



WEB COPY



W.P.No.7972 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.7972 of 2022 and

WMP No.7959 of 2022

Prasant Singh Daniel,
Flat No.A-203, Amarprakash Heritage Apartments,
Thirumudivakkam Main Road, Chennai 600 132.

... Petitioner

Vs.

1. The Chennai Metropolitan Development Authority,
Enforcement Cell, Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road, Egmore, Chennai 600 008.
2. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai 600 003.
3. The Chairman, Tamil nadu Pollution Control Board,
No.76, Mount Salai, Guindy, Chennai 600 032.
4. The President of Heritage Owners Association (THOAT),
B-302, Amarprakash Heritage Apartment,
Thirumudivakkam, Chennai 600 132.
5. The Commissioner, Corporation of Tambaram,
Chennai.



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6. Harish

7. Balachandran Nalladat

8. Radha

(R5 to R8 impleaded as per the order of this Court
made in WMP No.14147/2022 in WP.No.7972/2022
dated 19.06.2023.)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 4 to implement the CMDA approvals for the flats & building granted at Amarprakash Heritage Apartments, Thirumudivakkam Main Road, Chennai 600 044 up to four floors and to demolish the illegal and unauthorized constructions put up on the open terrace.

For Petitioner : Mr.J.I.Rajkumar Rober

For Respondents : Mr.C.V.Vinobha, Standing Counsel for R1

Mr.D.B.R.Prabhu, Standing Counsel for R2

Mrs.Shanmugavalli Sekar,
Standing Counsel for R3

Mr.P.Srinivas for R5



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ORDER

WEB COPY (Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This petition has been filed to direct the respondents 1 to 4 to implement the CMDA approvals for the flats & building granted at Amarprakash Heritage Apartments, Thirumudivakkam Main Road, Chennai 600 044 up to four floors and to demolish the illegal and unauthorized constructions put up on the open terrace.

2. The petitioner is owner of one of the flats at Amarprakash Heritage Apartment, No.A-203 at Thirumudivakkam Main Road and the above apartment contains a total 176 dwelling units. The Apartment has four floors and few flats of the fourth floor apartment are provided with a private terrace area provided by the builder. As per the CMDA norms and construction agreement, there shall not be any construction either temporary or permanent in the private terrace area. But, with the connivance of the fourth respondent, some of the owners of the Apartment have illegally constructed concrete structures and they have installed huge iron rods and thick sheets, which caused grave safety concerns for the people residing in



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the flats and to community living there. This is also a breach of covenant entered into between the owners of the flat and the builder and the CMDA Rules of the first respondent. Though the petitioner had requested the Association/4th respondent herein and also given complaint to the official respondents to take against the above action, no action has been taken against the owners, who are having private terrace. Hence the writ petition.

3. The learned standing counsel appearing for the official respondents submitted that the Commissioner of Tambaram Corporation is a competent authority to take necessary action against the removal of illegal/unauthorized construction. But, the petitioner has not preferred any complaint to the Commissioner, Corporation of Tambaram and he made a complaint only to the CMDA authorities, Chennai. Therefore, the prayer sought for in the writ petition cannot be entertained and therefore, seek for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 to 4. Also we have perused the materials on record.



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5. Admittedly, while filing the writ petition, the petitioner has not impleaded the necessary parties and subsequently, he has filed an impleading petition in WMP No.14147/2022 and the same was allowed today. Accordingly, the Commissioner of Tambaram Corporation is impleaded as fifth respondent. Further, it is an admitted fact that no complaint has been preferred before the Commissioner of Tambaram, who is the competent authority to take action against the illegal/unauthoroized construction. Therefore, we are not inclined to entertain the writ petition.

6. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Liberty is granted to the petitioner to approach the Commissioner of Tambaram Corporation as well as the other competent authorities concerned, seeking his remedy.

(D.K.K.J.)

(P.D.B.J.)

19.06.2023

(2/2)

Internet: Yes/No

Index : Yes/No

mst



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To

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D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

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