

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12.10.2018

JUDGMENT PRONOUNCED ON : 24.10.2018

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.27262 of 2018

and

W.M.P.Nos.31697, 31700, 31707 of 2018

- 1.Prabha Mandot
- 2.Chandresh Mandot
- 3.Premalatha Mandot
- 4.Savitha
- 5.M.Manohar Lodha
- 6.M.Kiran Lodha
- 7.G.Mangalchand Lodha
- 8.M.Prakash Kavar
- 9.L.Rajendra Lodha

... Petitioners

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9.
- 2.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.
- 3.The Corporation of Chennai,
Rep. by its Commissioner,
Rippon Building,
Egmore, Chennai - 8.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent comprised in order dated 20.07.2018 in Letter No.12630/UD-VII (1)/2017-11, quash the same as arbitrary, illegal and consequently direct the respondents to approve the construction of petitioners at Old

Door No.5, New Door No.10, Rathinasabapathy Street, Old Washermanpet, comprised in R.S.No.3734/52, 3734/85, Block No.56, Tondiarpet Village, Chennai - 18, under Section 80A of the Tamil Nadu Town and Country Planning Act and the subsequent letters.

For Petitioners: Mrs.D.Geetha

For Respondents: Mr.R.Udayakumar,
Additional Government Pleader for R1

: Mr.S.Thiruvengadam for R2

: Ms.Arunmozhi,
Standing Counsel for R3

O R D E R

(Order of the Court was made by R.SUBRAMANIAN, J.)

The petitioners challenge the order of the 1st respondent dated 20.07.2018 made in appeal filed under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971.

2. The petitioners had put up a multi-storied residential building at Old Door No.5, New Door No.10 Rathinasabapathy Street, Old Washermanpet, comprised in R.S.No.3734/52, 3734/85, Block No.56 of Tondiarpet Village, Chennai - 18 after obtaining a planning permission. The construction was inspected by Enforcement Cell of Chennai Metropolitan Development Authority on 15.09.2010. Since it was found that the construction was being done without an approved plan the Authorities issued a stop work notice on 15.09.2010. Despite the stop work notice the construction proceeded further forcing the Authority to issue a lock and seal notice on 02.11.2010. The lock and seal notice also gave the details of violations as follows:

S. No .	Description	As per approved plan	As on site	Deviation/ Violation	Remarks
1	Front Set Back	1.52 M	1.20 M	Less by 0.32 M	-
2	Rear Set Back	1.52 M	0.65 M	Less by 0.87 M	-
3	Side set back (West)	1.76 M	0.40 M	Less by 1.38 M	-

S. No.	Description	As per approved plan	As on site	Deviation/ Violation	Remarks
4	Building width Stilt floor (part)/ Ground Floor (part)	10.0 M	12.5 M	Excess by 2.5 M	-
	I to IIIrd floor	3.11	13.90 M (Due to projections at upper floors)	Excess by 0.79 M	-
	Building Length stilt floor (part)/ Ground Floor (part)	25.60 M	29.15 M	Excess by 3.55 M	-
	I to IIIrd floor	27.13 M	29.15 M	Excess by 2.02 M	-
5	No. of floors	Stilt +2 floors	Stilt floor, (pt) + Ground floor (pt) + 3 floors + 4 th floor (pt)	Ground Floor (pt) + 3 rd floor & 4 th floor (pt) is an unauthorized construction	-
6	No. of Dwelling units	6 Dwelling units	7 dwelling units	Excess by one dwelling units	-
7	Due to conversion of part of Stilt floor into Ground Floor 3 nos. of car parking affected.				
8	Ground Floor (part) + Third floor and fourth floor (part) are constructed unauthorised against the approved plan.				

3. It appears that the petitioners submitted an application for planning permission after the issuance of lock and seal notice on 29.12.2010. The same was returned un-approved on 02.03.2011 stating that the permission sought for does not reflect the construction made as on site. The father of the 9th petitioner herein approached this Court in WP.No.15305 of 2011 seeking a mandamus directing the respondents to remove the lock and seal to enable him to carry out the removal of the violations and to rectify the deviations.

4. This Court by an order dated 29.06.2011 directed the respondents to remove the seal and further directed the petitioner to remove the unauthorized constructions within a period of three months from the date of removal of the seal. The said order also provided for a default clause giving liberty to the Authorities to proceed in accordance with law in the event of failure on the part of the petitioner to remove the deviated constructions.

5. The Chennai Metropolitan Development Authority issued a notice on 28.07.2011 intimating the petitioner in WP.No.15305 of 2011 that the lock and seal will be removed subject to certain conditions as stipulated by this Court. It appears that the petitioners had again applied for planning permission on 13.05.2011. The said planning permission was also refused in view of the large scale deviations found in the building.

6. As against the refusal dated 07.12.2011, the petitioners had approached the Government under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971. The Government by its order dated 12.09.2013 rejected the appeal. The said rejection was challenged by some of the petitioners herein in WP.No.17153 of 2014. When the above writ petition came up before the Division Bench a representation was made on behalf of the petitioners that they are willing to demolish the unauthorized structure for the purpose of restoring the building to its original position in terms of the planning permission granted by the Corporation. In the light of the said submission, the Division Bench passed the following orders.

"5. The petitioners are given liberty to make an application before the first respondent with a request to permit them to demolish the unauthorised structure. In case, any such application is given, the first respondent is directed to grant permission for the purpose of demolishing the unauthorised structure. The petitioners are granted eight weeks time to rectify the deviations. After demolishing the unauthorised structure, the first respondent shall inspect the building once again to confirm as to whether the unauthorised structure was removed. If it is found that the entire unauthorised structure is removed, the first respondent shall proceed the matter further. In case, the unauthorized structure is not removed within the time give, the first respondent is permitted to take further action, in accordance with law."

7. However, in gross violation of the undertaking made before this Court, the petitioners occupied the said premises by completing the constructions. Hence, the Chennai Metropolitan Development Authority issued a de-occupation notice on 09.06.2017 in letter No.EC/EA/N-I/13292/2010 that was a subject matter of challenge before the Government in the appeal under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971.

8. The Government found that the violations are not condonable. It was also found that despite their repeated undertakings given to the Court the petitioners have not demolished the offending structures and bring the building within the permissible limits. Therefore, the appeal was rejected by the Government by the order impugned in this writ petition.

9. We have heard Mrs.D.Geetha, learned counsel appearing for the petitioners.

10. Mrs.D.Geetha, would submit that the Authorities have erroneously proceeded on the footing that it is Rule 28 of the Development Control Rules that would apply to the building in question. According to her, it is Rule 26 that would apply to her and if Rule 26 is applied and the building in question is treated as a special building, there is no violation of the requirements and hence the entire premise on which the Authorities have proceeded is incorrect.

11. We are unable to agree with the said contention of the learned counsel for the reason that Rule 26 will not apply to the site in question. In order to apply Rule 26 for a special building in a continuous building area, the minimum plot extent should be 50 sq.m and maximum plot extent should be 80 sq.m. If the plot extent is above 80 sq.m, it is Rule 28 that would apply and not Rule 26. In the case on hand the plot extent is 584.81 sq.m., which is over and above the maximum extent prescribed under Rule 26. We therefore see no substance in the contentions of the counsel that Rule 26 should be applied and not Rule 28. Once it is found that Rule 28 that would apply, admittedly, there had been violation of every possible condition contemplated under Rule 28 of the Development Control Rules. The plot extent, plot frontage, the abutting road width are less than the required measurements. The FSI, plot coverage and number of floors permissible are in excess. The set backs all around the building are lesser than the required extent. The car parking is also lesser. The violations noted by the Authorities are as follows:-

S. No.	Rule	Description	Required/ permissible	Provided	Remarks
1	28(2)A	Plot extent	1200 square m	584.81 square m	Less by 615.19 m square
2	28(2)B	Plot frontage	25.0 m	16.16 m	Less by 8.84 m
3	28(2)C	Abutting road width	12.00 m	9.27 m to 9.53 m	Less by 0.962
4	28(2)D	Floor space index	1.50	2.462	Excess by 0.962
5	28(2)E	Plot Coverage	30%	69.36%	Excess by 39.36%
6	28(2)F	No. of floors permissible	GF+ 3 Floors or stilt + 4 floors Max. 15.25 m height	Stilt (Part) + GF (Part) + 4 Floors with 16.16 m height.	One floor excess and height exceeds by 0.91m
7	28(2)G	Set backs all around	7.00 m	North 0.26m South 0.68 m East 2.14 m West Nil	Less by 6.74m Less by 6.32m Less by 4.86m Less by 7.00m
8	28(4) Annexure (XVI)	Car parking	16 nos.	4 nos.	Less by 12 nos.
9	28(9)b (i)	Lift	2 nos.	1 no.	Less by 1 no.
10	28(9)b (ii)	Generator room not provided			
11	28(9)b (iii)	Neither transformer room of size 6.0mx4.0mx2.75m not open transformer yard provided			
12	28(9)b (iv)	Meter room of size 2.4x2.4m 2 nos. not provided			
13	28(10)	Fire safety staircase	2 nos.	1 no.	Less by 1 no.
14	No objection Certificate from DF&RS, Traffic Police are not provided.				

S. No.	Rule	Description	Required/ permissible	Provided	Remarks
15		Provision for sump and OHT for fire fighting rain water collecting sewage water recycling are not provided .			
16		Structural Stability Certificate from the Class I Structural Engineer is not furnished.			

12. In the light of the above whole sale violation of every possible requirement of the Rule we do not think that the petitioners deserve any indulgence from this Court, the attempt made by the Authorities to bring the building in conformity with the sanctioned plan has been delayed by the petitioners for almost 8 years. We therefore see no merit in the writ petition. The writ petition therefore fails and it is dismissed. No costs. The connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Egmore, Chennai - 8.

+1cc to Mr.S.Thiruvengadam, Advocate, S.R.No. 72811
+1cc to Mr.D.Geetha, Advocate, S.R.No. 73167

W.P.No.27262 of 2018

CA (CO)
GN(14/11/2018)