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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.24194 of 2021

Abirami Willow Creek Flat Owners
Welfare Association,
Rep. by its Secretary, K.Neethi Cholan
Having Office at
No.H-11, Abirami Willow Creek Flat Owners
Welfare Association,
South Avenue, Kamaraj Nagar,
Thiruvanmiyur, Chennai - 600 041.

.. Petitioner

Vs

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

2.Savithri Sundari

3.Dr.G.Jayamohan

4.J.Meena

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to consider the representation dated 14.12.2020 and take appropriate action in accordance with law.

For Petitioner : Mr.Ralph V.Manohar

For 1st Respondent : Mrs.Malarvizhi Udhayakumar
Standing Counsel for CMDA

ORDER

The prayer sought for herein is for a writ of mandamus directing the first respondent to consider the representation dated 14.12.2020 and take appropriate action in accordance with law.



2. The petitioner on 14.12.2020 has given a representation to the official respondents wherein the petitioner has stated the following:

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"Sub: Request for demolition of unauthorized structures in the common area of the premises

Ref: Approved Plan of CMDA dated 24.08.2010 bearing permit number B /spl.Bldg/316 Ato D/2010

With reference to the above mentioned plan, it is requested that immediate action be taken to demolish all unauthorized structures in the common area of the above premises. It is also informed that a pathway has been built in the front of the building leading to a staircase to the first floor only, which is unauthorized and not as per approved plan. This is built in the common area of the flat and not as per the approved plan. Further, in common stair case leading to the terrace, unauthorized structures is built in the first floor of the building restricting free movement and in case of emergency situations like a fire accident this would definitely hamper escape and rescue efforts.

In this stilt of the building where car parking is situated, a major portion of the same has been unauthorisedly occupied by a few of the owners causing inconvenience to majority of others. Also the common area in the front of the building has been completely blocked by constructing two walls unauthorized restricting the free movement of occupants of the flat and their vehicles. Again this would hamper the free movement of Ambulance/Fire Engine in and out of the flat in case of any big emergency.

In view of the above it is humbly requested that measures be taken on a war footing by the CMDA to immediately to inspect the premises and proceed to demolish/remove all unauthorized constructions for the welfare of all the occupants of the building.

Thanking you

Yours
sincerely

Secretary
Abirami Willow Creek-Flat Owners Welfare Association"



3. Since the said representation has not been considered, according to the petitioner, by the first respondent i.e., Member Secretary, Chennai Metropolitan Development Authority, he has moved the present writ petition.

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4. Heard the learned counsel appearing for the petitioner, who would submit that, the first respondent is a Planning Authority and as per the plan approval given by the Planning Authority, the apartment in question has been constructed where the members of the petitioner have purchased respective flats and they are residing. Insofar as the said apartment is concerned, the private respondents i.e., respondents 2 to 4 also having their flats and insofar as the alleged common area of the apartment is concerned, according to the petitioner, though it belongs to everyone of the apartment, i.e., every owner of the apartment, who are the members of the petitioner Association, the private respondents are trying to utilise some portion of the common area as if it is the exclusive property with exclusive right.

5. In this regard, though complaints have been given, nothing was forthcoming and in this regard, according to the petitioner Association, since the first respondent Planning Authority can take action against the private respondents for violating the plan condition or plan approval, when such a representation has been given since they have not come forward to consider the same, in order to redress such grievance, the petitioner can move this writ petition. Accordingly, this writ petition has been filed, hence, he seeks indulgence of this Court.

6. However, Mrs.Malarvizhi Udhayakumar, learned Standing Counsel, who, takes notice for the 1st respondent, on instruction, would submit that, it is purely an inter se dispute between the flat owners of the apartment concerned where even though a plan approval has been given, where if there has been any violation of construction in the plan approval, that alone can be considered by the Planning Authority under the provisions of the Town and Country Planning Act. However, insofar as the utility of the common space or space earmarked or allotted, subsequent to any of the inmate of the apartment is concerned, that may be gone into only by exploring the civil right of each of the parties or each of the owner of the apartment. Therefore, that kind of issue can only be resolved by the parties concerned by approaching the competent Civil Court.

7. The learned Standing Counsel for the 1st respondent would also point out that, in this regard, the private respondents already had approached the Civil Court and filing a civil suit in O.S.No.3575 of 2021 on the file of the XVI Assistant City



Civil Court, Chennai where they sought for a decree and judgment to declare that the plaintiffs i.e., the private respondents herein are exclusively and absolutely entitled to use the schedule-D mentioned areas as per the terms of the Deed of Handing over agreement dated 05.01.2011 executed by 11th defendant therein to Dr.Arunachalam and as per the Deed of Handing Over agreement dated 01.08.2011 executed by the 11th defendant in the suit to the 2nd plaintiff and also seek for a permanent injunction restraining the defendants 1 to 10, who are none other than the members of the petitioner's Association, from using the space exclusively allotted and belonging to the plaintiffs morefully described in schedule-D.

8. By relying upon this prayer sought for in the suit filed by the respondents, the learned Standing Counsel for the 1st respondent would point out that, therefore exactly the grievance of the petitioner if any can very well be espoused and decided by the Civil Court in the suit where all the members of the petitioner Association have been arrayed as defendants. Therefore, the petitioner can very well pursue the said suit by making suitable defence therein and hence, the learned Standing Counsel would submit that the present writ petition cannot be maintained before this Court.

9. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned Standing Counsel appearing for the 1st respondent, the issue raised in the writ petition cannot be resolved by this Court while exercising its jurisdiction under Article 226 of the Constitution of India.

11. Since it is a complete question of fact as to who will be the owner or who will be entitled to enjoy the space concerned, which is in dispute, which has been shown in schedule D of the suit which had been filed by the private respondents against the members of the petitioner's Association before the competent Civil Court and that issue can very well be resolved and decided after having appreciated the evidence to be let in in this regard by both the parties before the competent Civil Court.

12. In that view of the matter, this Court feels that since it is a settled proposition of law that mere question of fact that too establishment of civil right cannot be gone into by a Writ Court while exercising the writ jurisdiction under Article 226 of the Constitution of India and in this regard, the parties can be relegated to the Civil Court by filing appropriate civil



proceedings, which, in fact, the private respondents have already undertaken, this Court has no hesitation to hold that the present writ petition cannot be entertained by this Court at this juncture. In that view of the matter, the present writ petition is devoid of merits, hence, it is liable to be dismissed, accordingly, it is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

+2ccs to Mr.Ralph V.Manohar, Advocate Sr No.58308

W.P.No.24194 of 2021

VBM (CO)
PR (26/11/2021)