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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 1410 of 2019

And

C.M.P.No. 9729 of 2019

Kendriya Vihar II Apartment
Owners' Welfare Association
Rep. by its Secretary
B-9/130, 1st floor, Kendriya Vihar
Paruthipattu, Avadi,
Chennai - 600 071.

... Petitioner/Appellant

Vs.

1. Central Government Employee's
Welfare Housing Organization
Rep. by its Chief Executive Officer
Head Office at 6th Floor,
Janpath Building, Janpath
New Delhi.

Also having its office at
Paruthipattu, Avadi, Chennai 600 071.

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

... Respondents / Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 01.02.2019 made in W.P.No. 26755 of 2016 passed
by the learned Single Judge of this Court.

Prayer in W.P.No.26755 of 2016:Writ Petition filed under Article
226 of the Constitution of India for issuance of 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 as illegal incompetent and unconstitutional.

For Appellant : Mr. M.Muthappan
For R 1 : Mr. P.B.Sampth Kumar
For R2 : Mr.Karthik Raja

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J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

This Appeal has been filed by Kendriya Vihar II Apartment, Owners' Welfare Association against the Central Government Employees' Welfare Housing Organization, New Delhi and the Chennai Metropolitan Development Authority, Chennai, aggrieved by the order dated 01.02.2019 passed by the learned Single Judge of this Court dismissing the Writ Petition in W.P.No. 26755 of 2016 after the remand by a Co-ordinate Division Bench of this Court in W.A.No. 1603 of 2016 vide its order dated 30.07.2018.

2. The case seems to have a chequered history of litigation between the Owners' Welfare Association, the present appellant/petitioner and the Developer, Respondent No. 1, Central Government Employees' Welfare Housing Organization. The learned Single Judge had dismissed the Writ Petition of the appellant/petitioner by going into the facts of the case and taking pains to find that the approval of the construction raised by the respondent No.1 had been duly approved by the competent body, namely, CMDA, respondent No.2 herein.

3. The relevant observation of the learned Single Judge are quoted below for ready reference:-

"9. While coming to the issue indicated by the Division Bench as to whether the planning permission obtained by the first respondent organization in 2014 by showing the entire 26.58 acres in one composite block is in order or not, it is clearly found from the report submitted by the CMDA that the said Authority has considered the entire extent of 26.58 acres i.e., 1,07,565.27 sq.mtrs. as single entity for the calculation of FSI and coverage, and that the extent of 11.31 acres, where the first respondent had already constructed 37 (27+10) blocks, till date has not been demarcated.



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Therefore, the planning permission obtained by the first respondent organization showing the entire 26.58 acres in composite block is in order, for, as highlighted above, even after construction of the proposed 11 blocks comprising of 1220 dwelling in the remaining 12.62 acres, which is the impugned advertisement, the FSI works out being 2.025, the same is well within the FSI limit of 2.50. Accordingly, the first issue is answered.

10. Coming to the second issue, whether the proposed development would have the effect of diminishing the UDS that has been allotted and sold to the members of the petitioner association, it may be stated that earlier, when approval was issued for construction of 64 special building blocks with 1304 dwelling units, the first respondent organization has initially constructed 27 blocks with 412 dwelling units (Block-B: 8 Nos; Block-C:2 Nos; Block-D:9 Nos; Block-E:3 Nos; Block-F: 5 Nos.;) as could be seen from the partial completion certificate issued by the CMDA on 10.05.2012, and again, 10 more blocks comprising 160 dwelling units ('A' Type Block: 4 Nos. (64 dues); 'B' Type Block 6 Nos.(96 dues)) were constructed as could be seen from the partial completion certificate issued by the CMDA vide its proceedings dated 27.12.2012. In total, the first respondent organization has constructed 572 dwelling units (27+10 blocks) as against the original sanctioned dwelling units of 1304 (64 blocks). Now, for the remaining 27 un-built blocks, the first respondent organization has sought for permission to construct only 11 blocks comprising 1220 dwelling units and in total, this will work out to 47 blocks comprising 1792 dwelling units.

11. At this juncture, it may be mentioned herein that when there was an approval granted for 64 blocks, the first respondent has constructed 37 blocks



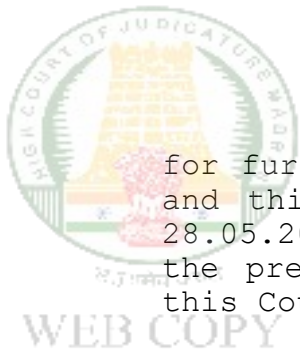
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(27+10) in 11.31 acres against the total extent of 26.58 acres, therefore, for the remaining area of 12.62 acres excluding 2.62 acres allotted to the CMDA for public purpose, they have now sought for permission to construct only 10 blocks comprising 1220 units against the left over blocks of 27. Therefore, in my view, the proposal of the first respondent organization seeking permission to construct only 11 blocks comprising 1220 dwelling units would not have the effect of diminishing the UDS allotted to the petitioners. Accordingly, in the above terms, the second issue is answered.

12. In fine, for the reasons stated above, the writ petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed."

4. The learned counsel appearing for the CMDA has taken us through the original sanction granted in favour of the Developer, Respondent No.1, vide sanction dated 07.11.2006 which was later on modified upon furnishing of modified plans by the Developer Respondent No.1, vide communication dated 22.11.2014. The petitioner Association raised its objections before the Member Secretary of the CMDA vide communication dated 14.11.2016. The same was duly replied by the respondent No.2, CMDA vide its communication dated 18.09.2017 on record. This filing of objection by the petitioner Association and the communication thereof by CMDA appears to have happened when the matter was pending before the Division Bench of this Court which remanded the case back to the learned Single Judge of this Court on 30.07.2018. The Writ petition was finally dismissed by the learned Single Judge, by the order dated 01.02.2019 impugned before us.

5. Having heard the learned Counsels, we are of the considered opinion that the present litigation in the writ jurisdiction is absolutely misconceived. Several disputed questions of facts are involved on the face of it. It appears that the original plan as well as the modified plan for construction as submitted by the respondent No.1, Developer was duly approved by the competent body, namely, CMDA and the petitioner Association having some grievance about a part of the land on which the buildings in which the members of the petitioner Association resided being used up by the Developer



for further additional development of its projects in the second and third phase vide Public Notice published in Newspapers on 28.05.2017 in Daily Thanthi against which Newspaper Notice only the present petitioner Association filed this Writ Petition in this Court under Article 226 of the Constitution of India.

6. We wonder how a newspaper Public notice could be the cause of action for a litigation of this nature by way of a Writ Petition before this Court. Be that as it may, it not only brought a writ petition before this Court but also before a Division Bench of this Court which after taking pains of going through the material on records, remanded the case back on the basis of the inspection report given by the competent body of the CMDA giving the findings of facts, as to find the construction being raised by the respondent No.1 in terms of the sanction given by the competent body, which were relied on by the learned Single Judge to dismiss the Writ Petition. Therefore, the present Writ Appeal is nothing but a failing effort of some disgruntled members of the first phase of development of the buildings by the Developer, the respondent No.1.

7. We are of the clear opinion that such disputed facts could not have been taken up by the Court exercising extraordinary jurisdiction and in the absence of any challenge to the jurisdiction of the competent body CMDA laid before us in passing the plans and approvals for the construction by the Developer, respondent No.1, we hold that the present Writ Appeal has no merit. This Court is not expected to go into the disputed questions of facts in the Writ jurisdiction and therefore, we dismiss the present Writ Appeal.

8. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar



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2. Member Secretary
The Chennai Metropolitan Development
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Egmore, Chennai - 600 008.

+1cc to Mr.M.Muthappan, Advocate Sr.65831
+2cc to Mr.D.Gopinathan, Advocate Sr.65824

W.A.No. 1410 of 2019

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srg 12/09/2019