

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.11.2019
CORAM:
THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE
W.P.No.31015 of 2019
and WMP. Nos.31115 & 31116 of 2019

1.R.Machagandhi
2.Lavanya Mahesh
3.R.Prabhakaran
4.B.Subramniam Chettiar
5.E.Jayanthi ... Petitioners

Vs

1.The State of Tamil Nadu
Rep by its Secretary to Government
Housing and Urban Development (UD-IV) Department
Secretariat, Fort.St.George
Chennai - 600 009.
2.The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai - 600 028.
3.The Commissioner
Greater Chennai Corporation
Chennai - 600 003. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 19.08.2019 in G.O.(D) No.113 Housing and Urban Development [UD-VI (1)] Department of the first respondent herein and quash the same and consequently direct the respondents to permit the petitioners to rectify the building as per the revised plan dated 10.05.2017, submitted by the petitioners in respect of the property situated at Old No.15/16, New No.29/1 and 30/1, VM Street, Royapettah, Chennai.

For Petitioners : Ms. AL.Gandhimathi

For Respondents : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader [R1]
Dr. C.Ravichandran [R3]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioners, 1 and 4 are the owners of the flat at third floor in Jayam Apartments at Old Door No.15/16, New No.29/1 and 30/1, V.M.Street, Royapettah, Chennai - 600 014 and the fifth petitioner is the sole and absolute owner of the said property measuring an extent of 1482 sq.ft. [Old S.No.44/98, T.S.No.746, Mylapore Village] and an extent of 1572 sq.ft. in Door No.14/1, Begum Sahib, 4th Street, Royapettah, Chennai-600 014 [Old S.No.44/98, T.S.No.747, Mylapore Village], and in order to promote the property, the fifth petitioner has applied for building plan to put up construction and obtained necessary planning permission for construction of stilt + 2 floors. However, the fifth petitioner has constructed a residential portion of stilt + 3 floors in respect of four flats in the third floor of the property and the same was sold to her relatives, who are also the petitioners herein.

2.1 The learned counsel appearing for the petitioners would submit that initially the fifth petitioner was issued with a rejection order dated 05.08.2016 bearing No.BC1/2079/2016, by the second respondent, rejecting her planning permission application in SBC.No.105/2016 dated 02.02.2016 and she filed a statutory review before the first respondent and it was rejected, vide communication in letter No.14930/UD-VI(1)/2016-3, dated 11.11.2016.

2.2 It is also brought to the knowledge of this Court by the learned counsel appearing for the petitioners that one M.A.Ahamed Uduman and 4 others has filed WP.No.27039 of 2016, against the rejection of their appeal / statutory revision filed under Section 80-A of the Town and Country Planning Act, 1971 in respect of their premises and it was directed to be disposed of in accordance with law, within a limited time frame and accordingly, comments were also invited by the first respondent from the second respondent, who has also furnished their comments.

3. The second respondent herein has sent a communication bearing letter No.BC1/6628/2017 dated 06.12.2017 to the third petitioner, pointing out the details of violations and further stated in the said communication that the fifth petitioner, E.Jayanthi, the sole and absolute owner of the property has not signed all the application forms and plans, and it is also pointed out in the said communication that all owners should apply for Planning Permission Application jointly. The petitioners herein, aggrieved with the said communication, once again filed an appeal before the first respondent and the same came to be rejected, vide the impugned G.O.(D)No.113 [Housing and Urban Development [UD-VI(1)] Department, dated 19.08.2019. The petitioners, challenging the legality of the

said Government Order, have filed this writ petition.

4. Ms. AL. Gandhimathi, learned counsel appearing for the petitioners would submit that the alleged offending structures are being used for residential purposes and in the light of the recent developments in the form of increased Floor Space Index, they are bound to succeed and hence, prays for setting aside the impugned order passed by the first respondent with appropriate directions, directing the second respondent to consider the revised plan dated 10.05.2017 submitted by the petitioners and to grant planning permission accordingly.

5. Per contra, Mr. P. S. Sivashanmuga Sundaram, learned Special Government Pleader accepts notice on behalf of the first respondent and Dr. C. Ravichandran, learned counsel for the second and third respondents. The learned Special Government Pleader appearing for the first respondent has drawn the attention of this Court to the tabular column given in the impugned order and would submit that the violations are major in nature and it has become routine for the defaulters to say that the premises under their occupation are used for residential purposes, and since the deviations are minor, the same should be considered sympathetically and positively and on account of undeserving sympathy shown to the offenders/defaulters on earlier occasions by the concerned statutory authorities, there are mushrooming illegal growth found throughout the cities and almost in all places in the State, and this is the high time for this Court to initiate appropriate action to curtail the said activities, in the manner known to law, and prays for dismissal of this petition.

6. This Court, paid it's anxious consideration and best attention to the rival submissions.

7. It is relevant to extract the deviations pointed out by the second respondent in the communication dated 05.08.2016, addressed to the fifth petitioner.

Sl. No.	Rule	Description	Required	Provided	Extent of violation
1	Patta in favour of present owner of the site under reference (Tmt. E. Jayanthi) not furnished				
2	26(3) Table-A	Road width	10m	9m	Less by 1m
3	36	Premium FSI	Permissible = 1.8	2.873	Excess by 1.073
4 a)	26(3) Table-A	FSB (West)	3.5m	Nil	Less by 3.5m

Sl. No.	Rule	Description	Required	Provided	Extent of violation
b)	26(3) Table-A	FSB (East)	3.5m	1.3m	Less by 3.2m
c)	Balcony encroached on to the road for 0.3m on eastern side				
5 a)	26(7)	Car parking	7 cars	4 cars	Less by 3 cars
b)	26(7)	Two Wheeler Parking	7 T.W.	Nil	Less by 7 T.W.
c)	Driveway, turning radius, aisle width not shown as per DR.				
6	Land for street alignment portion on western side not provided (Land for SA, required = 1.5, provided = Nil)				
7	26(6)	Corridor width	1m	0.91m	Less by 0.09m

8. The other residents of the said flats namely M.A.Ahamed Uduman, S.Guganathan, J.Rifaya Parveen, M.Velu and V.Jayashree has filed W.P.No.2773 to 2775 of 2016 and WP.No.3693 of 2016 and those writ petitions were disposed of, vide order dated 10.02.2016, and alleging non-compliance of the said order, the petitioners have filed Contempt Petition Nos.1533 to 1536 of 2017 and the said contempt petitions were closed, vide order dated 12.09.2017, by taking into consideration the fact that the Lock and Seal was effected on 04.09.2017 and the third floor of the car parking was also an unauthorised construction. Further, M.A.Ahamed Uduman, and four other residents of the said flat, aggrieved by the Lock and Seal notice issued by the second respondent for unauthorised additional construction put up by them, they preferred an appeal under Section 80A of the TCP Act, which came to be rejected and challenging the said rejection, they preferred W.P.No.27039 of 2016 and this Court, vide order dated 31.08.2016, has set aside the rejection order and further directed the Government to consider afresh, in accordance with law, upon receiving further representations from the residents. Thereafter, M.A.Ahamed Uduman, and others submitted applications to the Government to re-consider their claim and the first respondent has taken on file the representation dated 30.09.2016, submitted by Mr.M.A.Ahamed Uduman, and vide proceedings dated 31.10.2017, has directed the second and third respondents not to take any enforcement action on the said property, till the disposal of the appeal.

9. A perusal of the typed set of papers would reveal that repeated endeavours were made by the petitioners and similarly placed persons, as regards regularising the unauthorised

construction, and fresh planning permission sought by the petitioners before the second respondent, has also ended in futile, which has resulted in filing of appeals before the first respondent, which came to be refused vide impugned G.O. dated 19.08.2019, challenging which, the petitioners are constrained to approach this Court in the present writ petition.

10. A perusal of the impugned order would disclose that the violations appear to be major one and the first respondent/Government has examined the grounds raised in the appeal along with connected original records submitted by the second respondent and after due consideration of the relevant facts and circumstances, and taking into account the recommendations of the Appeal Committee, thought fit to reject the appeals submitted by the petitioners, as it was devoid of merits.

11.1 Let this Court considers some of the judgments rendered by the Hon'ble Supreme Court of India, which portrays the menace caused to the Society, in view of illegal/unauthorised constructions and encroachments.

11.2 In *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation & Ors.* [(2013) 5 SCC 336], the Apex Court has observed as follows in paragraph Nos. paragraph Nos.8, 9 and 29 and the same is extracted hereunder :

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, 'the Corporation') have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, 'the 1980 Act') and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage etc.,. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.

11.3. In Esha Ekta Apartments Co-operative Housing Society Limited and others V. Municipal Corporation of Mumbai & Others reported in [(2013) 5 SCC 357], the demolition order to demolish the illegal construction came up for consideration, wherein the Hon'ble Supreme Court of India, in paragraph No.44 of its judgment, has observed as follows :

" 44. The argument of Shri Prasad and Dr. Singhvi that the flat buyers should not be penalized for the illegality committed by the lessee and the developers/builders in raising construction in violation of the sanctioned plan sounds attractive in the first blush but on a closer scrutiny, we do not find any merit in the same. Admittedly, the flat buyers had entered into agreements with the developers/builders much before commencement of the construction. They were aware of the fact that the revised plans submitted by the architect had not been approved by the Planning Authority and the developers/builders had foretold them about the consequence of rejection of the revised plans.

Therefore, there is no escape from the conclusion that the flat buyers had consciously occupied the flats illegally constructed by the developers/builders. In this scenario, the only remedy available to them is to sue the lessee and the developer/builder for return of the money and/or for damages and they cannot seek a direction for regularization of the illegal and unauthorized construction made by the developers/builders.

11.4 In *Santhi Sports Club Vs Union of India*, reported in [(2009 [15] SCC 704) : AIR 2010 SC 433], the Hon'ble Apex Court observed that the Executive must take stringent action to curtail the menace of illegal construction and in paragraph 75, it is observed as follows:-

"75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

11.5. The Hon'ble Supreme Court has made similar observation in *Priyanka Estate International (P) Ltd., Vs. State of Assam* [(2010) 2 SCC 27], it is relevant to extract paragraph No.55:

" 55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans

and would still go scot-free. Ultimately it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

12. As right pointed out by the learned Special Government Pleader appearing for the first respondent, on account of negative implications and ineffective mechanism, there are mushrooming growth of illegal construction that sprang over in Chennai and almost in all places of Tamil Nadu and such kind of unauthorised construction, not only puts pressure on civic amenities, but also results in encroachment of road margins and causing skyline aerial encroachments also, and it is high time for the concerned authorities to take stringent measures in accordance with law to abate such kind of nuisance / illegality.

13. In the considered opinion of the Court, the first respondent has assigned proper and tenable reasons while exercising their statutory powers, and to review the said order, in exercise of jurisdiction under Article 226 of the Constitution of India, scope of interference is very limited. The first respondent has assigned tenable and proper reasons to reach this conclusion in rejecting the appeals filed by the petitioners and this Court, on an independent application of mind, is of the considered view that there is no apparent error or infirmity in the impugned proceedings of the first respondent dated 19.08.2019, and finds no merit in this writ petition.

14. In the result, this writ petition is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The State of Tamil Nadu
Rep by its Secretary to Government
Housing and Urban Development (UD-IV) Department
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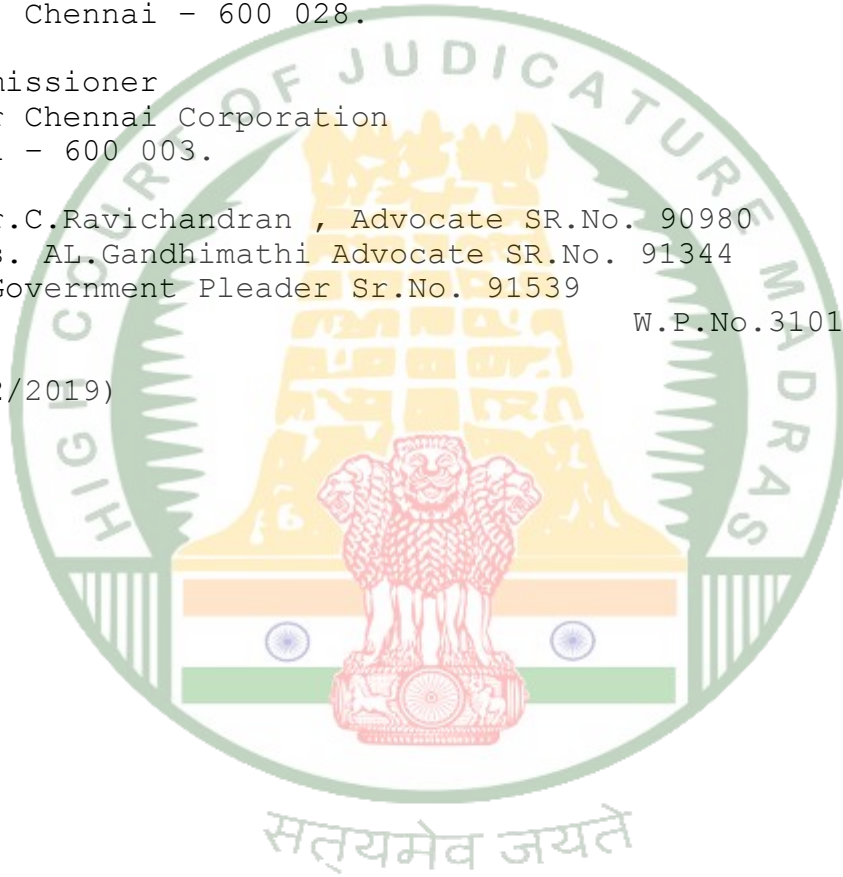
+1cc to Mr.C.Ravichandran , Advocate SR.No. 90980

+1cc to Ms. AL.Gandhimathi Advocate SR.No. 91344

+1 cc to Government Pleader Sr.No. 91539

W.P.No.31015 of 2019

A.SK(27/12/2019)



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