

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.1603 of 2016
& CMP No.7311 of 2017

Kendriya Vihar II Apartment Owners'
Welfare Association,
Rep by its Secretary,
B 9-130, 1st Floor, Kendriya Vihar,
Paruthipattu, Avadi, Cehnnai 71.

... Appellant

versus

1. Central Government Employees Welfare
Housing Organization,
Rep. By its Chief Executive Officer,
Head Office at 6th Floor, Janpat Building
New Delhi.

2. The Chennai Metropolitan Development Authority
Rep. By its Member Secretary,
Thalamuthu Natarajan Maligai,
Egmore, Chennai 600 008.

... Respondents

R2 is Suo Motu impleaded as party respondent vide
order of this Court dated 03.07.2018 made in
WA No.1603/2016 and CMP No.7311/2017 by KKSJ & RSMJ

Appeal filed under clause 15 of the Amended Letters patent
Act of 1865 against the order passed by this Court dated
23.09.2016 passed in WP No.26755 of 2016 which was presented
under Article 226 of the constitution of India, to issue a writ
of certiorari to call for the records in proceedings published
by Central Government Employees Welfare Housing Organization in
"Dhina Thanthi" dated 28.05.2016 and quash the same.

For Appellant : Mr.UM.Ravichandran

For Respondents : Mr. P.B.Sampathkumar for R1

Mr. Karthik Rajan for R2

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 23.09.2016, made in WP No.26755 of 2016, in and by which, the learned Single Judge disposed of the Writ Petition filed by the appellant Association recording the statement made by the learned counsel for the 1st respondent Organisation to the effect that no new construction will be put up for phase III project in the extent of 11.31 acres set apart for Phase II.

2. The Writ Petition came to be filed by the petitioner/appellant herein which is an Association of the apartment owners who had purchased apartments from the 1st respondent Organisation. The 1st respondent Organisation had promoted a scheme for Housing of both former and present Central Government employees. A total extent of 26.58 acres was to be developed by constructing apartments of various sizes and allot the same to both former and present Central Government employees. While getting approval for development of the project, the entire area of an extent of 26.58 acres was shown as one block and the planning permission was obtained for construction of nearly 400 residential units, spread over the entire extent of 26.58 acres. The total extent of the built up area, as per the approved plan, which was sanctioned in the year 2006 was about 1,38,156 sq.mts. Though approval was obtaining for construction of 1,38,156 sq.mts equivalent to 14,85,792 sq. feet, the entire project was not completed, the construction was put up only over an area of 11 acres 31cents and the sale deeds were executed to the allottees concerned.

3. Thereafter, it appears that the 1st respondent Organisation had applied to the Chennai Metropolitan Development Authority seeking approval for a revised planning permission. While doing so, the 1st respondent Organisation included the area of 11.31 acres also by showing the entire area 26.58 acres as land to be developed and obtained approval afresh in the year 2014 for construction of at least 10 Blocks of multi storied buildings in the remaining area. While doing so, the total planning area was shown as 1,97,505.34 sq.mts, the proposed construction itself was to measure 1,34,391.20 sq. mts., excluding the earlier construction made an extent of 63,114.17 sq. mts. Though the appellant Association challenged the advertisement, issued by the 1st respondent Organisation inviting applications for sale of the Flats that are proposed to be put up, its grievance was that by including the land measuring about 11.31 acres, which was already developed, as a part of the new

proposal and obtaining a planning sanction for construction of much a larger extent of 1,34,391.20 sq.mts., which would mean that the total area of construction in the entire extent of 26 acres 58 cents would be 1,97,505 sq.mts. as against the original sanctioned extent of 1,38,156 sq.mts.

4. The primary contention of the appellant Association was that this excess of about 60,000 sq. mts would eat into the undivided share of land that had already been purchased by the members of the appellant association. However, before the learned Single Judge these facts were not projected in the proper prospective, which led to the learned Single Judge disposing of the Writ Petition, on the basis of a statement made by the counsel for the 1st respondent but no further construction will be put up.

5. Since the controversy related to the undivided share that would be allotted to the proposed construction as well as the sanction of the Plan by the CMDA, we had suo-motu impleaded the Chennai Metropolitan Development Authority, by our order dated 03.07.2018. The Chennai Metropolitan Development Authority was directed to file its response for the following questions framed by us in our order dated 05.07.2018:

"3. We direct the Member Secretary, CMDA to inspect the site in question and offer his remarks in respect of the following:

- 1. FSI achieved in Phase II on the basis that the area of the project site is 11 acres 31 cents and the exact extent of the existing construction.*
- 2. What is the FSI or the maximum built up area allowed as per the present rules in the area of 11 acres 31 cents covered by Phase II?*
- 3. FSI achieved by the new plan by including the land area in Phase II also.*
- 4. What is the FSI or the permissible area that could be built up in the remaining area i.e. 26.58 - (11.31 + 2.65) = 12.62 acres?*
- 5. What is the maximum permissible area that could be constructed if the total area of 26.58 acres is shown as available land?*
- 6. Whether it would be possible to demarcate the 11.31 acres of land earmarked for construction of Phase II out of the total extent of 26.58 acres?"*

6. Pursuant to the said order, the senior planner of the Chennai Metropolitan Development Authority has filed an inspection report giving the answers for the questions posed by us. A perusal of the inspection report shows that the claim of the 1st respondent Organisation is incorrect. The Chennai

Metropolitan Development Authority has made it very clear that 11.31 acres which had already been developed, as per the plan sanctioned in the year 2006 cannot be demarcated from the entire project. It is also made clear that the present sanction granted in the year 2014, takes in the area of that 11.31 acres which was already developed as part and parcel of the present project.

The Chennai Metropolitan Development Authority has also claimed that the sub division of this 11.31 acres made by the 1st respondent Association as allotable to the construction that was put up, pursuant to the plan sanctioned in the year 2006 is unauthorized.

7. The report also makes it clear that if 11.31 acres is not taken into consideration, the 1st respondent association will not be in a position to put up construction in the remaining 12.62 acres, excluding the areas reserved for former and present Central Government employees. We find a prima facie case in favour of the appellant. These Questions need to be examined with the assistance of the Planning Authority, viz. the Chennai Metropolitan Development Authority. Since these questions were not addressed by the learned Single Judge, we do not want to embark upon an enquiry into these factual issues, which will have effect of depriving one of the parties of an appellate remedy by way of an intra court Appeal.

8. We have heard Mr.UM.Ravichandran, learned counsel appearing for the appellant, Mr.P.B.Sampathkumar, learned counsel appearing for 1st respondent and Mr.Karthik Raja, learned counsel appearing for the 2nd respondent.

9. We are therefore of the considered opinion that this exercise as to whether the planning permission obtained by the 1st respondent Organisation in 2014 by showing the entire 26.58 acres is one composite block is in order or not and whether the proposed development would have the effect of diminishing the UDS that has been allotted and subsequently sold to the members of the appellant association should be decided by the learned Single Judge. Now that we have impleaded the Chennai Metro Development Authority also in the Writ Appeal, the Chennai Metro Development Authority is also made a party to the Writ Petition.

10. In view of the foregoing reasons, the order of the learned Single Judge dated 23.09.2016 impugned in this Writ Appeal is set aside. The Writ petition in WP No.26755 of 2016 is remitted to the learned Single Judge to be heard and disposed of in the light of the observations made above. However there will be no order as to costs in this Appeal. Consequently, the connected miscellaneous petition is closed.

11. The Chennai Metropolitan Development Authority will file its counter in the Writ Petition within two weeks from the date of receipt of a copy of this Order. Mr.U.M. Ravichandran, learned counsel appearing for the appellant would submit that the respondent association is proceeding with the construction. It is open to him to seek appropriate interim orders before the learned Single Judge. We only request the learned Single Judge to take up the Writ Petition itself at the earliest and dispose of the same.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

jv
To

1. The Chief Executive Officer,
Central Government Employees Welfare
Housing Organization,
Head Office at 6th Floor, Janpat Building
New Delhi.

2. The Member Secretary,
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai,
Egmore, Chennai 600 008.

+2cc to Mr.UM.Ravichandran, Advocate SR.No.51151
+1cc to Mr.P.B.Sampathkumar, Advocate SR.No.52161
+1cc to Mr.Mr.Karthikrajan, Advocate SR.No.51584

TM(CO)
sm:27.8.2018

W.A.No.1603 of 2016
& CMP No.7311 of 2017

सत्यमेव जयते

WEB COPY