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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.28682 of 2018
and W.M.P.Nos.33485 and 33486 of 2018

1. P.Krishnan
 2. A.Manickam
 3. Janaki Arunkumar
 4. R.Subash
 5. A.Krishna Dev
 6. V.Mini
 7. R.Srinivasan
 8. S.L.Padmavathy
 9. Chadalawada Charulatha
 10. D.Sreedharan
 11. R.Govindhan
 12. P.Nilakantan
- ... Petitioners

Vs.

1. The Chennai Metropolitan Development Authority (CMDA),
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai - 600 035.
3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,



Thirumangalam Shopping Complex,
Thirumangalam, Chennai - 600 101.

4. Colonel K.Malaiappan (Retd),
389/2, Green Gardens, "L" Block,
Anna Nagar East, Chennai - 600 102.

5. N.K.M.V.C.P.Rao,
384/4, Green Gardens, "L" Block,
Anna Nagar East, Chennai - 600 102.

6. KGEYES Residency Private Limited,
'Srushtisshal', No.10,
2nd Cross Street, R.A.Puram,
Chennai - 600 028.
Rep. by its Managing Director

7. Lt.Colonel S.K.Robertson (Retd),
S/o.Late Kanagarathnam,
387/4, Green Gardens, "L" Block,
Anna Nagar East,
Chennai - 600 102.

8. Vasanthi Selvakumar

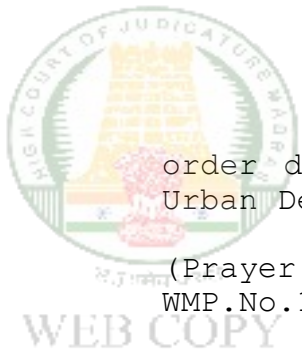
9. The Managing Director,
Chennai Metro Water and Sewerage Board,
No.1, Pumping Station Road,
Chindarpet, Chennai - 2.

... Respondents

(R7 and R8 are impleaded vide Court order dated 19.11.2018,
made in WMP.No.35211 of 2018 in W.P.No.28682 of 2018 by VBDJ)

(R9 impleaded vide order dated 20.03.2019 made in
WMP.No.4641 of 2019 in W.P.No.28682 of 2018 by TRJ)

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of Letter No.B3/8218/2018 dated 14.11.2018 issued by the first respondent and quash the same as arbitrary and illegal and consequently direct the first respondent to issue revised planning permission for the construction of Stilt and 4 Floors residential building with 20 dwelling Units at TNHB Block Nos.382 and 383, 1st Avenue and New Avadi Road, Anna Nagar, Chennai in TS No.2 (Part) and T.S.No.37 (Part), Block No.12 of Ayanavaram Village, on the application for revised planning permission submitted by the 6th respondent (Power Agent of the Petitioners) to the first respondent on 25.07.2016 and resubmitted with clarifications on 22.03.2018 in terms of the



order dated 28.05.2015 passed by the Department of Housing and Urban Development.

(Prayer amended as per order dated 21.11.2019 made in WMP.No.11442/2019 in W.P.No.28682/2018 by VBDJ)

For Petitioners : M/s.R.Parthasarathy

For Respondent No.1 : M/s.P.Veena Suresh
Standing Counsel

For Respondent : M/s.R.Bharath Kumar
Nos.2 & 3 Standing Counsel

For Respondent No.4: M/s.R.Arumugam

For Respondent No.5: Mr.N.K.M.V.C.P.Rao
(Party-in-Person)

For Respondent No.6 : M/s.Nithyaesh & Vaibhav

For Respondent Nos.7 & 8 : M/s.A.Priyadharshini

For Respondent No.9 : M/s.G.Janakiraman
Standing Counsel

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of Letter No.B3/8218/2018 dated 14.11.2018 issued by the first respondent and quash the same as arbitrary and illegal and consequently direct the first respondent to issue revised planning permission for the construction of Stilt and 4 Floors residential building with 20 dwelling Units at TNHB Block Nos.382 and 383, 1st Avenue and New Avadi Road, Anna Nagar, Chennai in TS No.2 (Part) and T.S.No.37 (Part), Block No.12 of Ayanavaram Village, on the application for revised planning permission submitted by the 6th respondent (Power Agent of the Petitioners) to the first respondent on 25.07.2016 and resubmitted with clarifications on 22.03.2018 in terms of the order dated 28.05.2015 passed by the Department of Housing and Urban Development.

2. Though elaborate arguments were made by the learned



counsel for both sides, and parties-in-person, the writ petitioners and the sixth respondent have agreed to comply with the regulations imposed by the official respondents and restrict their constructions within usable Undivided Share of land and the sixth respondent filed an affidavit to that effect. With this development on hand, this Court has decided to take the matter further.

3. On 28.05.2015, the Secretary to Government, Housing and Urban Development Department, Chennai, has issued the following directions:-

"4. The following conclusions are arrived/direction issued, based on the above discussion / submissions:-

1. With regard to the contention of the appellants that provisions of Tamil Nadu Apartment Ownership Act, 1994, will apply to this case, it is observed that no deed of apartment has been registered by the flat owners as per Section 11 of the Tamil Nadu Apartment Ownership Act 1994. The same is compulsory as per the Tamil Nadu Apartment Ownership Act 1994. Apartment deed conditions have been prescribed in Section 10 of the Tamil Nadu Apartment Ownership Act 1994 and model of the deed has been provided as Annexure in Form I under Rule 4 of the Tamil Nadu Apartment Ownership Rules, 1997.

2. In the absence of deed of apartment, it is difficult to determine the common areas and facilitates as well as limited common areas and facilities for common utilization by all the apartment owners.

3. As regards contention regarding availability of 33 feet wide common road all around the apartments, the same is not a scheme road provided by the Tamil Nadu Housing Board. It has not been handed over to the Corporation of Chennai to be declared as a public road. Further, in absence of availability of a registered apartment deed as provided by Section 11 of Tamil Nadu Apartment Ownership Act, 1994 claim on it as common road cannot be verified. Hence, it should be treated only as a common open area being used as common internal passage. But it is also clarified that despite the common are being part of the UDS, no development by way of reconstruction shall be allowed which will restrict easement rights of any of the other flat owners within the whole premises.

4. In the current scenario, since the block Nos.382 and 383 fall on the extreme western end of the scheme, reconstruction of these blocks will not restrict any right of other flat owners. But, the flat owners of 382 and 383 will not build any wall or restrict approach to the wicket gate to facilitate all the flat owners of the



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Green Garden Apartment to approach the Bus stand on New Avadi Road by walk as it existed prior to reconstruction of these blocks.

5. The appellants have no cause of action left to represent if their easement rights to the wicket gate and their equitable share in UDS along with non-interference in usage of common facilities and amenities is protected. If the flats are old and dilapidated, lives of the flat owners cannot be risked. Also, the objection has come long after the reconstruction started and the flat owners of blocks of 382 and 383 have become now houseless.

6. Direction to Tamil Nadu Housing Board / Chennai Metropolitan Development Authority:-

1. As per explanation I in Section 11 of Tamil Nadu Apartment Ownership Act, 1994, the Tamil Nadu Housing Board should verify and certify the floor space of the building including the lay out, location, name of the building, total no. and dimension of the apartments etc., in the deed of apartment. The power of issuing the orientation sketch by Tamil Nadu Housing Board is derived from explanation I to Section 11 of Tamil Nadu Apartments Ownership Act 1994. The same infact should have been done at the time of issuing the sale deed to each apartment owner. Since the same was not issued at the time of issuance of sale deed, insistence of the same arose when the dispute arose over sharing issuance of orientation sketch by Tamil Nadu Housing Board where ever flat owners request for the same in order to decide their rights over the common facilities, maintenance etc., if the same was not decided at the time of issuance of sale deed by way of execution of deed of apartment as prescribed in Section 11 of the Tamil Nadu Apartment Ownership Act, 1994. The full bench judgment of the High Court, Madras restricts only issuance of No Objection Certificate by Tamil Nadu Housing Board and charging 10% of the cost of present Market Value for the additional Floor Space Index to be achieved during the reconstruction.

2. In respect of the contention of Metro Water regarding their land being included in the Orientation Sketch, the Tamil Nadu Housing Board should verify all the records to check the extent of ownership of the land by Metro Water and issue revised Orientation Sketch accordingly. After the same is submitted to Chennai Metropolitan Development Authority, Chennai Metropolitan Development Authority should issue revised planning permission to the applicants.

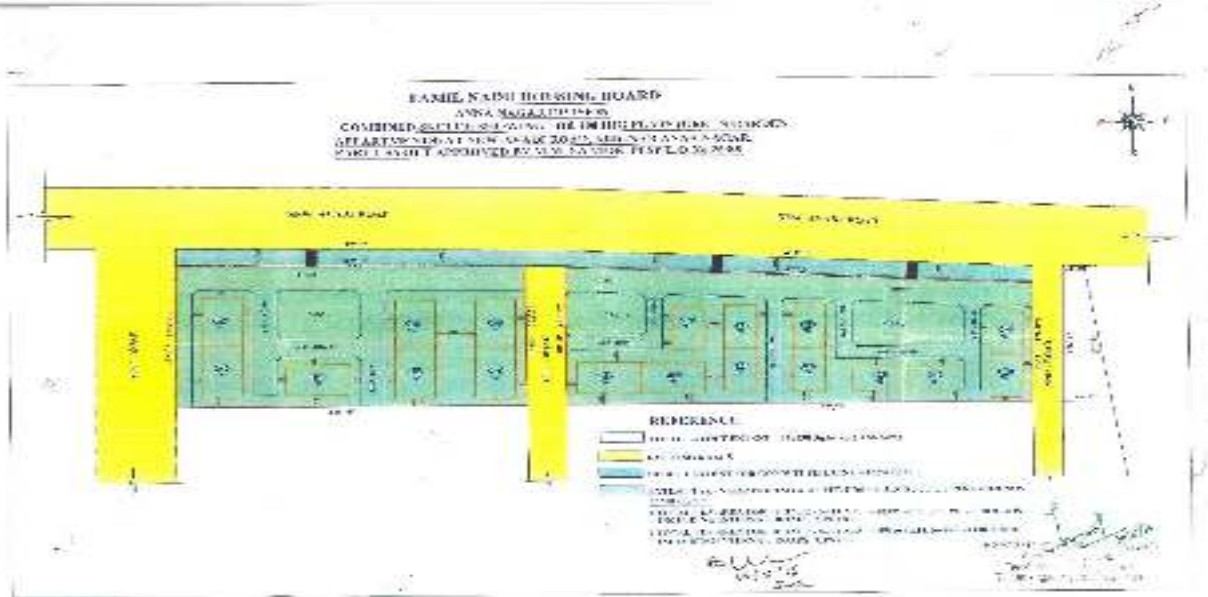


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3. While issuing revised orientation sketch, the Tamil Nadu Housing Board should ensure that UDS of all the flat owners are properly calculated and ensure that it tallies in the UDS as shown in the sale deed."

4. In pursuance of that order, the Housing Board have given an Orientation Sketch indicating total UDS, proportionate common area and proportionate usable UDS.

5. The Orientation Sketches issued by the Tamil Nadu Housing Board are as under for ready reference:-





6. Mr.N.K.M.V.C.P.Rao, Respondent No.5, to a query posted by this Court would reply that for 12 Flats, the approximate UDS is around 12,800 Sq.Ft. This measurement coincides with the usable UDS indicated by the Housing Board in respect of Block Nos.382 and 383, which is 12,867 Sq.Ft. Likewise, for Block Nos.385 and 386, it is 12,741 Sq.Ft., for Block Nos.387 and 388, it is 12,741 Sq.Ft. and for Block Nos.389 and 390, it is 12,801 Sq.Ft.

7. The Housing Board by its letter dated 03.03.2016, has suggested that they cannot give the individual UDS. Therefore, unless this individual UDS and specific definition of territory is given to each Block, the problem cannot be solved.

8. At this juncture, the sixth respondent Builder has filed the following affidavit of undertaking:-

AFFIDAVIT OF P.V.SANMUGAM

I, P.V.Sanmugam, Hindu aged about 65 years, having office at No.10, 2nd Cross Street, Raja Annamalaipuram, Chennai 600028 do hereby solemnly affirm and sincerely state as follows:-

1. The Answering Respondent is the 6th Respondent in the instant writ petition.

2. This Affidavit is being filed pursuant to the proceedings of this Hon'ble Court on 20.04.2022.

3. The development proposal scheme preparation is mainly on two inputs.

- a. Undivided share of land
- b. Building foot print

4. Insofar as the Undivided share of land for each block of 6 flats in the Scheme is concerned, there are two admitted documents on record to show the extent of UDS which each block is entitled to. The first document is a letter dated 14.12.2015, from the TNHB to the petitioners and the private respondents herein (Page 148 of the Petitioner's Typed set). There is a sketch attached to this letter (Page 158 of the Petitioner's Typed Set) and an enlarged colour copy of the same was handed over to the Court and all the parties on 20.04.2022. The second document is the orientation sketch dated 03.03.2016 for the entire property issued by the TNHB (Enlarged colour copy at Page 183 of the Petitioner's Typed Set).



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5. A perusal of the combined orientation sketch dated 03.03.2016 prepared by the TNHB will show the following details:

- Total lay out extent : 159430 Sq.Ft or 3.66 Acres
- Extent taken for pricing as : 143154 Sq.Ft or 59.65 per UDS (Excluding existing Grounds roads & CMWSSB Conduit Pipeline)
- Total UDS area for 'A' Type : 93898 Sq.Ft or 39.12 Flats (54 Flats) including Grounds internal roads, Common Parking Space etc)
- Total UDS are for 'B' Type : 49256 Sq.Ft or 20.53 Flats (54 flats) (including Grounds internal roads, Common Parking Space etc)

6. A perusal of the sketch at Page 158 of the Petitioner's Typed Set, prepared by the TNHB, enlarged colour copy of which was handed over in Court on 20.04.2022, will reveal the following:

- Total UDS as per pricing : 20862 Sq.Ft (93898 including common area for Sq.Ft / 54 Flats x Blocks 382 & 383 12 Flats)
- Proportionate Common Area : 7995 Sq.Ft UDS, as per approved lay out for Block Nos.382 & 383
- Proportional Usable UDS for : 12867 Sq.Ft 12 Flats

7. Thus, as per the dimensions and area provided by TNHB, the proportionate usable land area for the 12 land owners in Block Nos.382 & 383 is 12,867 Sq.Ft. In the course of the hearing on 20th April, 2022, the land owners, as well as the Answering Respondent have made concession that the construction will happen on 12,867 Sq.Ft alone and this area should be allowed to be used by the land owners and this answering respondent for the FSI calculation in our new proposal. The private respondents have also explicitly agreed to the Petitioners utilisation of the usable UDS of 12,867 Sq.Ft (Refer Para 23 & 39 of Counter dated 18.11.2018 of Respondent No.4, Para 6 of Additional Counter



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Affidavit dated 18.04.2022 of Respondent No.4 & Para 23 of Counter dated November 2018 of Respondent No.5)

8. It is pertinent to mention that the counsels for the statutory authority TNHB have clearly expressed their no objection before this Hon'ble Court when this revised proposal was mentioned before this Hon'ble Court. We undertake to submit our revised proposal for 12,687 sq.ft and this area should be allowed to be utilised by us for FSI calculation.

9. Insofar as the building foot print is concerned, the original building in Blocks No.382 and 383 had 10 feet all around their building foot print exclusively for use by the 12 owners of Block Nos.382 & 383 and only after that the layout road was formed. It is submitted that the road in the eastern side is 24 feet, northern side is 33 feet and western side is 16 feet in the layout surrounding the building, after leaving this 10 feet gap on all the side.

10. In the new proposal from our side, we undertake to pull down the existing building in Block Nos.382 & 383 and apply for planning permission to put up a new building within the boundary indicated in blue colour around Block Nos.382 & 383 in the combined orientation sketch dated 03.03.2016.

11. Thus, it is seen that on both counts, i.e. on UDS as well as the building footprints, the revised proposal submitted by the answering respondent is a win-win situation for all the parties and has already been agreed to by counsels for CMDA and TNHB during the hearing dated 20.04.2022.

12. The Answering Respondent has been put to untold hardship and misery because of the litigation between the different landowners and even after ploughing in huge amount of monies running into crores of rupees pursuant to valid statutory permits issued by CMDA and the Corporation of Chennai (Planning Permission & Building Permission), there is still a logjam and the Answering Respondent is unable to proceed with construction. Therefore, this revised offer is being submitted to bring a complete quietus to the entire dispute.

13. It is further respectfully submitted that the CMDA, is not a quasi-judicial authority under Section 49 of the Town and Country Planning Act, 1971, while



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considering a planning permission and the Act does not contemplate hearing of any party at that stage. Hence, it is open to any aggrieved party to challenge the planning permission, if any issued for Block Nos.382 & 383, in the manner known to law.

Therefore, in light of the above, it is humbly prayed that this Hon'ble Court may be pleased to take the present affidavit on record and direct CMDA to sanction the revised plan as undertaken and submitted before this Hon'ble Court on 20.04.2022, wherein the answering respondent undertakes to use only 12,867 sq.ft for the total usable area for the land owners in block No.382 and 383 for the purpose of FSI calculation with foot print dimension of 8630 Sq.Ft and thus render justice."

9. However, considering the interest of all the Flat Owners, the following directions are issued:-

" (i) Each and every block is entitled to be constructed with the proportionate usable UDS indicated by the Housing Board, leaving out the proportionate common area, which includes 33 Feet Road on the Western Side, 24 Feet Road on the Eastern Side and common frontage for all the flats and access to New Avadi Road through common areas.

(ii) It is made clear that the above access cannot be interfered with by any of the Blocks. The access cannot be through any of the Blocks under the pretext of common area or common UDS.

(iii) The construction shall be made as per the plan approved by the Chennai Metropolitan Development Authority (CMDA).

(iv) The rejection of plan by the Chennai Metropolitan Development Authority (CMDA) stands set aside.

(v) The first respondent is directed to sanction the revised plan as per the affidavit of undertaking submitted by the 6th respondent before this Court on 20.04.2022.

(vi) There shall not be any violation from the undertaking and the Flats shall be constructed within the usable UDS portion.

(vii) The concerns of the 9th respondent, Chennai



Metro Water and Sewerage Board is to be addressed by all the parties. The area beyond 33 Feet Road shall not be encroached as it caters pipeline of drinking water to the entire city.

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(viii) The 9th respondent is further directed to remove all the encroachments over the pipeline in accordance with law without waiting for any further orders through out the sketch."

(ix) The undertaking given by the Builder, 6th respondent, on behalf of the petitioners, is taken on file.

With the above directions, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.
3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam Shopping Complex,
Thirumangalam, Chennai - 600 101.
4. The Managing Director,
Chennai Metro Water and Sewerage Board,
No.1, Pumping Station Road,
Chindarpet, Chennai - 2.



+1cc to M/s.P.Veena Suresh, Advocate, S.R.No.28992
+1cc to Mr.R.Arumugam, Advocate, S.R.No.28742
+1cc to Mr.N.K.M.V.C.P RAO, Advocate, S.R.No.28541

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W.P.No.28682 of 2018 and
W.M.P.Nos.33485 and 33486 of 2018

SR(CO)
SB(26/05/2022)