

In the High Court of Judicature at Madras

Dated : 02.12.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Second Appeal No.31 of 2020
& CMP.No.13108 of 2020

1.M/s.Pacifica (Chennai Project)
Infrastructure Pvt. Ltd.

2.M/s.Sylvanus Builders &
Developers Ltd., Chennai-103. ...Appellants/Respondent

Vs

1.C.R.Chenthirkumaran

2.C.Dhanalakshmi ...Respondents/Respondents

APPEAL under Section 100 of the Civil Procedure Code read with Section 58 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 27.1.2020 in Appeal No.7 of 2019 on the file of the Tamil Nadu Real Estate Appellate Tribunal confirming the order passed 07.2.2019 in C.No.141 of 2018 on the file of the Real Estate Regulatory Authority.

For Appellants:Mr.Mukunth for M/s.Sarvabhauman Associates

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.Mukunth, learned counsel appearing on behalf of the appellants.

2. This appeal, filed under Section 100 of the Civil Procedure Code read with Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act), is directed against the order dated 27.1.2020 passed by the Tamil Nadu Real Estate Appellate Tribunal (for brevity the Tribunal) in Appeal No.7/2019 confirming the order passed 07.2.2019 in C.No.141 of 2018 on the file of the Real Estate Regulatory Authority (for short, the Authority).

3. The respondents herein filed a complaint before the Authority in C.No.141/2018 (i) to direct the appellants to deposit in the escrow bank account the amounts due to the

complainants, (ii) to prevent the appellants from registering the plot to any third party and (iii) to direct the appellants to provide bank guarantee for the amount due to the complainants. The application was taken up for hearing by the Authority on 07.2.2019, on which date, it was recorded that the appellants represented through their counsel handed over one email communication indicating that the appellants settled the dispute with the respondents herein. However, since the Statute empowers the Authority to take up suo motu the application, after recording the submission of the appellants' counsel that the dispute has been settled, the Authority rightly took into consideration the issue as to whether the project developed by the appellants was exempt under Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation & Development) Rules, 2017.

4. After considering the entire facts and also taking note of the fact that the planning permission obtained on 05.12.2018 is for developing the project consisting of various types of buildings including multi storeyed buildings and that the project is an ongoing project, the Authority held that it is registerable under the Act. One more vital aspect, which was noted by the Authority is that the Structural Engineer issued a false certificate to avail exemption from the rigor of Rule 2(h)(iii) of the said Rules. The Authority also directed the Commissioner, Corporation of Chennai to take action against the Structural Engineer. Accordingly, the complaint was finally disposed of by order dated 07.2.2019 holding that the project 'AURM Villa' falls within the definition of on-going project and the appellants were directed to register the project within two weeks from the date of the said order.

5. Aggrieved by the said order, the appellants preferred an appeal before the Tribunal, which, after taking note of the submissions, framed three issues for consideration, which are as follows :

"1. Whether the appellant's project is a completed project or an on-going project on the date of implementation of the Act?

2. Whether the completion certificate relied by the appellant can relieve the appellant from the clutches of Rule 2(h)(iii)? And

3. Whether the appeal is deserved to be allowed?"

All the above three points were decided against the appellants.

6. It is the submission of the learned counsel for the appellants that the project developed by the appellants consists of villas and it will not fall within the definition of the provisions of the Act.

7. However, such a contention was never raised at the first instance when the legal notices were exchanged nor when the matter was heard by the Authority nor before the Tribunal in the grounds of appeal and such an issue is raised for the first time before this Court in this appeal. This issue being a factual issue and having not been raised by the appellants at any earlier point of time, they are estopped from raising such a contention. Furthermore, we find that the planning permission obtained is a composite planning permission consisting of various types of buildings such as some consisting of ground + 1 floor, some consisting of ground + 2 floors and some consisting of stilt + four floors and also multi storeyed buildings, which obviously fall within the definition of the word 'project' as defined under the provisions of the Act.

8. That part, on the appellants' own showing in the settlement agreement entered into with the respondents dated 11.1.2019, in Clause 7B, the appellants agreed to complete the necessary formalities under the applicable laws including the Act. Therefore, the appellants cannot be permitted to raise such a contention for the first time before this Court and factually also, we find that there is no basis for such an argument to be placed. Furthermore, the Tribunal took note of the entire factual details and clearly culled out as to how the president of the village panchayat, Pudhupakkam issued a false certificate without following the mandatory procedure under the Act. This will clearly demonstrate that the appellants were somehow trying to manage to get out of the rigor of the statutory provisions. Thus, we find that there absolutely no ground to interfere with the order passed by the Tribunal.

8. For the foregoing reasons, the above civil miscellaneous second appeal is dismissed. Consequently, the connected CMP is also dismissed.

-s/d-

सत्यमेव जयते
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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