



W.P. No. 18720 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 18720 of 2022
and
W.M.P. No. 18105 of 2022**

1. Chithra Lakshmanan
2. R.Vasanth
3. K.S.Ganesan
4. S.Manimegalai
5. B.Devendran
6. S.Venkatachalam
7. S.P.Nachiappan
8. K.G.Srinivasan
9. M.Lakshmi Madhavan
10. C.Rajasulochana
11. K.Vaiyananthimala
12. S.Kathyani
13. T.Murugan
14. J.K.Shanthi
15. V.Santhi



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16. S.Ravichandran

17. V.V.Radha Krishnan

18. K.Ravi

19. R.Valsala

20. A.T.K.Muthumurugan

21. B.Vijayakumari

22. C.Vijayalakshmi

23. M.Aparna

24. Shoba Prabu

25. R.S.Muralidharan

26. UshaRani

27. S.Ramaswamy

28. A.V.Vikram

29. A.S.Mani

30. Dakahisnamoorthy

31. P.N.R.Ganesan

32. D.Selvarasu

33. Chitra Krishnakumar

34. Sudhakar

35. M.Krishnamurthy

36. M.B.Ananthakrishnan

37. K.Lalitha



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38. Dr. N.Usman

39. C.J.Raj

40. Saroja Gangadharan

41. Deepa Viswanath

42. S.Muthulekshmi

43. Saarukesi Sabapathy

44. N.Krishnamurthi

45. N.S.Rajesh

46. N.C.Srinivasan

47. Jayakar J.Edmond

48. R.Parthasarathy

49. R.Sathya Narayanan

50. S.Subramanian

51. K.Chellappa

52. Poojakamachidevi Jothi Karthikeyan

53. C.P.Shakthivel

54. V.Sivakumar

55. Mr. M.Velayudham

Thirty Ninth to Fifty Fifth Petitioners
are represented by their power agent
M/s. Ramaniyam Real Estates (P) Ltd.,
Having Office at No. 17/35, 2nd Main Road, Gandhi Nagar,
Adyar,
Chennai – 600 020
rep. by its Authorized Signatory Mr. M.Chandru

... Petitioners



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-VS-

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1. The State of Tamil Nadu,
Rep. by Secretary,
Housing and Urban Development,
Fort St. George,
Chennai – 600 009.
 2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore,
Chennai – 600 008.
 3. The Chairman,
Tamil Nadu Housing Board,
Nandhanam,
Chennai – 600 035.
 4. Bharathidasan Colony 642 Flats Owners Welfare Association,
Rep. by Secretary,
Bharathidasan Colony,
K.K.Nagar,
Chennai – 600 078.
- Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the impugned order dated 17.11.202 vide Letter No. C3(S)/441/2020 passed by the Second Respondent and quash the same and consequently direct the First and Second Respondents to approve the proposed building plan as sought for by the Petitioner.



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For Petitioners : Mr. K.Chandrakumar
For Respondents : Mr. P.Balathandayutham,
Special Government Pleader (for R1)
Mr. Y.Bhuvanesh Kumar (for R2)
Mr. D.Veerasekaran (for R3)
Mr. George Graham
for M/s.Devadason & Sagar (for R4)

ORDER

Heard Mr. K.Chandrakumar, Learned Counsel for the Petitioners, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First Respondent, Mr. Y.Bhuvanesh Kumar, Learned Counsel for the Second Respondent, Mr. D.Veerasekaran, Learned Counsel for the Third Respondent and Mr. George Graham, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the materials placed on record that Tamil Nadu Housing Board had developed 642 residential flats consisting of 576 LIG, 36 MIG and 30 HIG flats in K.K.Nagar of Chennai City in an extent of 2,55,427 sq. ft. of land, which is now known as Bharathidasan Colony, and after



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allotment, the constructed flats with proportionate undivided share in the land

has been conveyed to the respective flat owners. The Fourth Respondent, viz.,

Bharathidasan Colony 642 Flats Owners Welfare Association, had been formed

by the said allottees of the flats in that property. It is the case of the Petitioners,

who are the present owners of 54 flats in H1 to H3 Blocks and L1 to L3 Blocks,

that though there was a proposal in the Association of the Fourth Respondent to

demolish all the existing buildings and make re-constructions in entire property,

consensus could not be arrived by all flat owners for the same. In that backdrop,

the Petitioners had alone made an application for demolition of the said

buildings occupied by them and re-construction in that part of the property

through M/s. Ramaniyam Real Estates Private Limited, but the said proposal

was returned unapproved by Order No. CE(S)/441/2020 dated 17.11.2020 by

the Second Respondent by stating as follows:-

“ The Planning Permission Application for the proposed construction of High Rise building consisting of Extended Basement floor (parking) + Stilt floor + 11 floors Residential Building with 88du TNHB Block No. H1 to H3 & L1 to L3 Bharathidasan Colony Main Road, Bharathidasan Colony, KK.Nagar, Chennai 600 078, bearing Old S. No. 339pt, 342pt, TS No.4/2, Block No. 129 of Kodambakkam Village is under



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process.

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During process of the Planning Permission Application an objection petition was received in the reference 2nd cited stated that the group of flat owners who have applied through M/s. Ramaniyam Builders have got their patta for site extent more than the undivided share given by TNHB and it has been stated that the Bharathidasan Colony (642) flats owner's welfare Association having common infrastructure are utilized by all flat owners and that without getting NOC from the remaining flat owners, the plan approval shall not be given by CMDA.

Further it is observed that from the original layout sketch furnished by TNHB it is observed that unless all the flat owners jointly apply for Planning Permission. Individual development of the proposed development abutting Bharathidasan Colony cannot be permitted, since other blocks existing in the rear side and nearer to park area all will be deprived of getting Planning Permission, Since these blocks do not abuts to public road and



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may not be eligible to get the higher FSI as the proposed development is eligible.

In view of the above, Planning Permission for individual block within the layout cannot be considered and returned unapproved. Therefore you are requested to apply the Planning Permission Application jointly by all the owners afresh.”

The said order is challenged by the Petitioners in this Writ Petition.

3. The remaining 588 flat owners, who are members in the Association of the Fourth Respondent, have expressed their unwillingness to grant no objection for demolition and re-construction of the buildings occupied by the Petitioners alone as according to them, they would not have the benefit of the road width for re-construction of buildings in their portions, which are situated on the rear side of the property.

4. At this juncture, it would be useful to refer to the decision of the Full Bench of this Court in ***Tamil Nadu Housing Board -vs- Mary Rani Immanuel*** [(2013) 3 CTC 129] in which it has been that the allottees of the flats in a



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scheme implemented by the Tamil Nadu Housing Board, after execution of the Sale Deed in their favour by the Tamil Nadu Housing Board are entitled to demolish the existing the superstructure and put up new apartment blocks with additional dwelling units and sell the same to the third parties without obtaining 'No Objection Certificate' from the Tamil Nadu Housing Board as long as the constructions are within the parameters of the rules and regulations of the CMDA. It would necessarily follow as its corollary that it is only in the event of all the flat owners consenting for such demolition and re-construction that planning permission could be granted for the same. In the present case, as noticed earlier, 588 flat owners, who hold proportionate undivided share in the extent of 2,55,427 sq. ft. have expressed their unwillingness to grant no objection for demolition and re-construction of the buildings occupied by the Petitioners alone contending that if the Petitioners proceed with such construction, they would be deprived of the right to re-develop their properties without the prescribed road width at later point of time.

5. Having regard to the aforesaid rival contentions of the Petitioners and the remaining 588 flat owners, who are represented by the Association of the Fourth Respondent, the proper recourse for the Petitioners would be to seek partition of the property by division of the land after providing necessary access



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with prescribed road width for the flats of the remaining 588 flat owners in that

property. In the absence of any arrangement made by the parties in that regard, the Second Respondent cannot be faulted for having returned the application made by the Petitioners for demolition and re-construction of their buildings alone and requiring them to re-submit the same with consent of all 642 flat owners. Though the Petitioners claim to have obtained separate patta showing exclusive ownership of land, the Fourth Respondent disputes the same by stating that such bifurcation of the property has not taken place after due notice to all its members, who are co-owners of that property. In any event, it is settled position of law as restated by the Hon'ble Supreme Court of India in ***Jitendra Singh -vs- State of Madhya Pradesh*** (Order dated 06.09.2021 in Special Leave Petition (C) No. 13146 of 2021) that mutation of property in revenue records neither creates or extinguishes title nor has any presumptive value on title to the property, which would have to be determined only by the jurisdictional civil court.

6. In that view of the matter, there does not appear to be any infirmity in the decision-making process of the Second Respondent warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.



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In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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vjt

Index: Yes/No

Note: Issue order copy by 23.11.2022.

To

1. The Secretary to Government of Tamil Nadu,
Rep. by Secretary,
Housing and Urban Development,
Fort St. George,
Chennai – 600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore,
Chennai – 600 008.
3. The Chairman,
Tamil Nadu Housing Board,
Nandhanam,
Chennai – 600 035.



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P.D. AUDIKESAVALU, J.

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