



W.P.No.18340 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.18340 of 2009
and MP.Nos.2 and 3 of 2009

Anna Nagar Plaza Owners Association,
(Regn.No.1 38/97) rep. by its Secretary
Mr.J.Govindarajan,
C-47, Anna Nagar Plaza,
Shop No.14, 1st Floor,
II Avenue, Anna Nagar,
Chennai – 600 040.

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort st. George, Chennai – 600 009.
2. Tamil Nadu Housing Board,
Rep. by its Chairman,
Nandanam,
Chennai – 600 035.
3. Tamil Nadu Housing Board,
Rep. by its Executive Engineer,
Anna Nagar Division,
Chennai – 600 040.
4. Chennai Metropolitan Development Authority,
Rep. by its Member – Secretary



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No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

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5. Sankaran, Plot No.435,
Shop No.16, TNHB Colony,
Korattur, Chennai – 600 080.

... Respondents

[R5 impleaded as per order dated 07.11.2019 made in WMP.No.30869 of 2019 in W.P.No.18340 of 2009 by VBDJ]

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to G.O.Ms.No.73 (Housing and Urban Development (UD-VI), 25.5.2009) and quash the same and further direct the respondents to restore the building to its original first approved master plan.

For Petitioner	: Mr.V.Anand
For Respondents	: Mr.T.Arunkumar Additional Govt. Pleader [R1] Mr.D.Veerasekaran TNHB [R2 and R3] Mrs.R.Revathy CMDA [R4]

ORDER

Government order issued in G.O.Ms.No.73, Housing and Urban Development (UD-VI, 25.05.2009) granting exemption in respect of the building constructed by the Tamil Nadu Housing Board from certain



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provisions of the Development Control Rules of First Master Plan for Chennai Metropolitan Area is under challenge in the present writ petition.

2. The petitioner is the Anna Nagar Plaza Owners Association. The members of the petitioner's Association purchased various shops under outright purchase scheme considering the infrastructural facilities available at the complex and the location of the said shops.

3. The learned counsel for the petitioner states that the Tamil Nadu Housing Board constructed the commercial shops in violation of the Building Control Rules and they have committed certain serious violations and the petitioner's association raised objections, finally, the Government has passed the impugned order granting regularization, which caused prejudice to the members of the petitioner's association in getting their undivided share in respect of the portions by the respective members of the petitioner's association.



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4. The petitioner's association has raised their objections even in the year 2003 and 2004, however, the Tamil Nadu Housing Board filed a application before the CMDA and thereafter to the Government and the Government has granted regularization by granting exemption and thus the petitioner has chosen to file the present writ petition challenging the said Government order.

5. Learned counsel appearing on behalf of the Tamil Nadu Housing Board and the learned Additional Government Pleader made submissions that the building was constructed in the year 1991 and allotments were made in the year 1992-1993 and the members of the petitioner's association are the respective allottees and they are in possession of their respective portions of the shops in the complex.

6. It is brought to the notice of this Court that certain inevitable violations were done by the Tamil Nadu Housing Board at the time constructing the commercial complex at Anna Nagar and in respect of such violations, the Tamil Nadu Housing Board approached the CMDA, who in turn had not considered the case of the Tamil Nadu Housing



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Board, thus, the Tamil Nadu Housing Board approached the Government for granting exemption under the Building Control Rules in respect of the violations made in the commercial complex.

7. The provisions in the basement floor was shifted and erected in the set back areas and duly got approval from the Government vide G.O.Ms.No.73, Housing and Urban Development (UD-VI), dated 25.05.2009. The space meant for generator, electrical, transformers was converted into eight shops and two of these were sold to the general public and the remaining six shops are in possession of the respondent Housing Board. As such there is no unauthorized construction in the basement as stated by the petitioner.

8. The learned counsel appearing for the Housing Board contended that the ventilation in the ground and first floors have been leased out illegally is also incorrect. The area meant for shop was duly approved in proceedings dated 09.06.2011 by the competent authority and sold to the general public. At the outset, it is contended that there was no violation and unauthorized construction as contended by the petitioner.



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9. The details of FSI is set out in the following Table:-

<i>Sl.No.</i>	<i>Description</i>	<i>Area in Sq.Meter</i>
1.	Plot Extent (as per site)	3720.29
2.	Plot extent (as in approved plan)	3516.35
3.	Basement Floor (FSI Area)	301.65
4.	Ground Floor(FSI Area)	1609.29
5.	First Floor (FSI Area)	1609.20
6.	Second Floor (FSI Area)	1592.25
7.	Third Floor (FSI Area)	1592.25
8.	Total	6702.73
9.	Plot Coverage	46.61
10.	FSI	6702.73/3720.29 1.80

10. That apart, regarding the formation of original layout and type design for office cum shopping complex also has been narrated in paragraph 4 of the counter affidavit filed by the Tamil Nadu Housing Board/second respondent, which reads as under:

“4.I respectfully submitted that the original Layout and Typed Design for Office cum Shopping Complex in Plot No.C-47 at Anna Nagar was approved in the year 1988 vide PPLO.No.61 A to E/88 and Letter No.D2(L)/4943/88, dt. 30.05.88. The Office cum Shopping Complex was constructed during the year 1990-1991. As per the practice followed by the respondent/Board, the



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maintenance was handed over to the petitioner – Association. The respondent/Board was forced to shift the provisions such as the Meter/Generator and Transformer rooms from the basement floor to the rear set back area based on the direction of TANGEDCO. As a result, the area earmarked for these provisions were converted into shops as they were not covered under floor space index and parking area. The petitioner had filed W.P.No.25526/2004 before the Hon'ble High Court of Madras to direct the 3rd respondent to demolish the unauthorized construction in the basement, Ground Floor and First Floor. The Hon'ble High Court of Madras in its order dated 28.04.2006, had held that:

“The Government of Tamil Nadu is directed to refer to its proceedings in Letter No.P.12/1012 /2003 in and by which it had already called for remarks from the Chennai Metropolitan Development Authority. If it is of the opinion that in considering the issue in that proceeding, any decision adverse to the fourth respondent herein is likely to be taken, then before taking any such decision, it shall issue a notice to the fourth respondent as well and then decide the issue in accordance with law. The Housing Board also shall be heard in the decision-making process on that issue. It is needless to state that, as already stated, depending upon the outcome



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of the decision to be taken by the Government, the third respondent/CMDA will act in accordance with law.”

11. This Court is of the considered opinion that the commercial complex was constructed in the year 1991-1992 and admittedly, certain violations were committed regarding the set back areas and in this regard, Tamil Nadu Housing Board approached the Government and the Government Considered the application submitted by the Housing Board granted the regularization. It is stated that thereafter no violation has been committed beyond the regularization granted by the Government. Thus, the Board has not committed any illegality as alleged by the petitioner's Association.

12. Therefore, the violations committed originally by the Tamil Nadu Housing Board in respect of deviation in construction, the Government regularized such violations and passed the impugned order. Though the Tamil Nadu Housing Board admittedly committed certain violations, on account of the fact that construction of the commercial complex was done long back i.e., 30 years ago, this Court is of an



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opinion that no further action needs to be taken in respect of the regularization order passed by the Government. It is further made it clear that, the Tamil Nadu Housing Board has not committed any further violation over and above the regularization order passed by the Government.

Accordingly, this writ petition stands dismissed. No costs.
Connected miscellaneous petitions are closed.

27.03.2023

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

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