



W.P.No.25753 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.25753 of 2015 and
MP.Nos.1, 2 and 3 /2015

1.M.S.Easwaran
2.Umasrinivasan
3.P.r.Sujatha
4.Deepak JamanOdedra
5.Manju

.. Petitioners

Vs.

1.The Chennai Metropolitan and Development Authority,
rep.by its Member Secretary,
No.1, Gandhi Irwin Road,
Chennai 600 008.

2.The Commissioner,
Corporation of Madras,
Ripon Building, Chennai 600 003.

3.The Commissioner of Police,
South Zone, Police Office Street,
Binny Road, St.Thomas Mount,
Nizarathipuram, Gandhi Nagar,
Chennai 600 016.

4.M/s.Ananthi Construction Pvt. Ltd.,
rep.by its Managing Director,
Regd.Officeat 'Ananthiraajendra' centre,
No.1, 4th Main road, Nanganallur,



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Chennai 600 061.

5.M.Radha

6.The Church of Almighty
Basement, Durgai Flats,
Door No.14/5, 48th Street,
Nanganallur, Chennai 600 061.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying of issuance of Writ of Mandamus directing the respondents 1 - 3 to prevent the use of the Schedule-B premises for any purpose other than the purpose permitted under the Sanctioned Plan dated 12.01.1996 by taking appropriate action against the respondents 4 to 6 in accordance with law award costs.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Ms.Shubharanjani Ananth

For RR1 : Mr.C.H.Vinobha Gandhi
Standing Counsel (CMDA)
For RR2 : Mr.G.T.Subramanian
For RR3 : Ms.P.Rajarajeswari
For RR4 : Mr.P.B.Balaji
For RR5 : Mr.M.P.John Peter

ORDER

The petitioner has filed this petition for issuance of writ of Mandamus directing the respondents 1 - 3 to prevent the use of the Schedule-B premises for any purpose other than the purpose permitted under the Sanctioned Plan dated 12.01.1996



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2. The case of the petitioners is that they are all residents of an Apartment (Residential) by name Durgai Flats at Plot No.14/5, 48th Street, Nanganallur, Chennai 600 061 and all the petitioners are owners of their respective flats and have been residents there since 1998 onwards. The 4th respondent is the flat promoter / developer in the said flats and he obtained planning permission and approval of the building from the 1st respondent and on 12.01.1996, the 1st respondent had sanctioned a building plan for construction in respect of the Schedule A mentioned property. As per the Sanctioned Plan, the construction on the basement floor comprised of common areas for common use of the residents like watchman's room, Generator room and M.E.S.Room and therefore, the 4th respondent could not claim to build anything more than that sanctioned by the plan and further the planning permit dated 12.01.1996 permitted only a residential building at the Schedule A mentioned property. While such being the case, during May 2015, suddenly a group of persons barged into the Schedule-A mentioned property and attempted to break into the Basement of the Schedule A mentioned property viz., Schedule B mentioned property. Aggrieved by the same, the petitioners have joint together and filed this writ



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petition to direct the respondents 1 to 3 to prevent the use of the Schedule B mentioned property for any purpose other than the purpose permitted under the Sanctioned Plan dated 12.01.1996.

3. The learned Senior Counsel appearing for the petitioners submitted that the entire basement forms part of the common area alone and for common use for the collective interest of the residents and no party either petitioners or respondents could claim exclusive ownership or exclusive possession of the built-up area in the basement and the common area is meant to be enjoyed in common amongst all co-owners and the same was also informed to the respondents 4 to 6 that the Schedule B mentioned property cannot be put to any use apart from that set out under the planning permission, however the respondents 4 to 6 has failed to adhered to the law and hence prays for appropriate orders to prevent the private respondents from misusing the Schedule B mentioned property, which is common area of the flats, contrary to the Sanctioned Plan dated 12.01.1996.



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4. The learned counsel appearing for the private respondents submitted that the 4th respondent has not violated any of the Sanctioned Plan and they do not have any objection to issue direction to the official respondents for taking action, if there is any deviation of the Sanctioned Plan. Further the learned counsel submitted that for violation of the Sanctioned Plan, already Demolition Notice was issued against the Occupier on 19.08.2016.

5. This Court has carefully considered the rival submissions and also perused the materials available on record.

6. Considering the limited prayer sought for by the petitioners and further considering the facts and circumstances of the case, this Court is inclined to issue direction to the official respondents 1 to 3 to prevent misuse of the common area, which mentioned in the Schedule B mentioned property and ensure usage of the common area as per the Sanctioned Plan dated 12.01.1996 and if there is any individual violation of the said Sanctioned Plan is noted, and further if there is no legal



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impediment, the respondents 1 to 3 shall take appropriate action against them within a period of twelve weeks from the date of receipt of a copy of this order and restore the said extent of the basement area as per the original Sanctioned Plan.

7. This Writ Petition is disposed of with the above terms. No costs. Consequently connected miscellaneous petitions are closed.

09.11.2022

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To

- 1.The Member Secretary,
The Chennai Metropolitan and Development Authority,
No.1, Gandhi Irwin Road,
Chennai 600 008.
- 2.The Commissioner,
Corporation of Madras,
Ripon Building, Chennai 600 003.
- 3.The Commissioner of Police,
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M.DHANDAPANI,J.

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