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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM

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

WA.No.1483 of 2018
and CMP.No.11717 of 2018

The Tamil Nadu Housing Board,
rep.by its Managing Director,
Anna Salai, Nandanam,
Chennai-600 035.

.... Appellant

Vs.

1.Mr.A.Ganesan
2.Smt.Vasantha Ganesan
3.N.Seshadri
4.S.Sriram
5.Smt.Umayal Parvathi
6.The Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

7.The Corporation of Chennai,
rep.by its Commissioner,
Rippon Building, Chennai-600 003.

...Respondents

PRAYER:

Writ Appeal filed under Clause 15 of the Letters Patent, to allow this appeal by setting aside the order of the learned Judge in W.P.No.21052 of 2010 order dated 20.10.2010.

W.P.No.21052 of 2010:-

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to entertain consider and grant approval to the demolition plan planning permission building permit for developing the lands at Flats in Block No.89A to D MIG Flats Dr.P.T.Rajan Salai S.No.32/1 pt. and 54 pt. K.K.Nagar Mambalam-Guindy Taluk Chennai admeasuring about 2 grounds and



2340 sq. ft. For putting up a residential building without insisting upon the N.O.C. from the 3rd respondent herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules.

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For Appellant : Mr.V.Anandamoorthy

For Respondents : Mrs.Veena Suresh
Standing Counsel for R6
Mr.V.C.Selvasekaran
Standing Counsel for R7

J U D G M E N T

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

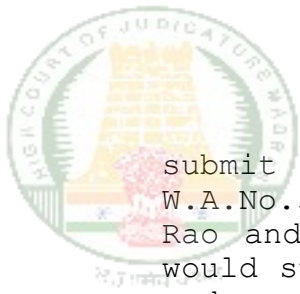
By consent, the writ appeal is taken up for final disposal.

2. Mrs.Veena Suresh, learned Standing Counsel accepts notice on behalf of the 6th respondent and Mr.V.C.Selvasekaran, learned Standing Counsel accepts notice on behalf of the 7th respondent.

3. The respondents/writ petitioners has filed W.P.No.21052 of 2010 praying for issuance of writ of Mandamus, directing the Chennai Metropolitan Development Authority cum the Commissioner, Corporation of Chennai, Rippon Buildings, to entertain, consider and grant the approval to the demolition plan, planning permission, building permit for developing the lands at Flats in Block No.89 A to D MIG Flats, Dr.P.T.Rajan Salai, S.No.32/1pt and 54 pt, K.K.Nagar, Mambalam-Gluindy Taluk, Chennai admeasuring about 2 grounds and 2340 sq.ft for putting up a residential building without insisting upon the No Objection Certificate from the 3rd respondent / appellant herein or any other authority so long as the proposed new construction activities is in accordance with the Development Control Rules.

4. The learned Single Judge, has taken note of the order dated 28.08.2007 in W.A.No.1052 of 2007 found that once the layout is made allotted to the allottees, the entire area belongs to the allottees has no control over the possession and management of the said area and accordingly, allowed the writ petition in terms of the above said order and making challenge to the said order, the present writ appeal is filed.

The learned Standing Counsel appearing for the appellant/Tamil nadu Housing Board has invited the attention of this Court to the decision rendered by 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



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submit that the said judgment has been subsequently in W.A.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 would submit that in the light of the said judgment, appropriate orders may be passed in the writ appeal.

5. This Court heard the submission of learned counsel Mrs.Veena Suresh, learned Standing Counsel appearing for the 6th respondent and Mr.V.C.Selvasekaran, learned Standing Counsel appearing for the 7th respondent.

6. It is relevant to extract paragraph 15 of the Full Bench Judgment in W.A.No.1052 of 2007 [The Managing Director, Tamil Nadu Housing Board, Nandanam, Chennai 600 035 Vs LANCOR G CORP Properties Ltd and others] :

15. Thus, the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1994, the covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the Allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the Flats or common area, the question of obtaining 'No objection Certificate from the Tamil Nadu Housing Board will not arise. In such circumstances, the allottees of the Flats, after execution of the Sale Deed in their favour have got every right to demolish the existing building and construct new Apartment Blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the Rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got no say, even if additional dwelling units are constructed after demolishing the existing Flats. As stated already, the Tamil Nadu Housing Board loosed its rights as soon as it executes the Sale Deed in respect of the Flats, appurtenant land and even in the areas earmarked for the common enjoyment of the Flat owners. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without 'No Objection Certificate' from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the Rules and Regulations of the CMDA. Even assuming that there are restrictive covenants in the Sale Deed executed by the Tamil Nadu Housing Board in favour of the allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as



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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 ratio laid down by the Full Bench of this Court, this Court is of the considered view that when the Tamil Nadu Housing Board have not retained any right over the land appurtenant to the Flats or common area, the question of obtaining ''No objection Certificate'' from the Tamil Nadu Housing Board will not arise. The common area has to be enjoyed in common by the Flat owners. If a consensus is arrived at by all the Flat owners, they can utilize the common land also to put up construction without ''No Objection Certificate'' from the Tamil Nadu Housing Board subject to obtaining planning permission / building permit and putting up a construction in accordance with law.

8. In the light of the said decision, the writ appeal deserves to be dismissed. Accordingly the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.'

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sk

W.A.No.1483 of 2018

NA (CO)
CS/29/08/18