

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.1848 of 2020
and
W.M.P.Nos.2154 and 3014 of 2020

A.Kumarasamy ... Petitioner

Vs.

1. The Area Engineer,
No.18, Arunachalam Road,
Zonal Office, Corporation of Chennai,
Saligrammam, Chennai-600 093.
2. The Commissioner,
Corporation of Chennai,
Chennai-600 003.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
4. Rajesh Kumar Dash,
Secretary,
Ceebros Shyamala Garden Apartment
Owners' Association,
Door No.136, Arcot Road,
Saligrammam, Chennai-600 093.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to take appropriate preventive action against the fourth respondent on or before the completion of the construction and formal inauguration of the Temples without conforming with the statute and rules relating to Building and Apartment Owners Association Act or necessary restitution action.

For petitioner : Mr.K.M.Vijayan, Senior Counsel for
Mr.N.V.N.Margandeyan

For respondents : Mr.K.Raja Shrinivas for RR-1 & 2
Mr.S.Thiruvengadam for R-3
Mr.AR.L.Sundaresan, Senior Counsel
for M/s.Law Vision for R-4

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to take appropriate preventive action against the fourth respondent on or before the completion of the construction and formal inauguration of the Temples at "Ceebros Shyamala Garden Apartment" at No.136, Arcot Road, Saligrammam, Chennai-600 093, without conforming with the statute and rules relating to Building and Apartment Owners Association Act or necessary restitution action.

2. It is the case of the petitioner that he has purchased a flat in a gated community called as Ceebros Shyamala Garden Apartments amongst 344 other co-flat owners built upon in approximately 66-1/2 grounds. All the flat owners have a proportionate undivided interest in the land, which cannot be diluted or usurped. The flat owners, for the purpose of maintenance of the common areas, comprised in the gated community and for convenient ingress and egress of all the residents, had formed an Association under the Societies Registration Act. The planning permission as sanctioned by the third respondent, specifically provides and allocates the common area for different purposes as mentioned in the planning permission. The petitioner is now concerned with the usage of a lawn area since 2008 onwards, when the apartments were initially handed over to the residents, which is sought to be altered permanently for an extraneous purpose not in conformity with the approved plan.

3. It is further stated by the petitioner that the original land owner, who owns 70 numbers of flats and other co-owners alleged to be representing on behalf of the welfare society, had unilaterally, without any statutory right to put up a construction in the open common area, used as a lawn, for the purpose of constructing two Temples which, though objected by the petitioner along with the other secular minded people, was ignored for want of majority. Further, the Society which is the fourth respondent, has no locus-standi to interfere in the title rights of the co-owners under the Apartment Owners Association Act under which it was established, or to violate the planning permission and put up new construction of Temple(s) against the provisions of the Tamil Nadu Combined Development and Building

Rules, 2019, which prohibits any kind of addition or deviation or whatsoever without a permission from the competent authority under the Act. No such permission was obtained by the fourth respondent from the competent authority for the purpose of permanently altering the common area and constructing two Temples.

4. It is the further grievance of the petitioner that the fourth respondent has proceeded with the preliminary work with the construction of two Temples, one in the common area (lawn) and the other in the car parking area, obstructing the easy ingress and egress of the vehicles used by the residents and also entry and exit of fire engines in case of any calamity, without obtaining the necessary permission and concurrence of the other co-owners. The fourth respondent had already distributed the inauguration notice to have the inauguration of the Temples on 05.02.2020 and they are in the process of putting up the construction day and night without observing any law, just by a mere majority. The petitioner had caused due notice to the respondents 1 to 3, who are competent authorities under their respective Acts to take action, but of no avail. Hence, the petitioner has come forward with the present Writ Petition for the relief stated supra.

5. When the Writ Petition is taken up for consideration, the learned Senior Counsel appearing for the petitioner made detailed submissions adverting to the averments made in the affidavit filed in support of the Writ Petition. He prayed that taking into account the facts and circumstances of the case, the Mandamus as prayed for may be granted.

6. Heard both sides and perused the materials available on record.

7. The learned counsel for the third respondent/CMDA relies on the following paragraphs from the counter affidavit, stating as follows:

"4. I state that based on W.P.No.1848 of 2020, the site under reference was inspected on 29.01.2020 and observed that the Vinayagar Idol was placed over the 1.0m height platform at the parking area and from the platform there is a 5.80m driveway is available and a small Stone Mandapam was there over the 1.0m height platform at end of the Park area.

5. I state that we have issued notice dated 29.01.2020 (Notice No.A 2417) u/s 56 & 57 r/w Section 85 of the

Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35/1972) as amended by Act 22 of 1974.

6. I state that the temple is said to have been constructed by the Association in which the petitioner is also a member. The physical features of the present status of the said construction, have been noted and further action shall be taken in accordance with law."

8. Therefore, from the above counter affidavit, it is evident that the CMDA had issued notice in accordance with law. Since notice has already been issued and action is being taken, no further order is necessary in this Writ Petition from this Court and hence, nothing survives for consideration. Therefore, the respondents 1 to 3 including the CMDA, in coordination with each other, are directed to further proceed in the matter in regard to the above issuance of notice and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, at any rate, preferably within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

cs

To

1. The Area Engineer,
No.18, Arunachalam Road,
Zonal Office, Corporation of Chennai,
Saligrammam, Chennai-600 093.

2. The Commissioner,
Corporation of Chennai,
Chennai-600 003.

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

+1cc to Mr.S.Thiruvengadam, Advocate, SR.No.8890.
+1cc to Mr.NVM.Margandeyaa, Advocate, SR.No.8404.
+1cc to M/s.Law Vision, Advocate, SR.No.8530.

W.P.No.1848 of 2020

RSV(CO)
CSR: 10.03.2020



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