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*W.P.Nos.27150, 27153 of 2019
and 7894 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.27150, 27153 of 2019 & 7894 of 2021

and

W.M.P.Nos.26535, 26541 of 2019, 8429 of 2021

& 15016 of 2022 in W.P.No.27150 of 2019

A.Suresh	...Petitioner in W.P.27150/2019
C.Dhinesh	...Petitioner in W.P.27153/2019 and W.P.7894/2021

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Executive Engineer,
Zone – XI, Greater Chennai Corporation,
Arcot Road, Valasaravakkam,
Chennai.
- 3.The Junior Engineer,
Division-152, Unit – 33, Zone-XI,
Greater Chennai Corporation,
Arcot Road, Valasaravakkam,
Chennai.



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4.The Assistant Executive Engineer,
Unit – 33, Zone – XI,
Greater Chennai Corporation,
Arcot Road, Valasaravakkam,
Chennai.

5.A.Chandra

[R5 impleaded as per order dated 20.11.2019 made in
WMP.No.28325 of 2019 in WP.27150/2019]

[R5 impleaded as per order dated 20.11.2019 made in
WMP.No.28326 of 2019 in WP.27153/2019]

6.K.Senthivel

[R6 impleaded vide order dated 20.01.2021 made in
WMP.No.2656 of 2020 in WP.27150/2019]

[R6 impleaded vide order dated 20.01.2021 made in
WMP.No.2657 of 2020 in WP.27153/2019]

...Respondents in all WPs

Prayer in W.P.Nos.27150 & 27153 of 2019: Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned rejection order passed by the 1st respondent vide order dated 02.08.2019 in Letter No.2589/UD-VI(1)/2019-4 and to quash the same and consequently direct the respondents 2 to 4 to initiate fresh enforcement action as contemplated



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under the Town and Country Planning Act, 1971 and until such time forbear the respondents 2 to 4 their men, agents, subordinates or any one acting under them from Locking and Sealing the Flat No.S-2, Second Floor and Flat No.F-2, First Floor, New No.39, Old No.71, Pillayar Koil Street, (V.O.C. Street), Kaikkankuppam, Valasaravalkam, Chennai – 600 087.

Prayer in W.P.No.7894 of 2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari, calling for the records of the impugned de-occupation notice issued by the respondents 2 to 4 vide Notice No.Zone 11/U 33/Div-152/01/2021, dated 19.03.2021 and to quash the same.

For Petitioner : Mr.T.Gouthaman
for Mr.S.Santhan

For Respondents : Mr.Vadivelu Deenadayalan,
Additional Government Pleader for R1

Mr.G.T.Subramaniam,
Standing Counsel for R2 to R4

Mr.D.Yogeswaran for R5



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COMMON ORDER

*(Order of the Court was made by **R.SUBRAMANIAN, J.**)*

Challenge in these Writ Petitions is to the order of the Government dismissing the Special Revisions under Section 80-A of the Tamil Nadu Town and Country Planning Act. The petitioners had purchased undivided share in the land measuring about 658.33 sq. feet each from the fifth respondent. Of course there is a controversy regarding execution of the Sale Deeds by the fifth respondent which is the subject matter of the Civil Suit. We do not propose to pronounce upon the said controversy.

2. As of today, the petitioners have purchased undivided share in the land and they have been allotted two apartments measuring 1239 sq. feet each. Since the Corporation issued a de-occupation notice, the petitioners approached the Government under Section 80-A of the Tamil Nadu Town and Country Planning Act. The Government had dismissed the Appeal on the ground that the entire second floor is unauthorised and there were deviations in the ground floor and the first floor. The Government had also



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observed that since there is a dispute between the petitioner and their vendor, viz. the fifth respondent, regularisation is not possible.

3. An observation has also been made that since the land is a Grama Natham land, regularisation cannot be granted. We are afraid that such an observation is foreign to the scope of the very power of the Government under Section 80-A of the Act. It is settled law that Grama Natham land does not belong to the Government, it belongs to person in occupation and it is reserved as house sites. Even the Land Encroachment Act 1905, does not apply to Grama Natham lands. This Court had consistently upheld the view that the Grama Natham land does not belong to the Government.

4. Adverting to the main controversy viz., the lack of planning permission, we find that the builder, viz. the sixth respondent had defrauded the petitioners by enclosing a fake plan, in the place of the original plan, showing as if the entire building consisting of stilt, ground, and two floors has been approved.



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5. The Original Approved Plan has been produced before us which shows that there is approval only for ground and first floor with two residential apartments. Though the fifth respondent the owner of the land would claim that she is unaware of the violations committed by the builder, we are unable to accept the said submission in view of the fact that she herself had executed three Settlement Deeds settling 658.33 sq.feet of undivided share and one residential flat in the ground floor, first floor and second floor in favour of her three daughters.

6. Though her counsel would contend that the Settlement Deed was obtained by the builder without her knowledge no steps have been taken by her or the settlees to have those settlement Deeds cancelled till date. We suspect that there has been some collusion between the owner and the builder. We find that there is non-application of mind on the part of the Government in disposing of their Special Revision under Section 80-A of the Tamil Nadu Town and Country Planning Act. While the tabular column in paragraph 3 shows that the ground floor and the first floor are deviated



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para 7 concludes that the first floor is also authorised. In fact, the petitioners have purchased one flat each in the first floor and the second floor, the order in the 80-A Revision impugned in the Writ Petitions proceeds as if the petitioners have purchased the two flats in the second floor.

7. There is also a direction to the Corporation to take proper action to demolish the unauthorised portion. In fact the Original Owner, viz. the fifth respondent had taken a plea that the builder has sold portions of the land without her knowledge, that is a question that is to be decided in the Civil suit. The fact that the Original owner fifth respondent entered into a Joint Development Agreement with the sixth respondent is admitted. The said Joint Development Agreement provides for construction of stilt, ground plus two floors. Therefore, we have very great suspicion in accepting the claim of the land owner that she was unaware of anything. However, considering the fact that the Government has not taken note of the fact that at least one flat belonging to one of the petitioners is situate within the approved area. We set aside the order of the Government and permit the



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petitioners to file applications under Sub Section 3 of Section 56 of the Tamil Nadu Town and Country Planning Act, seeking retention of the building. The Authority will consider the same in the light of the Prevailing Development Control Rules. If the building is permissible as per the Prevailing Development Control Rules, no further enforcement action shall be taken till the conclusion of the Civil dispute between the parties.

8. The Writ Petitions are disposed of with the above observation. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

**(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)
18.11.2022**

Index :No
Internet :Yes
Speaking order
jv



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