

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 01.02.2019
Delivered on : 06.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21915 of 2018

M.Manohar
Managing Director
M/s.Prime Shruti Housing Pvt. Ltd.,
No.1-A, Dr.Thangaraj Salai,
Vinayaka Nagar, Madurai - 605 020.

... Petitioner

Vs.

1.The District Magistrate and
District Collector,
Collector's Office,
Kanchipuram.

2.The Chennai Metropolitan Development Authority,
rep by its Member Secretary,
No.1, Gandhi Irwin Road,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to direct the respondents herein to handover the possession of the land comprised in Survey Nos.17/7A, 7B, 7C, 8B3 and 8B4B of Moulivakkam Village, Kundrathur High Road, Chennai measuring an extent of 103 cents approximately within a time frame.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.T.Sai Krishnan

For Respondents : Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c) (R1)
Mr.Karthik Rajan (R2)

O R D E R
THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

The petitioner, as the Managing Director of M/s.Prime Shruti Housing Private Limited, has filed the above Writ Petition to issue a writ of mandamus directing the respondents to hand over the possession of the land comprised in Survey Nos.17/7A, 7B, 7C, 8B3 and 8B4B at Moulivakkam Village, Kundrathur High Road, Chennai measuring an extent of 103 cents approximately within a time frame.

2.It is the case of the petitioner that M/s.Prime Shruti Housing Private Limited had obtained the plan sanction for putting up construction of combined basement floor for Block - A and Block - B, consisting of stilt plus 11 floors (44 dwelling units in Block - A) and consisting of ground floor (part)/stilt floor (part) plus 11 floors (4s dwelling units in Block - B), totalling, 86 units for residential development in the lands in Survey Nos.17/7A, 7B, 7C, 8B3 and 8B4B at Moulivakkam Village, Kundrathur High Road, Chennai, from the 2nd respondent. The petitioner was constructing two multi storeyed residential building consisting of Block - A and Block - B as stated above. While so, on 28.06.2014, suddenly, the entire Block - B collapsed, leading to death of 61 workers and injuring 27 persons. Thereafter, the site was under the custody of District Administration and Police. The people living around 50 meters radius were also evacuated. With the technical assistance of experts from Indian Institute of Technology, Madras, Structural Engineering and Research Centre, Chennai, Retired Chief Planner of CMDA, Retired Professor from IIT, Retired Engineer from Tamil Nadu Housing Board, a comprehensive investigation was carried out and a detailed report was submitted to the Tamil Nadu Government on 25.08.2014.

3.The Government also constituted a Special Investigation Team (SIT) to investigate the disaster headed by a Joint Commissioner of Police (North), Greater Chennai Police, which was assisted by technical experts in the relevant field from the Indian Institute of Technology and Public Works Department. The SIT completed its investigation and filed its charge sheet against the Directors and Architect on 25.08.2014. During the inspection by the Enquiry Commission, it was noticed that the building had been constructed in deviation to the approval, therefore, the Security Deposit of Rs.15.90 lakhs paid by the Builder was forfeited by the CMDA. The SIT found that the building collapsed for the reason that it could not withstand its own weight and it was also found that the building had collapsed due to faulty design and poor construction.

4.As per the findings of the Enquiry Commission, headed by a Retired Judge of this Court who enquired into the causes and circumstances leading to the collapse of one of the Blocks, the Government directed the District Magistrate and District Collector, Kanchipuram to take necessary action to demolish the existing unsafe building viz., Block - A.

5.On the request of the District Collector, Kanchipuram, the CMDA initiated action for the demolition of the building by calling for tender and the CMDA selected M/s.Maglink Infra Projects (P) Limited to demolish the building using Implosion Technology at a total cost of Rs.49.95 lakhs.

6.Challenging the order passed by the District Magistrate and District Collector for demolition, the petitioner filed Crl.R.C.Nos.1122 & 1133 of 2015 before this Court and this Court, by order dated 26.11.2015, interfered with the order passed by the District Collector, Kanchipuram, against which the District Collector filed Appeals in S.L.P.Nos.1042 & 1043 of 2016 before the Hon'ble Supreme Court. In the said appeals, the Apex Court, by order dated 12.05.2016, directed the authorities to demolish the existing building viz., Block - A and also made it clear that the costs of demolition shall be borne by the Writ Petitioner and after the building is demolished, the possession of the land should be handed over to them.

7.Pursuant to the orders of the Hon'ble Supreme Court, the Block - A was demolished on 02.11.2016. By letter dated 06.01.2017, the CMDA also informed the District Collector about the amount to be recovered from the Builder.

8.By communication dated 20.01.2017, the 1st respondent called upon the petitioner to pay a sum of Rs.91,54,264/- and also informed that on remitting the said amount, the site would be handed over to them. The petitioner addressed letters to the 1st respondent on 07.02.2017 and 10.05.2017 to provide break up of the claim of Rs.91,54,264/-.

9.The petitioner contended that they are not liable to pay any amount more than Rs.49,95,000/- for the reason that they have already paid a sum of Rs.21.40 lakhs towards Open Space Reservation Charges, a sum of Rs.35.50 lakhs towards Premium FSI Charges, a sum of Rs.39 lakhs towards Infrastructure Development Charges and a sum of Rs.16.80 lakhs towards three types of Security Deposits.

10.The learned senior counsel appearing for the petitioner submitted that in all, the petitioner had paid a sum of Rs.1.12 crores, which should be adjusted towards demolition charges and the balance should be refunded to the petitioner.

11.The learned counsel appearing for the CMDA submitted that as per DR 28 of the Development Regulations for Chennai Metropolitan Area under the Tamil Nadu Town and Country Planning Act, 1971, the Security Deposits shall be refunded on completion of development as per the approved plan as certified by the CMDA, if not, it would be forfeited.

12.In the case on hand, there is clear violation of the planning permission granted to the petitioner. In view of DR - 28 (14), the Security Deposits can be forfeited by the CMDA. Therefore, the petitioner cannot seek for refund of the said amount.

13.So far as the other payments made by the petitioner are concerned, that is, towards Open Space Reservation Charges, Premium FSI Charges and Infrastructure Development Charges, those payments were made for getting the planning permission from the CMDA. However, the petitioner violated the planning permission and put up construction unauthorizedly, which resulted in the disaster. Therefore, the petitioner is not entitled to claim any refund from the CMDA. That apart, the charges paid by the petitioner are not refundable, unless the planning permission is rejected by the CMDA. In the case on hand, though the planning permission was given to the petitioner, they have violated the planning permission and put up construction unauthorizedly. Therefore, they are not entitled to get the refund of the charges paid by them as well as the Security Deposits made by them.

14.The CMDA claimed a sum of Rs.1,11,47,059/- towards demolition charges and 50% of the consultants fees. This was also communicated to the petitioner by their letter dated 06.01.2017. The CMDA has also stated that on receipt of the amount from the petitioner, the 1st respondent viz., the District Collector will take action to hand over the land to the petitioner.

15.The demolition of the building constructed by the petitioner was only due to the violation committed by the petitioner in constructing the Block - A and Block - B. For the fault of the petitioner, the respondents cannot be made to suffer. Because of the violation committed by the petitioner, 61 workers had died and 27 persons were injured. The respondents had spent huge money for prosecuting and defending the case before this Court as well as before the Hon'ble Supreme Court. The expenditure had occurred only because of the petitioner's act. Therefore, the liability cannot be fastened on the respondents to bear the expenditure. Only the petitioner is liable to pay all the expenses incurred for the demolition of the building.

16.In these circumstances, the Writ Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The District Magistrate and
District Collector,
Collector's Office,
Kanchipuram.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

+1cc to Mr.Karthik Rajan, Advocate, S.R.No.10656

+1cc to Mr.T.Sai Krishnan, Advocate, S.R.No.10451

+1cc to the Government Pleader, S.R.No.10560 &10547

W.P. No.21915 of 2018

PA(CO)
GSP(21/02/2019)

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