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W.P.No.8926 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	01.08.2023
PRONOUNCED ON :	28.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.8926 of 2021

K.Nalini

... Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan House,
No.01, Gandhi Irwin Road,
Ansari Estate,
Egmore, Chennai 600 008

2. Sarah Catherin

3. Grace Hepzibah

4. The Greater Chennai Corporation,
Rep. By its Commissioner,
Ripon Building, 1st Floor, Raja Muthiah Road,
Kannappar Thidal, Periyampet, Chennai

... Respondents

** R4 suo-moto impleaded vide order dated 09.04.2021*



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to take appropriate and necessary action against the 2nd and 3rd respondents based on the petitioner's representation dated 28.09.2020 for putting up the illegal construction on northern side of the ground floor in property bearing door No.4, Dr.Ambedkar street, Arumbakkam, Chennai 600 106 with land measuring 2600 sq.ft. comprised in Survey No.252/2/B, T.S.No.36, Block No.1C, Arumbakkam and remove the illegal constuction.

For Petitioner : Mr.G.Krishna Kumar

For R-1 : Mrs.P.Veena Suresh,
Standing counsel

For R-2 : No Appearance

For R-3 : Mrs.T.K.S.Bharathy

ORDER

J.NISHA BANU, J.

The present writ petition is filed seeking a direction to the first respondent to take appropriate and necessary action against the 2nd and 3rd respondents based on the petitioner's representation dated 28.09.2020 for putting up illegal construction at the subject property located at door No.4, Dr.Ambedkar street, Arumbakkam, Chennai 600 106.



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2. The petitioner is one of the purchasers of the flat and she is the occupant of Door No.S-1, second floor of the residential apartment. The subject property originally belonged to late S.Martin Samuel, husband of the second respondent and father of the third respondent herein. After the demise of the said Martin on 09.05.1989, his legal heirs; his wife and children, entered into an Agreement of Joint Venture on 09.06.2006 with a promotor viz. M/s.Shubham Foundations for the construction of residential building consisting of ground floor, first floor and second floor.

3. It is averred in the writ petition that the petitioner had purchased one flat in door No.S-1, in the second floor along with undivided share of land vide Document No.984 of 2012 on the file of SRO, Kodambakkam. The petitioner had approached the Jana Bank – Mandaveli, Federal Bank- Anna Nagar, IndelMoney- Mogappair and few other banks for obtaining loan. On inspection of the subject property by the bank officials during the month of January 2020, the petitioner came to know from the bank officials that there is an illegal construction on the northern side of the subject property, which was originally reserved for car parking in the ground floor by the respondents 2 and 3.



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4. It is further averred in the writ petition that the legal heirs of late S.Martin Samuel, viz, the second and third respondents herein, without obtaining any planning permit, extended their flat illegally on the northern side, thereby encroaching the land which was reserved for car parking and they have put up illegal construction under the guise of extending the flat without any planning permit.

5. Aggrieved by the same, the petitioner made a representation dated 28.09.2020 to the first respondent, seeking to take appropriate action against the 2nd and 3rd respondents, who had put illegal construction in the subject property. However, the first respondent did not take any action against the same. Thereafter, the petitioner invoked a petition dated 28.09.2020 under Right to Information Act on 03.12.2020 to ascertain about the status of the representation filed by the petitioner. Hence, the petitioner has come up with the present writ petition seeking direction to the first respondent to take appropriate action, based on his representation dated 28.09.2020, against the respondents 2 and 3 for putting up illegal construction in the subject property.



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6. Mrs.T.K.S.Bharathy, learned counsel appearing on behalf of the third respondent would submit that after the death of her father late S.Martin Samuel, the subject property was enjoyed by his five legal heirs, including the mother of the third respondent, her three brothers and the third respondent herself. While the third respondent was allotted 1/5th share of the subject property, i.e. G-1 flat in ground floor, her mother was also allotted 1/5th share, i.e. one flat in the ground floor, which she in-turn settled to the third respondent itself vide Doc. No.1040 /2020 dated 05.03.2020 on the file of SRO, Kodambakkam. From then on, the third respondent has been paying the property tax, water tax and EB bill for the above two flats, ie. G-1 & G-2.

7. Moreover, according to the learned counsel appearing on behalf of the third respondent, the mother of the third respondent had not extended any portion in the subject building and the building plan was intimated by the builder much earlier in 2006. She further stated that the fourth respondent had sent a notice under sections 56 & 57 r/w 87 of Tamil Nadu Town and Country Planning Act 1971 vide (i) Zone – VII/TPENF/258A/2021 for G1 and (ii) notice No.Zone – VIII/TPENF/258B/2021 dated 29.06.2021 for G2. Pursuant to which,



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an application on 05.08.2021 was made by the third respondent before the first respondent for regularization of her flats; G1 & G2 under Section 113(c) of Tamil Nadu Town and Country Planning Act 1971, claiming the benefit of G.O.Ms.No.235, Housing and Urban Development Department, dated 30.10.2012, where the buildings that have constructed prior to 01.07.2007 can be regularised. Therefore, the third respondent has made an application for regularization of the subject property by paying necessary fees under the building regularisation scheme 2017 vide application no.113C/567/2021 and also enclosed the acknowledgment of the same before this Court.

8. On the other hand, Mrs.P.Veena Suresh, learned standing counsel appearing on behalf of first respondent, submitted that the petition dated 01.10.2020 submitted by the petitioner herein has been forwarded vide office letter No.EC/C-I/10207/020 dated 11.08.2021 to the Commissioner, Greater Chennai Corporation and the Zonal Executive Engineer, (Zone VIII) requesting to take necessary Enforcement Action against the unauthorized construction in the subject property, exercising the powers delegated by the CMDA and as per CCMC Act of 1919.



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9. Further the learned standing counsel submitted that the first respondent has delegated powers to all the local bodies within CMDA including the Greater Chennai Corporation (GCC) to take action on all types of unauthorized / deviated construction under the provisions of Tamil Nadu Town and Contry Planning Act, 1971. Therefore, further course of enforcement action is to be pursued by the Greater Chennai Corporation under the delegation of powers conferred by CMDA and also as per the CCMC Act, 1919.

10. Heard the learned counsel appearing on the side of the petitioner and the learned standing counsel appearing on behalf of the first respondent and the learned counsel appearing on behalf of the third respondent and perused the materials placed before this Court.

11. A perusal of the affidavit and typed set of papers would go to show that 2nd and 3rd respondents have put up illegal construction in the land reserved for car parking area by extending their flat that too without any planning permit. The petitioner, who is one of the owner cum occupier of the said flat, given a representation dated 28.09.2020 to the 1st respondent-CMDA. Thereafter, the



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Assistant Executive Engineer, Unit-22, Zonal Office-VIII [GCC] sent Pre-Notice dated 29.06.2021 u/s 56 & 57 of Town and Country Planning Act, 1971 to the 3rd respondent in respect of G1 and G2, ground floor flats. It is stated in the said notice that if the construction has been made in contravention to the conditions with which the plan was approved, the 3rd respondent was requested to stop the work immediately and confirm in writing the fact of having done so within 15 days of the receipt of pre-notice.

12. However, thereafter, there was no action taken by the Greater Chennai Corporation and no enforcement action was directed by the 1st respondent for taking action against the illegal construction put up by the 3rd respondent.

13. Per contra, it is the stand of the 3rd respondent that she made an application under Section 113(c) of Tamil Nadu Town and Country Planning Act, 1971 and claimed the benefit of G.O.Ms.No.235 dated 30.10.2012 stating that the building is constructed prior to 01.07.2007 and the same can be regularised.



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14. The Honourable Supreme Court in the decision *Pratibha Cooperative Housing Society Ltd. And another vs. State of Maharashtra and others* (1991 (3) SCC 341) came down heavily on the housing society which made construction in violation of Floor Space Index. The Apex Court said that such unlawful construction was made by the Housing Board in clear and flagrant violation and disregard of FSI and upheld the order of demolition of eight floors as ordered by the Bombay Municipal Corporation. While dismissing the special leave petition, Supreme Court observed as under: -

"Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

15. The Hon'ble Supreme Court in *CIVIL APPEAL NO. 2544 OF 2010 [Nahalchand Laloochand Pvt. Ltd. Versus Panchali Co-operative Housing Society Ltd.]* while dealing with the claim of Housing Society who traversed the



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claim and set up the plea that the promoter has no right to sell or dispose of spaces in the stilt portion and that the undertakings given by the flat purchasers are not binding being contrary to law and based on such undertakings, the promoter has not acquired any right to sell stilt parking spaces, held as under:-

“In our opinion, MOFA does restrict the rights of the promoter in the block or building constructed for flats or to be constructed for flats to which that Act applies. The promoter has no right to sell any portion of such building which is not ‘flat’ within the meaning of [Section 2\(a-1\)](#) and the entire land and building has to be conveyed to the organisation; the only right remains with the promoter is to sell unsold flats. It is, thus, clear that the promoter has no right to sell ‘stilt parking spaces’ as these are neither ‘flat’ nor appurtenant or attachment to a ‘flat’.

16. A Division Bench of this Court, finding building violations, directed the violated portions to be razed to the ground, in the case of *M/s.Aara Silk, rep. by its Partner, MAM. Hayath S/o.M.A.Mohamed Masthan, 8/42 & 8/42-A, B - Ranganatha Mudhali Street, C.Pallavaram, Chennai vs. The Principal Director, Southern Command, IDES Guest House and others, [W.P.No.29985*



of 2016] decided on 29.09.2016. For the sake of convenience, the relevant paragraphs of the said judgment are extracted hereunder:

“20. It is pertinent to note that recently, the First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4.We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe



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consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available."

17. In view of the decisions cited above, we are of the considered view that the unauthorised construction put up in the land reserved for car parking area in the subject property has to be demolished forthwith. It is seen that the 3rd respondent has been issued with Pre-Notice under Sections 56 and 57 of Town and Country Planning Act, 1971, dated 29.06.2021. In the event of 3rd respondent submitted any objections to the said notice dated 29.06.2021, the same may be considered by the concerned officials of Greater Chennai Corporation, in accordance with law. After consideration of the objections, the officials of Greater Chennai Corporation, has to issue necessary notices to the 3rd respondent as stipulated in the Act. The Enforcement Cell of the 1st and 4th respondent are directed to take necessary action as against the unauthorised



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construction of flats in the stilt car parking area, in accordance with law. The above exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order.

18. In the result, this writ petition is disposed of, with observations and directions as stated supra. No costs.

(J.N.B.,J.) (N.M.J.,)

28.08.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

sts/nvsri

To:

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan House, No.01, Gandhi Irwin Road,
Ansari Estate, Egmore, Chennai 600 008
2. The Commissioner,
Greater Chennai Corporation, Ripon Building, 1st Floor,
Raja Muthiah Road,
Kannappar Thidal, Periyampet, Chennai.



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J.NISHA BANU, J.,
and
N.MALA, J.,

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Pre-Delivery Order made in
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Dated:
.08.2023