

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :- 01.02.2019

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.26755 of 2016

Kendriya Vihar II Apartment

Owners Welfare Association,

Rep. By its Secretary,

B 9-130, 1st floor, Kendriya Vihar,

Paruthipattu, Avadi,

Chennai - 71.

... Petitioner

vs.

1. Central Government Employees Welfare

Housing Organization,

Rep. By its Chief Executive Officer,

Head Office at 6th floor,

Janpath Building New Delhi.

2. The Chennai Metropolitan Development Authority,

Rep. By its Member Secretary,

Thalamuthu Natarajan Maligai,

Egmore, Chennai - 8.

.. Respondents

(R2 - Suo Motu impleaded by order
dated 30.07.2018 in WA.1603/16)

Prayer:- 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 the Central Government Employees Welfare Housing Organization in "Dhina Thanthi", dated 28.05.2016 and quash the same as illegal, incompetent and unconstitutional.

For Petitioner : Mr.U.M.Ravichandran

For R1 : Mr.P.B.Sampathkumar

For R2 : Mr.Karthikrajan, standing counsel

ORDER

The Hon'ble Division Bench of this Court, vide its judgment dated 30.07.2018 passed in W.A.No.1603 of 2016, while setting aside the order passed by the learned Single Judge in

W.P.No.26755 of 2016, dated 23.09.2016, has remitted the matter back to the learned Single Judge to address the issue as to whether the planning permission obtained by the Central Government Employees Welfare Housing Organization / first respondent herein in 2014 by showing the entire 26.58 acres in one composite block is in order or not and whether the proposed development would have the effect of diminishing the UDS that has been allotted and subsequently sold to the members of the petitioner Association. Therefore, since the matter before me is after remand by the Hon'ble Division Bench, I am inclined to deal only with the above issues indicated by the Hon'ble Division Bench.

2. Heard Mr.U.M.Ravichandran, learned counsel for the petitioner, Mr.P.B.Sampathkumar, learned counsel for the first respondent and Mr.Karthikrajan, learned standing counsel for the second respondent.

3. It is seen that the writ petitioner, who is an Association of the apartment owners, had purchased apartments from the first respondent organization, who had constructed apartments of various sizes in an extent of 26.58 acres and then allotted the same to both former and present Central Government Employees. While getting approval for development of the project, the entire area to an extent of 26.58 acres was shown as one block and the planning permission was obtained for construction of nearly 400 residential units, spread over the entire extent of 26.58 acres. It is also stated that the total extent of the built up area as per the approved plan sanctioned in the year 2006, was about 1,38,156 sq.mts. Although approval was obtained for construction of 1,38,156 sq.mts., equivalent to 14,85,792 sq.ft., the entire project was not completed and that the construction was put up only to an extent of 11 acres 31 cents and then sale deeds were executed to the allottees concerned. Thereafter, the first respondent Organization had applied to the Chennai Metropolitan Developing Authority (CMDA) seeking approval for a revised planning permission including the area of 11.31 acres and also showing the entire area of 26.58 acres as land to be developed and obtained approval afresh in the year 2014 for construction of atleast 10 Blocks of Multi Storied Buildings in the remaining area. They have also shown the total planning area as 1,97,505.34 sq.mts. and shown the proposed construction area as 1,34,391.20 sq.mts., excluding the earlier construction made to an extent of 63,114.17 sq.mts., therefore, the petitioner Association challenged the advertisement issued by the first respondent organization inviting applications for sale of the Flats that are proposed to be constructed.

4. At this juncture, it is the grievance of the

petitioner Association that by including the land measuring about 11.361 acres, which was already developed as a part of the new proposal and obtaining a planning sanction for construction of much a larger extent of 1,34,391.20 sq.mts., would mean that the total area of construction in the entire extent of 26 acres 58 cents would be 1,97,505 sq.mts. as against the original sanctioned extent of 1,38,156 sq.mts. If the proposed construction as planned by the first respondent Organization is permitted, it is pleaded, the excess built up area of 60,000 sq.mts. would eat into the undivided share of the land that had already been purchased by the members of the petitioner Association. However, since this issue was not properly projected before the learned Single Judge, the Hon'ble Division Bench of this Court has remanded the matter back to the learned Single Judge to re-examine the same, namely, whether the move/proposal made by the first respondent organization to an extent of 60,000 sq.mts. would cause problem to the existing flat owners covering an extent of 11.31 acres.

5. Prior to the order of remand passed by the Hon'ble Division Bench, a direction was issued to the CMDA on 05.07.2018 to undertake an inspection of the site in question and find an answer to the following questions:-

1. FSI achieved in Phase II on the basis that the area of the project site is 11 acres 31 cents and the exact extent of the existing construction.

2. What is the FSI or the maximum built up area allowed as per the present rules in the area of 11 acres 31 cents covered by Phase II ?

3. FSI achieved by the new plan by including the land area in Phase II also?

4. What is the FSI or the permissible area that could be built up in the remaining area i.e. 26.58 - (11.31 + 2.65) 12.62 acres?

5. What is the maximum permissible area that could be constructed if the total area of 26.58 acres is shown as available land?

6. Whether it would be possible to demarcate the 11.31 acres of land earmarked for construction of Phase II out of the total extent of 26.58 acres?

6. Pursuant to the above said direction, a report dated 26.07.2018 was filed by the Senior Planner, CMDA, Chennai, before the Division Bench. A mere reading of the report shows that initially, the CMDA, vide its proceedings dated 07.11.2006,

has approved the application submitted by the first respondent Organization for construction of Stilt + 4 floors and ground + 3 floors residential building (64 blocks) with 1304 dwelling units. For better appreciation, relevant portion of the proceedings dated 07.11.2006 is extracted below:-

"The Planning Permission Application and Revised Plan received in the reference 1st cited for the proposed construction of Stilt + 4 Floors and Ground + 3 Floors Residential building block 64 Nos. with 1304 Dwelling Units at S.Nos.472,474/1,2,476,477,479,480/1624/3,625/1,475,482,485,551,489/2B2,489/2B3,624/2,484/1B, 484/1C1, 484/1A, 484/1D, 484/1E, 611/2, 611/2B2, 612/2B2 and 612/1B of Paruthipattu Village, has been approved subject to the conditions incorporated in the reference 4th cited."

7. It is also further seen from the report dated 26.07.2018 submitted by the CMDA that out of 64 blocks comprising 1304 dwelling units, 37 (27+10) blocks comprising 572 units were constructed and the remaining 27 blocks were not constructed. Subsequently, another proposal submitted by the first respondent Organization for construction of 11 blocks i.e., 10 blocks with stilt floor + 10 floors residential building with 1220 dwelling units and 1 block with stilt floor + 3 floors + 4th floor (part) for community hall to the already existing approved 37 blocks at S.Nos.472/1&2, 474/1B, 2A&2B, 475, 476, 477/1&2, 479, 480/1, 482, 484/1A, 1B, 1C1, 1C2, 1D&1E, 485, 489/2B2 & 2B3, 551,611/2,612/1B & 2B2, 624/2&3 and 625/1 of Paruthipattu Village, Avadi-Poonamallee Road, Chennai, was examined and placed before the MSB Panel meeting held on 17.08.2012, whereby the Panel had accepted the said proposal and thereafter, the Government have also accorded approval for the said proposal vide G.O.(Ms.).No.221, Housing and Urban Development (UD.1) Department, dated 08.10.2012. It is also further stated that pursuant to the direction of this Court, site was inspected on 23.07.2018 along with the President and other members of Kendriya Vihar Apartments Owners Welfare Association and Officials of CGEWHO, and during the inspection, it was found that the construction of 10 MSB blocks was under progress.

8. Now, the prime question needs to be answered is whether the CMDA has considered the entire extent of 26.58 acres (1,07,565.27 sq.mts.) as single entity including Phase-II area, for which FSI achieved is 1.84 (FSI area: 1,97,505.34 sq.mts.). It must be noted in this regard that pursuant to the representation of the petitioner association, on verification by

the officials of CMDA, it was found that FSI area of the already existing 37 (27+10) blocks constructed in 11.31 acres works out to 1.38 only as against the maximum FSI achievable limit of 2.50. It is also further seen that even after construction of the proposed 11 blocks, which pertain to the impugned advertisement, the FSI works out to 2.025, which is admittedly well within the maximum permissible limit of 2.50. Therefore, the permission granted by the CMDA for construction of 11 blocks comprising of 1220 dwelling units cannot be questioned by the petitioner association.

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. 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 (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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

- 1.The Chief Executive Officer,
Central Government Employees Welfare
Housing Organization,
Head Office at 6th floor,
Janpath Building New Delhi.
- 2.The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Egmore, Chennai - 8.

+1cc to Mr.P.B.Sampath, Advocate, S.R.No. 8484
+1cc to Mr.Kathik Rajan, Advocate, S.R.No. 9108
+1cc to Mr.UM.ravichandran, Advocate, S.R.No. 8524

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PP(CO)
GN(11/02/2019)