

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.17632 of 2019
and
WMP.No.17090 of 2019

Rani Residency Flat Owners Welfare Association
Rep. by its Secretary T.Balakrishnan
Having office at "Rani Residency"
No.:155, Velachery Main Road,
S-4, B-Block, Sembakkam,
Chennai- 600 073.

...

Petitioner

..Vs..

1. Chennai Metropolitan Development
Authority (CMDA)
Rep by its Member Secretary
No.:1, Gandhi Irwin Road,
Chennai- 600 008.
2. The Commissioner
Sembakkam Municipality
Sembakkam,
Chennai- 600 073.
3. Indian Bank
Rep by its Authorised Officer/
Chief Manager, Zonal Office,
Gandhi Road, Kancheepuram-631501.
4. Smit.RaniR.Vasvani
Proprietor of M/s.Ramraj Agency
No.21-C, Tylors Road,
Kilpauk, Chennai-600 010.

5. Shri.VijayR.Vasvani, ...

Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Mandamus, directing the respondents 1 & 2 to consider the representation of the petitioner dated 13.11.2017 and take an appropriate action against the 4th and 5th respondents to comply with the approved plan vide No.B/26214/370/D/E/98 DATED 26.11.1998 by filling the three meters of basement floor of B-Block in Rani Residency with earth.

For Petitioner : Mr.Muthukumaran
for M/s.Paul and Paul

For Respondent : Mr.Karthik Rajan (R1)
Mr.P.Srinivas (R2)
Ms.S.R.Sumathy (R3)

O R D E R

(Delivered by DR.VINEET KOTHARI, J.)

This Writ Petition has been filed seeking for a Mandamus to direct the respondents 1 & 2 to consider the representation of the petitioner dated 13.11.2017 and take an appropriate action against the 4th and 5th respondents to comply with the approved plan vide No.B/26214/370/D/E/98 dated 26.11.1998 by filling the three meters of basement floor of B-Block in Rani Residency with earth.

2. Upon issuance of notice, the learned counsel for the Chennai Metropolitan Development Authority filed a status report on behalf of the first respondent. Paragraph 6 of the said report is quoted below for ready reference:

"6. In this regard, the building under reference was inspected by the CMDA officials on 26.08.2019 and found that the existing building consists of 2 Blocks (A & B) at New Door No.155, Velachery Main Road, Sembakkam and the following observations are made:

- Block-A(front side abutting
Tambaram-Velachery Main Road):
Construction of Ground Floor + 2 Floors
Hospital & Shop-cum-Residential
Building with 20 Dwelling Units,
occupied and Block-B: (rear side Block)
consists of Basement Floor + Ground

Floor + 2 Floors Residential Building with 54 Dwelling Units occupied.

- Further, the Block-B lies at (-) 2.10 m below the ground level, with reference to Block-A. The inspection of sketch showing the site under reference are enclosed for reference.
- Based on the inspection report dated 26.08.2019, necessary enforcement action is being initiated by issuing Show Cause Notice to the 4th Respondent (Smt.Rani R Vasvani) in letter No.EC/S-II/11780/2019 dated 27.08.2019 to restore the building under reference as approved plan issued by CMDA. A copy of the letter No.EC/S-II/11780/2019 DATED 27.08.2019 is enclosed. "

3. The learned counsel for the Chennai Metropolitan Development Authority further submitted that the first respondent has already issued the notice to the fourth respondent on 27.08.2019 to restore the building under reference as approved plan issued by CMDA.

4. The learned counsel for the Second Respondent submitted that she has already issued notice to the petitioner as well as the private respondents 4 and 5 on 29.07.2019 seeking to produce the building plans to verify the state of the building as to whether it is in compliance with the building permission or not. The learned counsel for the second respondent further submitted that the appropriate action may be taken in the manner pursuant to the said matter after giving an opportunity of hearing to the petitioner and also the concerned persons .

5. The learned counsel for the third respondent/Bank submitted that the SARFAESI proceedings are also initiated against the private respondents for the loan default.

6. Having heard the learned counsel for the parties we are of the opinion that the basic purpose for approaching this Court by the Flat Owners Welfare Association was to restore the deviation constructed by the respondents 4 and 5. Since the CMDA has filed the report stating that the enforcement action was initiated against the respondents 4 and 5 by issuing show

cause notice to the fourth respondent dated 27.08.2019, we expect that appropriate action will be taken against respondents 4 and 5 after giving an opportunity of hearing to the petitioner as well as the respondents 4 and 5 and also to other persons concerned. As far as the SARFAESI proceedings initiated by the bank is concerned, since it is an independent proceeding, there is nothing to pronounce upon that on the same in this writ petition.

With the above observations, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Chennai Metropolitan Development
Authority (CMDA)
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No.:1, Gandhi Irwin Road,
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2. The Commissioner
Sembakkam Municipality
Sembakkam,
Chennai- 600 073.

3. Indian Bank
Rep by its Authorised Officer/
Chief Manager, Zonal Office,
Gandhi Road, Kancheepuram-631501.

+1cc to Mr.Karthik Rajan, Advocate SR.NO. 79109

+1cc to M/s.Paul & Paul, Advocate sr.79227

+1cc to Mr.P.Srinivas, Advocate sr.79096

+1cc to M/s.S.R.Sumathy, Advocate sr.79809

W.P.No.17632 of 2019

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nr 01/11/2019