



A.S. No. 1267 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 02.12.2022

Judgment Delivered on: **19.12.2022**

CORAM:

THE HON'BLE MR. JUSTICE D. BHARATHA CHAKRAVARTHY

Appeal Suit No. 1267 of 2003

1. Hari Ohm Estates repd. by Partner, C Subramaniam
2. R. Nallammal
3. I.V. Krishnamurthy
4. V. Subramaniam
5. V. Uma Saraswathy
6. T.R. Raghupathy
7. Jayaneela Ramanathan
8. B. Nalini
9. P.N. Natarajan

... Appellants

Versus

1. N.R. Seethalakshmi
2. Parvathy Bhaskar
3. Umamaheswari Ramachandran
4. Brahadeeswari Suresh
5. Sugantha Kumar
6. V.N. Ganapathy
7. K.R. Sukumar
8. K.S. Krishnan
9. Seetha Balakrishnan
10. Madras Metropolitan Deveopment Authority
repd. by its Member Secretary

...Respondents



A.S. No. 1267 of 2003

Prayer: Appeal Suit filed under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 1-11-2002 passed in O.S.No.6485 of 1996 on the file of the VI Additional Judge, City Civil Court at Chennai, and allow this appeal.

For Appellants : M/s J.R.K. Bhavanantham

For Respondents : M/s V. Gangatharan (for R1 & R4)
: M/s. P.B. Ramanujam (for R3)
: M/s. P. Veena Suresh (for R10)
: R6 - DIED.
: Notice served (R2, 5, 7, 8, 9)

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the judgment and decree of the VI Additional City Civil Court, Chennai, dated 01.11.2002, in O.S.No.6485 of 1996, in and by which, the suit filed by the plaintiffs claiming damages for a sum of Rs.5,00,000/-, was decreed against the defendants 2 to 15.

B. The Case of the Plaintiff :

2. The case of the plaintiff is that the second defendant is a builder/promoter. By an Apartment Promotion Agreement executed at Chennai on 16.09.1984 between the first plaintiff and the second



A.S. No. 1267 of 2003

WEB COPY

defendant, the second defendant offered to promote residential apartments in the vacant land belonging to the first plaintiff at No.20, Zackaria Colony Main Road, Kodambakkam, Chennai - 24. As per the agreement the plaintiff is entitled to the ground floor, while the promoter is entitled to develop and promote the other floors, and also to 3/4th of the undivided share in the land. The second defendant is to develop and construct only to the extent of the sanctioned plan. However, even though the plan was sanctioned only to an extent of 5885 sq.ft., the second defendant, in collusion with the other defendants, constructed a total of 7960 sq.ft., thereby exceeding the agreed limit. This apart, the second defendant/builder has occupied 306 sq.ft. of land without authorization. Thus the defendant has built an excess of 2381 sq.ft. The plaintiff has valued this excess area at about Rs. 240 per sq.ft., amounting to a total of Rs. 5,71,440/-. Based on this valuation the plaintiff claimed damages limited to a sum of Rs. 5,00,000/-.

2.1. The plaintiff issued a legal notice on 29.07.1989. Only defendants 3 to 15 issued a reply notice. This apart, regarding the car park, a separate suit was filed in O.S.No. 354 of 1989. Since damages were



A.S. No. 1267 of 2003

caused by the defendants 2 to 15, the plaintiff is entitled for the damages as prayed for.

WEB COPY

C. The Case of the Defendants :

3. The suit was resisted by the defendants. A separate written statement was filed by the first defendant namely, the Chennai Metropolitan Development Authority, in which, it has specifically averred that the entire construction, including the additional constructions made by the second defendant, were regularized by the first defendant.

3.1 The appellant/second defendant/builder filed a separate written statement by denying the allegations and submitted that as per the promotion agreement, the exact square feet is not mentioned and to the extent, permissible by the plan, and hence the construction could have been made. As a matter of fact, the revised plan was accepted on 28.07.1988 and therefore, the first plaintiff and her husband, being constant participants in the process, cannot now claim compensation.



A.S. No. 1267 of 2003

WEB COPY

3.2. The defendant also contested the suit by stating that the material particulars regarding the above pleadings were absent. A written statement filed by the defendants 3 to 15 also contested the suit on similar lines. They also deny the plaintiff's cause of action as against the defendants.

D. The Issues & The Trial:

4. On the strength of the above pleadings, the Trial Court framed the following five issues:-

"(i) Whether the defendants 2 to 15 have constructed in violation of the construction agreement?

(ii) Whether the plaintiff is entitled for compensation, if so, to what amount?

(ii) Whether the plaintiff is estopped from questioning the legality of the construction?

(iv) Whether the first defendant is a necessary party to the suit?

(v) To what reliefs, the parties are entitled?"

4.1 On the said pleadings, one *Jambu Nadan* was examined as P.W.1 and *Exs.A-1 to A-13* were marked. On behalf of the defendants, one *Mahesh* and one *V.Subramaniam* were examined as D.Ws. 1 and 2



A.S. No. 1267 of 2003

WEB COPY

respectively, and *Exs. B-1 to B-10* were marked.

E. The Findings of the Trial Court :

5. Thereafter, the Trial Court proceeded to consider the case of the parties. It held that the construction is to be carried out only to the extent as permitted by the plan. Once excess construction was made by the defendants 2 to 15, they being the promoters and the purchasers of the flat, have violated the agreement and have also disturbed the beneficial enjoyment of the flats and are liable to pay damages to the plaintiff. As the plaintiff had restricted their prayer for damages only to a sum of Rs. 5,00,000/- as calculated by them, the Trial Court decreed the suit accordingly. Aggrieved by the same, the defendants 2 to 9 and 11 have filed the present Appeal Suit.

F. The Submissions :

6. Heard *Mr.J.R.K.Bhavanandam*, the learned Counsel appearing on behalf of the appellants. Even though notices were served and appearances were entered, none appeared and argued on behalf of the respondents, in spite of repeated opportunities provided by this Court.



A.S. No. 1267 of 2003

WEB COPY

6.1. *Mr.J.R.K.Bhavanandam*, the learned Counsel took this Court through the Apartment Promotional Agreement, dated 16.09.1984 to point out that as per Clause 6 and 7, it is only 3/4th undivided share which has to be conveyed to the builder and the subsequent purchasers and as per clause 12, a sanctioned plan has to be obtained. As per Clause 2 of the said agreement, it is clearly mentioned that the promoters shall be entitled to construct upto three floors over the ground floor depending on the sanction for the construction from the M.M.D.A and Corporation of Madras. In this case, the original plan and revised plan were obtained and it would be clear from the written statement filed by the M.M.D.A itself that the entire construction has been regularized by them. Once the entire construction has been regularized, the same has to be deemed to be approved as per plan and therefore, there is no violation of the promoters' agreement. As a matter of fact, certain areas were mentioned as car parking in the ground floor, which the plaintiffs have violated. Once the plaintiffs seek to rely upon the original sanctioned plan and once they themselves have violated, they have no *locus standi* to contend about deviation in the other floors. Therefore, the Trial Court, without considering the said facts, had



A.S. No. 1267 of 2003

erroneously decreed the suit.

WEB COPY

G. Points for Consideration:

7. Upon considering the said submissions made on behalf of the learned Counsel for the appellant and perusal of material records of the case, the following points arise for consideration :-

“(i) In view of regularization of the constructions, whether the plaintiffs will still be entitled to complain and pray for compensation ?

(ii) Whether the plaintiffs will be dis-entitled to claim compensation in view of their own violation of the approved plan ?

H. On Point No. (i) :

7.1 Admittedly, as per the sanctioned plan only about 5885 sq.ft. was permitted to be built. However, by extending the constructions on all the sides in the first, second, and third floors, a total extent of 7960 Sq.ft has been built. In this regard, it is useful to extract Paragraph No.7 of the written statement filed by the first defendant namely, M.M.D.A in C.S. No. 178 of 1990 before this Court:-



WEB COPY



A.S. No. 1267 of 2003

"This defendant further states that the first plaintiff had earlier obtained planning permission in PP.No.B/1663/190/85, dated 14-11-85 for the proposed extent of about 719m². Further in the year 1986, the first plaintiff had sold the said property to the defendants two to fifteen. They intun had applied for regularisation of the deviated portion of the earlier approved plan in the name of the first plaintiff and the same was approved by this defendant for the extent of about 1311.76m²."

7.2 From the above, it is clear that there were deviations in the construction which were subsequently regularized. The contention of the learned Counsel for the appellant is that once it is regularized, then, it should come within the ambit of Clause 2 of the promoter's agreement. I am not in agreement with the said submission. Regularization by the first defendant would only mean that upon imposition of penalty, action for demolition will not be taken and the deviation will be only regularized. The Hon'ble Supreme Court of India, in ***Friends Colony Development Committee Vs. State of Orissa and Ors.***¹, has clearly held that the process of regularisation is a method of compounding and is an exception. It is useful to extract the following in this regard:

"25.Though the municipal laws permit deviations from sanctioned constructions being

¹ (2004) 8 SCC 733



WEB COPY



A.S. No. 1267 of 2003

regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule.
.....”

Thus, it can be seen that regularisation is the process by which the Municipal Authority condones the illegal construction by way of compounding, imposition of penalties, or otherwise as provided by law. It cannot by itself mean that it should be deemed to be as per approved plan. The plaintiffs being the land owners, entered into agreement with the second defendant/builder that the flat should be promoted only as per the approved plan. Any excess built up area or deviation is directly causing loss, (i) financially as the said factor was not taken into consideration while entering into the agreement, (ii) in terms of the enjoyment of the property, the value of the property, the moving space, everything is lost to the plaintiffs and there can be no doubt that the plaintiffs are put to loss and hardship. Therefore, the plaintiffs are entitled to damages. There is no evidence to the contrary as to the value of the construction per square feet and the plaintiff had, after calculating the damages to a tune of Rs.5,17,400/- has restricted it to a tune of Rs.5,00,000/- which was decreed



A.S. No. 1267 of 2003

WEB COPY

by the Trial Court. The Trial Court had also not awarded further interest regarding the same and there is no *contra* appeal by the respondents/plaintiffs before this Court. Under these circumstances, I am of the view that the plaintiffs would be entitled for the compensation of Rs.5,00,000/- as prayed and accordingly the first point is answered.

I. On Point No. (ii):

7.3 The other submission made by the learned Counsel is that the plaintiff herself being a violator of the plan, by not permitting the defendants to use the car parking cannot claim damages. In this regard, it is seen from the records that there was a separate suit which was filed in respect thereof and ultimately, *vide* judgment in **Ex.A-10**, the suit came to be dismissed and therefore, the said argument of the learned Counsel is also without any merit. The appellants herein have not let in any other positive evidence in this regard. When separate proceedings seems to have been filed in respect of the said matter, the appellant cannot re-agitate the same in the present suit which is filed claiming compensation in respect of the excess area of superstructure put up by the appellants. Hence, the second point is answered accordingly.



A.S. No. 1267 of 2003

WEB COPY

7.4 In view of the above answers, I am in agreement with the findings of the Trial Court in respect of all the five issues framed and this Appeal Suit is without any merit.

J. The Result :

8. In the result:

- (i) A.S.No.1267 of 2003 is dismissed;
- (ii) There shall be no order as to costs.

19.12.2022

Index: Yes/No
Speaking order/ Non-speaking order

klr

To:

- 1.The VI Additional, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court of Madras.



WEB COPY



A.S. No. 1267 of 2003

D. BHARATHA CHAKRAVARTHY, J.

klt

A.S.No.1267 of 2003

19.12.2022