



W.P.No.34257 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

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

W.P.Nos.34257, 34259 & 34263 of 2019

and

W.M.P.Nos.34888, 34891 & 34895 of 2019

S.M.Hiriya @ S.M.Hariya

...Petitioner in WP.No.34257/2019

Dr.G.M.Basiruddin

...Petitioner in WP.No.34259/2019

M/s.Cinebel, Brand Name of
M/s.Cinerama Pvt Ltd.,
Represented by its Authorised Signatory,
Door No.20, Moors Road and College Road,
Nungambakkam, Chennai – 600 034

...Petitioner in WP.No.34263/2019

Vs.

- 1.The Secretary to the Government,
Housing and Urban Development Department,
Secretariat, Chennai.
- 2.Chennai Metropolitan Development Authority,
Rep by Member Secretary,
ThalamuthuNatarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.



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3. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.

...Respondents in all the WPs

Prayer in W.P.Nos.34257 of 2019: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari, calling for records leading to pass the impugned order of the 1st respondent dated 14.11.2019 in Letter No.5045A/UD-VI(1) 2018-2 in so far as the petitioner's premises, at first floor is concerned and quash the same.

Prayer in W.P.Nos.34259 of 2019: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari, calling for records leading to pass the impugned order of the 1st respondent dated 14.11.2019 in Letter No.5045A/UD-VI(1) 2018-2 in so far as the petitioner's premises, at first mezanine floor is concerned and quash the same.

Prayer in W.P.Nos.34263 of 2019: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari, calling for records leading to pass the impugned order of the 1st respondent dated 14.11.2019 in Letter No.5045A/UD-VI(1) 2018-2 in so far as the petitioner's premises, at ground floor is concerned and quash the same.



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For Petitioner : Mr.N.C.Ashok Kumar in all Wps

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

Mr.R.Thamaraiselvan,
Standing Counsel for R2 in all WPs

Mr.G.T.Subramanian for R3 in all Wps

ORDER

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

The petitioners are aggrieved by the disposal of the special revisions filed by them under Section 80(A) of the Town and Country Planning Act recording a purported undertaking, given by them, to remove the offending structures.

2. Claiming that one Syed Ashraf Ali had put up unauthorised construction and has been running a commercial establishment in the



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ground floor of the building which is a commercial complex, proceedings were launched against him. This Court had in W.P.No.37175 of 2016 directed the respondents to take action against the said Syed Ashraf Ali for the violations. Consequent upon the order there was an inspection of the premises and notices were issued to the petitioners on 01.02.2018 claiming that they have made certain alterations and increased the FSI which would amount to an unauthorised development as per the provisions of the Tamilnadu Town and Country Planning Act. Upon receipt of the said notice, the petitioners have preferred independent special revisions under Section 80(A) of the Tamilnadu Town and Country Planning Act, 1971.

3. The primary contention of the petitioners before the Government was that the modification work carried out by them is not a *development* as defined under Sub-Section 13 Section 2 of the Tamilnadu Town and Country Planning Act and therefore there is no cause for invoking the power under Section 56 and 57 inasmuch as there was no unauthorised development.



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4. While things stood thus, the Government took up the revisions under Section 80(A) filed by the petitioners along with the revision filed by the other person viz., Syed Ashraf Ali and disposed of the same recording the purported undertaking by the petitioners to remove the so called unauthorised development.

5. Since it was contended by the learned counsel for the petitioners that no such undertaking was given by the petitioners, we had required the learned Additional Government Pleader to produce the original records in the revisions before the Government. In compliance of our direction, the learned Additional Government Pleader has produced the original records.

6. We find that the petitioners have appeared for a personal hearing on 10.10.2019. Thereafter there is an undertaking dated 15.10.2019, which is said to have been given by A.Syed Ashraf Ali and three others. It contains a signature with the rubber stamp which reads as



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follows:

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“for A.Syed Ashraf Ali, Authorized Signatory. ”

7. It is the specific contention of the petitioners that either Syed Ashraf Ali or any of other Authorized representative was not authorized to sign on their behalf. The manner in which the undertaking has been obtained creates a doubt in our mind regarding the claim of the Government that the petitioners have given an undertaking. The very fact that the rubber stamp has been prepared showing *for A.Syed Ashraf Ali, Authorized Signatory* creates a lingering doubt in our mind on the intention of Mr.Syed Ashraf Ali in forwarding the undertaking on behalf of the petitioners also.

8. We are unable to approve the manner in which the revisions were disposed of by the Government recording the alleged undertaking. We are therefore constrained to set aside the orders impugned in these writ petitions as regards the petitioners alone. Accordingly, these writ petitions are allowed. The revisions filed by the petitioners alone are remitted to the Government and the Government will dispose of the revisions in accordance



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with law strictly in terms of the provisions of the Tamil Nadu Town and Country Planning Act. Till such time the revisions are disposed of, no further coercive action shall be taken against the petitioners. No costs. Consequently, the connected writ miscellaneous petitions are closed.

(R.S.M.,J.) (K.B.,J.)
12.10.2022

dsa

Index :Yes/No

Internet :Yes/No

Speaking order/Non-Speaking order

To:-

- 1.The Secretary to the Government,
Housing and Urban Development Department,
Secretariat, Chennai.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
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- 3.The Commissioner,
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