

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.25296 of 2018 and
WMP No.29423 of 2018

DNS Complex Shopkeepers Association
Represented by its Secretary,
Mr.Satish Kumar
4 & 5, Nageswara Road,
T.Nagar, Chennai - 600 017.

...Petitioner

-vs-

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

2.M/s.DNS Projects Pvt. Ltd.,
Rep. by its Director,
Mr.Dinesh N.Surana
No.72, Harleys Road,
Kilpauk Road, Chennai - 600 010.

3.Sindhuja

4.Saradhapriya

5.Gajapathy

6.V.Sayi Shankar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus, calling for the records comprised in Letter No.EC/C-II/13034/2017 dated 17.09.2018 issued in pursuance of the Lock and Seal & Demolition notice in Letter No.EC/C-II/13034/2017 dated 31.07.2018 on the file of the file respondent, quash the same and consequently direct the respondents 2 to 6 to regularise the building in premises bearing Door No.4 & 5 Nageshwara Rao Road, T.Nagar, Chennai - 600 017.

For Petitioner :Mr.V.Ayyadurai
Senior Counsel for
Mr.G.RM.Palaniappan

For Respondents :Mr.Karthick
Standing Counsel for R1
Mr.Senthilkumar for
M/s.Sampath Kumar & Associates
for R2

O R D E R

[Order of the Court was delivered by
K.K.SASIDHARAN,J.]

The association of tenants occupying the building at Door Nos.4 & 5 Nageshwara Rao Road, T.Nagar, Chennai - 600 017, has come up with this writ petition challenging the de-occupation notice dated 17 September 2018 issued by the Chennai Metropolitan Development Authority on account of the construction made by the builder in deviation to the approved plan.

2. The members of the petitioner association are the tenants of the building developed by its erstwhile owners. The building was subsequently purchased by the respondents 3 to 6. It is the grievance of the tenants represented by the Association that in order to evict them, the builder has joined with the CMDA resulting in issuing the notice.

3. The petitioner Association has taken up a contention that while considering the application filed by the builder for regularisation, the Chennai Metropolitan Development Authority found only one defect and that was relating to the Fire Safety. However, in the notice now issued to the tenants for de-occupation, different grounds were given. The petitioner therefore alleged malafides against the statutory body.

4. We have heard the learned Senior Counsel for the petitioner. We have also heard the learned Standing Counsel for the Chennai Metropolitan Development Authority.

5. The Chennai Metropolitan Development Authority issued de-occupation notice invoking Section 56(2) Sub-Clause (iii) and (2A) of Town and Country Planning Act, 1971. The notice was issued as part of the demolition notice earlier issued to the builder on 31 July 2018.

6. The notice impugned in this writ petition is amenable to appellate jurisdiction. There is a provision for filing appeal

against this order under the Town and Country Planning Act. We are therefore of the view that the petitioner must approach the Appellate Authority.

7. We grant liberty to the petitioner Association to file an appeal before the Appellate Authority under the Town and Country Planning Act. The petitioner is also permitted to file interim application to maintain status quo during the currency of the appeal. In case, any such appeal is filed within a period of 30 days' from today, the same shall be entertained by the Appellate Authority and appropriate orders should be passed on merits. The Appellate Authority is at liberty to pass an interim order to maintain status quo during the currency of the appeal. Status quo as on today shall be maintained till orders are passed in the stay petition or in the appeal whichever is earlier.

8. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

svki

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Maaligai,
No.1 Gandhi Irwin Road, Egmore,
Chennai - 600 008.

+1 cc to M/s.Karthik Rajan Advocate sr 67129
+1 cc to M/s.R.M.Palaniappan Advocate sr 67139
+1 cc to M/s.Sampath kumar Associates sr 67389

W.P.No.25296 of 2018

aa15/10/2018