon us to produce No objection Certificate from Fire & Safety, IAF, AAI and Traffic Police Departments
13.12.2017	The AAI provided No Objection Certificate
20.12.2017	The IAF provided No Objection Certificate
10.01.2018	The Fire & Safety Department provided No Objection Certificate
19.04.2018	The MSB committee of the 3rd respondent recommended to grant planning permission
03.05.2018	The 3rd respondent addressed a letter to the 1st respondent Government to grant planning permission
12.05.2018	Traffic Police Department issued No Objection Certificate
24.05.2018	The 1st respondent issued a Letter (Ms) No.60 directing the 3rd respondent to grant necessary planning permission
01.06.2018	The 3rd respondent vide Letter No.C3(s)/16275/2017 called upon us to pay necessary development and other Charges for grant of planning permission
07.06.2018	We paid all necessary Development and other charges to the 3rd respondent for planning permission
21.06.2018	The 3rd respondent granted planning permission to us vide proceedings bearing No.C/PP/MNSB/24 (A to F)/2018 and forwarded to the 2nd Respondent for Building Permit
23.06.2018	The Greater Chennai Corporation officials inspected the site in connection with issue of Building Permit
28.06.2018	The Greater Chennai Corporation issued Demand Notice for payment of requisite fees
28.06.2018	On routine inspection the local Division Office of the 2nd Respondent issued a notice calling for approved plan
29.06.2018	The 2nd respondent granted Building Permit vide CEBA/WDCN10/00207/2018

DATE	EVENTS
30.06.2018	We furnished the entire documents in response to the notice issued by the Division office of the 2nd respondent along with the Planning Permission issued by the 3rd respondent.

The aforesaid events would undoubtedly make it clear that all the procedures which have been contemplated under law have been complied with.

31.Regarding the road width, much emphasis has been made by Mr.T.Mohan relying upon the affidavit filed by the Director of Tamil Nadu Fire and Rescue Services. Paragraph 8-a is usefully extracted hereunder:-

"8.As per the directions of the Hon'ble High Court, the Multistorey inspection team has inspected various multistorey buildings at T.Nagar on 24.01.2015 and 25.01.2015 and in particular parties of this case and observed general fire and life safety issues with reference to the above requirements in those buildings are as follows:-

a.The access road width to these buildings at T.Nagar especially at Ranganathan Street, Usman Road etc., are very narrow with heavy congestion and it measured as 3.7 m and 4.9 m at the entrance of the Usman Road in either side of the flyover near Chennai Silks. The entrance width of the Ranganathan Street is 5.6 m and with this road access it will be very difficult to take the fire fighting vehicles including Aerial Ladder Platform to these streets and to fight fire or doing effective evacuation."

32.The above details only convinced this Court to initially grant an order of interim injunction against the 4th respondent. Subsequently, this Court directed the official respondents to inspect the site under reference and pursuant to the same, the site was inspected by the officials on 06.08.2018. The following details are stated in the report:-

"The site under reference gains access from three roads, viz., Usman Road on the West, Pinjala Subramanian Street on the North and Venkatesan Street on the South. The width of the roads measured in front of the site are as follows:

Sl.N o	Name of the Road	Total Width of the Road	Width of Flyover	Left over Width from Margin of Flyover to the Property on the Western side
1	South Usman Road			

Sl.No	Name of the Road	Total Width of the Road	Width of Flyover	Left over Width from Margin of Flyover to the Property on the Western side
	At Northern end of the site under reference	22.76 m	8.40 m	7.20 m (Includes footpath 2.50 m wide)
	At Southern end of the site under reference	23.00 m	8.40 m	7.30 m (Includes footpath 2.60 m wide)
2	Pinjala Subramanian Street	12.20 m	--	--
3	Venkatesan Street	9.00 m	--	--

33.The photograph produced and approvingly seen by the counsels for the parties before this Court would show that there is more than enough width available on Usman Road between the overbridge and the western side of 4th respondent's property and heavy vehicles also could move very freely. In fact, the photograph produced and seen by all the counsels during the course of hearing was taken at the time of the fire accident which occurred in the year 2017 in the 4th respondent's property in which a heavy fire extinguisher vehicle was driven on the road very freely and parked on the road opposite to the 4th respondent's property to extinguish the fire. Therefore, the road space available between the 4th respondent's property and the bridge is enough for easy and free movement of vehicles at a time. Even a very big fire extinguisher vehicle with ladder was found to be moving freely and parked in the locality. Hence, the statement made by the Director of Fire and Rescue Services Department in W.P.No.23083 of 2014 that the width of Usman road is very narrow and it measures only 3.7 M and 4.9 M, especially at the entrance of Usman Road on either side of the flyover near the Chennai Silks is not correct. That apart, many Multistoried business showrooms are stated to be located on the entire stretch of Usman Road on both the sides.

34.A close look of the Google map of the T.Nagar area, especially Usman Road would reveal that the bridge starts about 286 M on the Southern side and 614 M on the Northern side of the 4th respondent's property. Therefore, the statement of the Director of Fire and Rescue Services Department that the 4th respondent property is located at the entrance of the Usman Road and the road on the either side of the flyover is narrow is

contrary to the actual measurements. Even otherwise, the road width has to be taken as per the definition 2(35) of Development Regulations for Chennai Metropolitan Area which reads as follows:-

"(35) Road/Street width means whole extent of space within the boundaries of the road/street measuring at right angles to the course and direction of such road/street."

35.Chennai Metropolitan Development Authority by Office Order No.12/2000, dated 01.08.2000 taking into consideration the construction of large number of flyovers decided that road width will be total road width inclusive of grade separated portion (ROB or RUB) also and not only of service roads at nearly the same level. The relevant portion of the said office order is usefully extracted hereunder:

"Since a large number of fly-overs are being constructed, the question of interpretation of road width when there are grade separators, and the pros and cons, were considered in detail and a decision arrived at in A.R.No.145/2000, dt 19.6.2000.

In modification of earlier views, it has been decided that the road width will be the total road width inclusive of grade separated portion (ROB or RUB) also, and not only of service roads at nearly the same level."

36.As per the existing CMDA order which is in force as on date, the entire width of Usman Road viz., 28 M has to be considered and not the service road alone. Therefore, the question of inadequacy or insufficiency of width of the road near the 4th respondent's property does not arise. In view of the above mentioned facts, the 3rd respondent is also justified in granting FSI of 2.5 + 1 to the 4th respondent.

37.Rule 4.6 of Part III of the Development Control Rules and General Building Requirements [National Building Code of India] speaks about only 6 M width of road whereas the left over width from the margin of the flyover and the Western side of the 4th respondent's property as per the report of the first respondent is 7.20 M on the Northern side and 7.30 M on the Southern side. Hence, the recommended/prescribed road width as per development control rules has been complied with. In view of above reasons, the petitioner cannot have any objection or grievance in granting planning permission to the 4th respondent.

38.As regards the allegations that even before obtaining the planning permission and building license, the 4th respondent commenced the construction in April 2018 is concerned, it is stated by the Corporation of Chennai that after the demolition of the Chennai Silks old building, the construction of the new

building was started only on 30.06.2018 after obtaining building permission from the Corporation of Chennai on 29.06.2018. It is stated by the Member Secretary, CMDA in the Multistoried Building panel meeting dated 19.04.2018 that old building was demolished and the excavation of the existing foundation of the old building is being done.

39.Mr.T.Mohan, relied upon the Advocate Commissioner's report filed in O.S.No.2382/2018 filed by Mr.N.Natrajan against the 4th respondent wherein it was stated that machineries such as piling boring machines and excavators are placed in the 4th respondent's property and construction materials such as reinforcement bars, pile reinforcement cage are also found in the premises. He also referred to the notice dated 28.06.2018 calling for approved plan issued by the Assistant Executive Engineer and contended that work was commenced before obtaining the building plan.

40.With regard to reference to Stop Work Notice issued by the Assistant Executive Engineer, Corporation of Chennai is concerned, the Commissioner of Corporation of Chennai had stated in paragraph 9 of the Counter affidavit as follows:-

"9.During routine inspection by the Assistant Engineer, Div-136, Zonal Office-X, Greater Chennai Corporation on 22.06.2018 it was noticed that the foundation works i.e., excavations had been commenced by the 4th respondent at the site under reference and they have not exhibited any sanctioned plan copy."

From the above, it is clear that excavation work alone was done on 22.06.2018.

41.Further, it is to be noted that the Engineer engaged by the Advocate Commissioner did not actually visit the subject property but he could see the property only from the terrace floor of the building owned by Mr.N.Natarajan who filed O.S.No.2382/2018 against the 4th respondent/Chennai Silks before XVI Assistant City Civil Court, Chennai and filed the report. After demolition of the old building, the resultant debris should be removed using men and machineries. Even the earth should be excavated deeper for a proper foundation especially to accommodate the proposed double basement floor building. For excavation and removal of debris and soil, vehicles like excavators should be used and for construction work, the materials have to be stored. The stored materials and preventive safety measures done by the 4th respondent could have given an impression of commencement of construction work on the new building, before getting approved plan.

42.At this juncture, this Court takes into consideration of

the submission of the learned Senior Counsel for the 4th respondent that old foundation was excavated and during the course of such excavation there was a chance for mud/soil sliding and only in order to prevent the mud/soil sliding which may affect the neighboring properties, reinforcement bars ought to have been placed and there was no construction as such. If the old building is demolished and the foundation was excavated to considerable depth, definitely the mud/soil in the margins would slide, especially when it goes deep into the earth, thereby causing damage to the neighboring property and even affect the safety of the neighbors and therefore, the property cannot be allowed to remain without any safeguards.

43.It is also clear from the photographs produced before this Court that the foundation was dug to considerable depth and therefore, necessary precautions such as placing of reinforcement bars should be made to prevent mud/soil sliding and the same cannot be considered as a construction activity. Therefore, it cannot be said that the construction was going on even before obtaining plan approval and building permission. It is only a preliminary preventive work to stop mud/soil sliding and therefore, the contention raised by the petitioner in this regard also had to be rejected. In fact, when the construction was progressing, this Court granted interim order on 24.07.2018. Thereafter, the 4th respondent got permission from this Court on 31.07.2018 and 29.08.2018 to put up reinforcement upto ground level on all the sides as the earth was dug upto a depth of 6.7 M. Considering the fact that the iron rods which have been placed on the sides of the 4th respondent's property started to bend unable to withstand the load, this Court permitted the 4th respondent to carry on with the reinforcement works on the side walls upto the ground level. For the above reasons, this Court finds that there is no contempt of Court committed by the 4th respondent.

44.It is not as if the 4th respondent could proceed with the construction deviating from the approved plan. It is to be noted that there is an undertaking given by the 4th respondent on 07.06.2018 to send a report by the licensed surveyor and architect to CMDA regularly and any deviation would be duly informed to the CMDA, which in turn could cancel the building approval.

45.As observed above, it is clear that the official respondents followed the procedures properly and as per the rules and regulations only, planning approval and building license have been granted to the 4th respondent/Chennai Silks. Thus, there is no violation of law in granting planning permission and building license and violation of principles of natural justice in reclassification of use of 4th respondent's

property.

46.As regards the specific contention made by Mr.T.Mohan, learned counsel for the petitioner that the No Objection Certificate issued by Tamil Nadu Fire and Rescue Services Department has not been issued as per the format prescribed in Form of Inspection - Report-I - Appendix VI of Tamil Nadu Fire Service Rules, it is evident from the certificate issued by the Tamil Nadu Fire and Rescue Services Department that though the NOC has not been issued in the format prescribed under the Act, in substance, all the details have been given. It is a settled principle that what has to be seen is only the substance and not the format. Therefore, the contention in this regard has to be rejected. However, taking into consideration of the fact that the Tamil Nadu Fire and Rescue Services Department has not given NOC in appropriate format as prescribed under the Act, it is expected that hereafterwards, the Tamil Nadu Fire and Rescue Services Department will give NOC as per the format prescribed under the Act.

47.Therefore, these writ petitions fail and they are dismissed without costs. Consequently, the interim orders granted by this Court stands vacated and the connected miscellaneous petitions are closed.

48.For the reasons stated above, Sub Application No.630 of 2018 also stands closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

pgp

To

1.Secretary to Government
Housing and Urban Development Department
State of Tamil Nadu
Secretariat, Chennai - 600 009.

2.The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai 600 003.

3.The Member- Secretary

Chennai Metropolitan Development Authority
Thalamuthu-Natarajan Buildings
Egmore, Chennai-8.

4.The Joint Director

The Tamil Nadu Fire and Rescue Services Department
No.17, Rukmani Lakshmipathy Salai
Egmore, Chennai - 600 008.

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.78069
+5cc to Mr.N.Senthil Kumar, Advocate, S.R.No. 77653
+2cc to Mr.Karthik Rajan, Advocate, S.R.No. 77767
+1cc to Mr.Swarnam J.Rajagopalan, Advocate, S.R.No.77137
+1cc to the Government Pleader, S.R.No. 77995

W.P.Nos.18716 & 18717 of 2018
and
W.M.P.Nos.22066 to 22069 & 22950 of 2018
and
Sub Application No.630 of 2018

RSV(CO)
GN(19/11/2018)