

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.20072 of 2020  
and  
W.M.P.No.24773 of 2020

1.Mangal Kanji Mehta  
2.Dinesh K.Mehta ... Petitioners  
Versus

- 1.The Executive Engineer,  
Greater Chennai Corporation,  
Zonal Office IX,  
Nungambakkam, Chennai 600 034.
- 2.The Commissioner,  
Greater Corporation of Chennai,  
Rippon Buildings,  
E.V.R.PeriyarSalai,  
Chennai 600 084.
- 3.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thalamuthu Natarajan Building,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai 600 008.
- 4.The Secretary to Government,  
Housing and Urban Development Department,  
Secretariat, Chennai 600 009. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1<sup>st</sup> respondent in notice NO.Z.O.9.C.No.11079 of 2016 dated 05.10.2016 and quash the same and pass such further or other orders as this Court may deem fit.

For Petitioner : Mr.Jerry V.V.Sundar  
For RR1 & 2 : Ms.Suganya assisted by  
Mr.M.Ganeshan, Standing Counsel

ORDER

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

The petitioners are sister and brother and in the affidavit filed in support of this Writ Petition, it is averred among other things that the land and building at Door No.32/2, (Old No.9), 3<sup>rd</sup> Trust Cross Street, Mandavelipakkam, Chennai 600 028, bearing Plot NO.07 in R.S.No.4458, together with land area measuring 1219 sq.ft with a 5 feet access to the road measuring 325 sq.ft (in all 1544 sq.ft) along with 200 sq.ft undivided share and interest, were purchased by him through registered Sale Deeds dated 28.02.2002 & 10.02.2003, bearing Document Nos.565 of 2002 and 331 of 2003, registered on the file of the office of the Sub Registrar at Mylapore.

2. It is the case of the petitioners that previous owners had obtained Planning Permission and put up ground floor with the built-up area of 687 sq.ft and first floor with the built-up area of 724 sq.ft, totally 1411 sq.ft, vide Planning Permission and Building Permission, dated 29.11.1999, issued by the Corporation of Chennai. It is the specific case of the petitioner that there was a deviation of the construction of a dwelling unit by the builders, without the notice of the owners and the petitioners were issued with a Notice dated 05.10.2016, under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971 (TCP Act), on the pretext that it is an unauthorised construction and calling upon them to remove the same and the petitioners also gone for regularisation under Section 113C of the TCP Act, by submitting an application, vide Receipt No.CMDA/Reg-113C/363/2018, dated 10.04.2018.

3.. The learned counsel appearing for the petitioners would submit that in the light of the pendency of the application filed under Section 113C of the TCP Act, on the file of the 3<sup>rd</sup> respondent, further proceedings in terms of the Notice dated 05.10.2016, issued by the 1<sup>st</sup> respondent, has to be deferred.

4. Per contra, Mr.M.Ganesan, learned Standing Counsel appearing for the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit dated 18.01.2021 and would submit that the inspection of the premises was caused on 30.09.2016 and deviations were noted and once again inspection was caused on 04.12.2020, wherein apart from the fact of some deviations in respect of the constructions made in pursuant to the Sanctioned Plan, the 2<sup>nd</sup> floor is totally unauthorised one and since action is being taken in terms of the provisions of law, the petitioners are not expected to make any grievance and prays for dismissal of this Writ Petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract the deviated and unauthorised construction, as pointed out after the inspection made on 04.12.2020:

| S.I.No | Floor         | As Per plan | As per site | Difference | Deviation/un authorised | Remark Building |
|--------|---------------|-------------|-------------|------------|-------------------------|-----------------|
| 1      | Front (South) | 1.50 M      | 1.30 M      | 0.20 M     | Deviation               | Residential     |
| 2      | Rear (North)  | 1.50 M      | 0.70 M      | 0.80 M     | Deviation               | Residential     |
| 3      | Side (East)   | 1.50 M      | 1.40 M      | 0.10 M     | Deviation               | Residential     |
| 4      | Side2 (West)  | 1.50 M      | 1.45 M      | 0.05 M     | Deviation               | Residential     |
| 5      | Ground Floor  | 63.82 M2    | 67.55M2     | 3.73M2     | Deviation               | Residential     |
| 6      | First Floor   | 67.26M2     | 72.53M2     | 5.27M2     | Deviation               | Residential     |
| 7      | Second Floor  | NIL         | 72.53M2     | 5.27M2     | Unauthorised            | Residential     |

7. The fact remains that the petitioners, in order to regularise the deviated and unauthorised construction, submitted an application dated 10.04.2018, under Section 113C of the TCP Act, before the 3<sup>rd</sup> respondent and it appears to be pending. The acknowledgment of the said application is made available at page no.36 of the typed set of documents and it is relevant to extract the following of the said acknowledgment:

' 'Acknowledgment

Receipt No : CMDA/Reg-113C/363/2018

Date : 2018-04-10 21:13:48

Applicant Name & Address Mangalkani Metha &  
Dinesh K Metha  
26/5, (32/2/5), 3<sup>rd</sup> Trust  
Cross Street, Mandavelipakka,  
9841392041  
Methabuildingreg2018@gmail.com

Type of Building: Special Building/Individual Flat

Building Usage : Residential

Site Address : 3<sup>rd</sup> Trust Cross Street,  
Mandavelipakka,  
Chennai 600 028.

Survey No.Details: RS No./4458/o.Mylapore

Enclosures :  
● Id proof  
● Site Drawing  
● Legal Opinion  
● PLR/Patta and FMB  
● NOCSSC  
● Building Approval Proof  
● Plot Approval Proof

Mode of Payment and Date: IndusInd

Reference Id : 927dd95c8c18b399bbbd

Premium FSI Charge : 0.000

Penalty I&A charges :  
● Residential:3750.000  
● Commercial:0.00  
● Residential:0.00  
● Commercial:0.00  
● Residential:0.000  
● Commercial:0.00  
● Residential:0.00  
● Commercial:0.00

Scrutiny fees : 215.28

OSR Charge : 0.00

Total Charges : 3965.28

Disclaimer

- Filing an application for exemption under these regulations will not in any way prevent the competent authority from taking action under any of the provisions of the Act, unless otherwise ordered so by the competent authority.
- If any under assessment in the self assessment, is detected at any stage, the regularization application shall be rejected, the amount shall be forfeited and enforcement action against the violation shall be taken.
- Development charges and other applicable charges normally leviabale at current rates will be

collected after scrutiny and ascertaining approvability.''

8. It is also relevant to extract Section 56(2-A) of the TCP Act, 1971:

'56 (2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under sub-section (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under Section 49 or appeal under Section 79 or any litigation before a Court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises''

9. In the considered opinion of this Court, mere pendency of the application filed under Section 113C of the TCP Act would not prevent the respondents from proceeding further, in accordance with law, in respect of the deviated and unauthorised construction. However, this Court, taking into consideration the submission made by the learned counsel appearing for the petitioners, is of the view that the entire premises are residential in nature and that the Planning Permission is available for putting up the ground and first floors, however, the construction made in respect of second floor, is an unauthorised one,

10. This Court, in the light of the above facts and circumstances, especially the fact that for construction of ground + first floor, there is a Sanctioned Plan and there appears to be some deviations and further that the 2<sup>nd</sup> floor is totally an unauthorised one, directs the respondents 1 and 2 to proceed further in respect of the 2<sup>nd</sup> floor alone by putting it in lock and seal as well as disconnect the electricity supply to the said floor. Insofar as the ground and first floor are concerned, the demolition of the offending construction, shall not be carried out and however, it is made clear that the petitioners till the disposal of their application under Section 113C of the TCP Act, shall not alter the physical features of ground and first floors and if they intend to do so in accordance with the Sanctioned Plan, they may have to file necessary petition before this Court in the form of modification of the order.

11. In the result, the Writ Petition is dismissed subject

to the above observation. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sk

To

- 1.The Executive Engineer,  
Greater Chennai Corporation,  
Zonal Office IX,  
Nungambakkam, Chennai 600 034.
- 2.The Commissioner,  
Greater Corporation of Chennai,  
Rippon Buildings,  
E.V.R.PeriyarSalai,  
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- 3.The Member Secretary,  
Chennai Metropolitan Development Authority,  
Thalamuthu Natarajan Building,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai 600 008.
- 4.The Secretary to Government,  
Housing and Urban Development Department,  
Secretariat, Chennai 600 009.

Copy to:

- 1.The Chairman Cum Managing Director,  
TANGEDCO, 10<sup>th</sup> Floor, NPKRR Maligai,  
144, Annasalai, Chennai 600 002.
- 2.The Assistant Engineer (Operation and Maintenance)  
Mandavelipakkam, No.1, Narasimhapuram,  
1<sup>st</sup> Floor, 33/11, KV SS, Visalakshithittam,  
Chennai 600 004.

+lcc to Mr.Jerry V.V.Sundar, Advocate, S.R.No. 4960

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AJS (CO)  
GN(23/02/2021)