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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2022

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.6619 of 2022

Sree Ram Aravind Flat Owners Association,
(Reg.No.204/2019),
Represented by its Secretary R.Chandra Mouliswaran,
No.356/218, Avvai Shanmugam Salai,
Gopalapuram, Chennai-86. ... Petitioner

Vs.

1. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
2. The Greater Chennai Corporation,
Rep. by its Commissioner,
Rippon Buildings,
Chennai-3.
3. The Zonal Officer - Zone-IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai-34.
4. Sree Ram Builders,
Rep. by Ram Pramuk Reddy,
44/51, Tambiah Road,
West Mambalam,
Chennai-33. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to demolish the unauthorized construction measuring an extent of 69.67 square meters put up by the fourth respondent in the stilt area at Door Number 356/218, Avvai Shanmugam Salai,



Gopalapuram, Chennai-600 086, pursuant to the lock and seal notice, dated 16.11.2021 within a time frame as may be fixed by this Court and issue Completion Certificate for the said building.

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For petitioner : Mr.P.K.Harinath Babu
for M/s.MF Shabana Associates

For respondents: Mrs.P.Veena Suresh for R-1
Mr.K.Raja Shrinivas
for RR- 2 and 3
No appearance for R-4

ORDER

(The Order of the Court was made by T.Raja, J)

The petitioner/Association has come up before this Court for issuance of a Writ of Mandamus to direct the respondents to demolish the unauthorized construction measuring an extent of 69.67 square meters, put up by the fourth respondent in the stilt area at Door Number 356/218, Avvai Shanmugam Salai, Gopalapuram, Chennai-600 086, pursuant to the lock and seal notice, dated 16.11.2021, within a time frame as may be fixed by this Court and issue Completion Certificate for the said building.

2. At the outset, it may be mentioned herein that the fourth respondent being the Promoter, has been served with notice privately by the learned counsel for the petitioner as ordered by this Court on 23.03.2022, and which was taken on 25.03.2022 and accordingly, Affidavit of Service has also been filed showing that the fourth respondent has been served with private notice, by enclosing the Track Consignment issued by the Postal Department, showing the endorsement as "item delivery confirmed". It is also to be mentioned that the Court notice sent had returned un-served with endorsement "Door locked".

3. However, when the members of the petitioner-Association are the owners of the flats, the non-representation of the fourth respondent is not going to make any difference. The learned counsel for the petitioner-Association submitted that, after obtaining planning permission from the authority concerned on 23.10.2009, the fourth respondent constructed 12 dwelling units consisting of stilt plus four floors, which was later on sold out. Presently, the members of the petitioner-Association are the owners of their respective flats. Thereafter, the fourth



respondent submitted revised plan for approval, which was rejected on 12.03.2015, aggrieved by which, statutory appeal was preferred by the fourth respondent, which was allowed by a Government Order in G.O.(3D).No.44, Housing and Urban Development (UD-V) Department, dated 11.09.2015 with conditions, one of which is that the size of the existing E.B. room was to be altered and provided with the same in the stilt floor as per the Development Regulation Norms.

4. It is the claim of the petitioner-Association that the fourth respondent, violating the conditions imposed by the statutory authority, has encroached upon three car parking areas and electric room and started using the same as his office. The fourth respondent has not removed the unauthorized construction put up by them. Therefore, the petitioner-Association gave a letter dated 12.07.2019 to the fourth respondent-Builder (Promoter) calling upon them to vacate and demolish the unauthorized portion occupied by them, which was not responded to by the fourth respondent, and once again, on 22.11.2019, a representation was sent to the fourth respondent, and in the meanwhile, an application dated 29.08.2019 under the Right to Information Act, was made to the third respondent, seeking information as to how the unapproved portion was assessed to tax, which also evoked no response. Hence, the petitioner has come before this Court by filing this Writ Petition for the relief stated supra.

5. Learned counsel for the petitioner submitted that, either the fourth respondent may be directed to set right the deviation, or otherwise, the individual flat owners may be given liberty to rectify the deviations. Further, pre-notice dated 04.09.2020 was issued by the third respondent/Greater Chennai Corporation, calling upon the occupiers to show the approved plan, following which, they have also issued lock and seal notice dated 16.11.2021, but no further action has been taken.

6. Learned counsel for the first respondent/CMDA submitted that, although the first respondent/CMDA has granted planning permission, in the present case, the respondents 2 and 3/Greater Chennai Corporation is entitled to take action for the deviated construction, and in view of the fact that the the Greater Chennai Corporation had issued lock and seal notice, it is proper on their part to proceed with the further action in the matter.

7. Opposing the above submission, the learned counsel for the respondents 2 and 3/Greater Chennai Corporation placed on



record the proceedings, dated 02.12.2016, issued by the CMDA in Proc.No.RT/19948/2011, and that though the pre-notice has been issued by the Greater Corporation of Chennai, the first respondent/CMDA shall take enforcement action under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 for all those cases for which the CMDA has issued planning permission.

8. Again, placing on record the letter dated 29.03.2022 issued by the Principal Secretary to Government, Housing and Urban Development Department, in Letter No.14102/UD-5(1)/2021-3, it is stated by the learned counsel for the respondents 2 and 3 that only the first respondent/CMDA shall take action to remove the unauthorized portion, if any found in the building in question.

9. Therefore, we make it clear that as clarified by the first respondent/CMDA in the said proceedings, dated 02.12.2016, that, since in this case, the Greater Chennai Corporation has issued lock and seal notice, we are of the view that the respondents 2 and 3/Greater Chennai Corporation is the competent authority to take further enforcement action in this matter, which shall be done within a period of eight weeks from the date of receipt of a copy of this order.

10. Accordingly, the respondents 2 and 3/Greater Chennai Corporation is directed to take further action in the matter within the above said time limit. It is needless to mention that, once again, no prior notice need be issued to the fourth respondent. It is also made clear that, after removal of the deviated portion, liberty is given to the individual flat owners of the petitioner/Association and also the Promoter/Builder (fourth respondent) to apply for new planning permission in accordance with law, before the competent authority.

11. With the above observations and directions, the Writ Petition is disposed of. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To

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1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.
2. The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai-3.
3. The Zonal Officer - Zone-IX,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai-34.

+1cc to M/s.P.Veena Suresh, Advocate Sr.28360
+1cc to Mr.M.F.Shabana Associates Sr.28365
+1cc to Mr.K.Raja Srinivas, Advocate Sr.28506

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