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W.P.No.8990 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 25.08.2023

ORDERS DELIVERED ON : 30.10.2023

CORAM

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA**

W.P.No.8990 of 2023

R.Umadevi

... Petitioner

vs.

- 1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.
- 2.The Executive Engineer,
Zone – IX, Greater Chennai Corporation,
No.1, Lake Area,
4th Cross Street,
Nungambakkam, Chennai – 600 034.
- 3.The Assistant Executive Engineer,
Town Planning Section – Works,
Corporation of Chennai,
Amma Maaligai,
Ripon Building,
Chennai – 600 003.



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4.Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
Thalamuthu Natarasan Maaligai,
Egmore, Chennai – 600 008.

5.Mrs.Gandhimathi Sridhar

6.Mr.Sridhar ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to process planning permission application filed by the petitioner vide W.D.C.No.PPA/WDCN09/01322/2023 for the existing building in Second floor apartment in No.12/22, 7th Main Road, Raja Annamalaipuram, Chennai – 28 without insisting the consent of the respondents 5 and 6 as per the Sale Deed Document No.1010/05 dated 04.04.2005.

For Petitioner : Mrs.A.Aruna

For R1 to R3 : Mr.D.B.R.Prabu
Standing Counsel

For R4 : Mr.R.Sivakumar
Standing Counsel

For R5 : Mr.R.Murugan for M/s.Rugan & Arya

* * * * *

ORDER



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This Writ Petition is filed directing the respondents 1 to 3 to process planning permission application filed by the petitioner vide W.D.C.No.PPA/WDCN09/01322/2023 for the existing building in Second floor apartment in No.12/22, 7th Main Road, Raja Annamalaipuram, Chennai – 28 without insisting for the consent of the respondents 5 and 6 as per the Sale Deed Document No.1010/05 dated 04.04.2005.

2.The petitioner, respondents 5 and 6 are the owners of the property in plot No.RA 207, measuring a extent of 4463 sq.ft. in new Door No.22, 7th Main Road, Raja Annamalaipuram, Chennai – 28. Originally the said property was purchased by the petitioner's husband and brothers-in-law vide the sale deed dated 15.06.1994. The petitioner vide the settlement deed dated 28.07.2003 and sale deeds dated 11.05.2005 became entitled to 60% of the aforesaid property and the respondents 5 and 6 became entitled to 40% (1800.82 sq.ft.) of the said property under the sale deed dated 04.04.2005 by the petitioner's brothers-in-law in their favour. In terms of the sale deed dated 04.04.2005, the respondents 5 and 6 put up the first floor above the existing ground floor owned by the petitioner, after obtaining



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proper planning permission and with the consent of their vendors. As there were disputes between the petitioner and the respondents 5 and 6, the respondents 5 and 6 filed a suit in C.S.No.156 of 2020 before this Court for Specific Performance and other reliefs against the petitioner, her husband and her brothers-in-law. As the second floor apartment was constructed without obtaining any planning permission from the Greater Chennai Corporation, the petitioner submitted an application for regularization of the second floor construction vide the CMDA/reg.113C/2123/2020 dated 21.11.2020. While so, the petitioner was served with a lock and seal notice dated 04.07.2022, which the petitioner challenged by filing a revision petition under Section 80(A) and 80(A) (3) of the Town and Country Planning Act, 1971 to the Government. During the pendency of the 80 (A) revision, the respondents 1 and 2 issued a de-occupation notice on 06.09.2022, which was challenged by the petitioner in W.P.No.25971 of 2022. On 26.09.2022, this Court allowed the Writ Petition by setting aside the impugned order and further directing the Government to dispose of the petitioner's revision, within a period of eight weeks from the date of receipt of a copy of the order. Thereafter the Government vide the order dated



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05.12.2022 disposed the revision petition filed by the petitioner under

Section 80 (A) by granting three months time to the petitioner to get the revised approval for the existing building as per the Tamil Nadu Combined Building and Development Rules, 2019, after making necessary rectification within the said period of three months. In pursuance of the said order of the Government the petitioner applied for a revised planning permission for the construction made in the second floor of the subject property. While the application for planning permission was pending scrutiny, the Assistant Executive Engineer, Town and Country Planning Department sent a letter to the petitioner seeking clarification as to why the planning permission was signed by the petitioner alone, while the patta stood in the name of three owners. The petitioner sent a detailed reply on 04.03.2023, but no further action was taken by the respondents 1 and 2 and therefore the petitioner filed the above writ petitioner for the aforesaid relief.

3.The learned counsel appearing for the petitioner submitted that the respondents 1 and 2 failed to note the recitals in the sale deed and were unnecessarily pressing the petitioner to obtain the consent of the respondents



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5 and 6 for planning permission. The counsel relying on the recitals in the sale deed submitted that the respondents 1 and 2 failed to note that there were specific clauses in the sale deed which permitted the petitioner to construct the second floor and which obligated the respondents 5 and 6 to co-operate in all matters relating to the construction of the second floor including the signing of such forms, documents, no objection certificates etc., as required in that regard. The learned counsel further submitted that the suit in C.S.No.156 of 2020 relates to the title to the property and as such had no bearing on the right of the petitioner to obtain the planning approval.

4.The learned counsel for the respondents 5 and 6 on the other hand submitted that as the title of the petitioner itself was in dispute, the respondents were justified in not giving consent for planning permission for the unauthorised construction in the second floor. The learned counsel further submitted that as the construction was in violation of the Act and the Rules the petitioner was not entitled to either the planning permission or regularisation of the unauthorized construction in the second floor.



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5.The learned counsel appearing for the Greater Chennai Corporation submitted that in the absence of the consent of the respondents 5 and 6 the petitioner's application could not be entertained as the Building Rules mandated a No objection Certificate from co-owners in case of multiple owners.

6.We have heard the learned counsels, perused the written submissions and materials on record.

7.We make it clear at the inception that we are not inclined to delve in depth into the factual matrix of the case for two reasons, firstly, because we understand the limited scope of writ jurisdiction in matters such as these and secondly because a civil suit is pending regarding title and other reliefs before this Court. We will venture into the factual aspects only to assess the prima facie case and find out in whose favour the balance of convenience lies for grant of relief. It is seen that the subject matter of the suit in C.S.No.156 of 2020 relates to the violation of clause 6 of the sale deed dated 04.04.2005 of the respondents 5 and 6. The other consequential reliefs



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prayed in the suit are to declare the sale deed dated 11.05.2005 of the petitioner as null and void and for permanent injunction. In short, the title of the petitioner to the second floor apartment and to the remaining lands of the vendors of the respondents 5 and 6 is in dispute. In our view, the title dispute shall have no bearing on the relief claimed in the writ petition.

8.In clause 3 of the sale deed dated 04.04.2005 of the respondents 5 and 6 their vendors reserved the right in themselves and in persons claiming through them to put up construction in the second floor, even while permitting the respondents 5 and 6 to put up construction in the first floor over and above the existing ground floor building of the petitioner and the vendors of the respondents 5 and 6. Both the parties agreed to co-operate with each other in the matter of putting up construction by signing all documents, forms, No objections etc. It is undisputed that the respondents 5 and 6 put up the first floor apartment by obtaining planning permission on the basis of the consent of their vendors. If the dispute as to title is kept aside, then the respondents have a reciprocal duty to give



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consent for the construction of the second floor apartment as per the recitals in the sale deed. It is further to be noted that the construction of the second floor apartment was put up way back in 2005 and the same is not disputed by the respondents 5 and 6. The respondents 5 and 6 pleaded that they were under the impression that the construction was made by the petitioner's husband on behalf of their vendors' as their power agent/brother. Whatever may be the reason, the fact remains that the second floor apartment was put up in the year 2005 and is in existence since then. The rift between the petitioner and the respondents 5 and 6 seems to be a recent development as is evident from the Advocate notice issued by the respondents 5 and 6 on 25.05.2020 to the petitioner.

9.The petitioner filed the application for planning permission in Application No.PPA/WDCN09/01322/2023 dated 13.02.2023 under the Tamil Nadu Combined Building and Development Rules, 2019, in compliance to the order dated 05.12.2022 passed by the Additional Secretary (Technical), Housing and Urban Development Department, Secretariat, Chennai – 9. During the scrutiny of the application, the 3rd



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respondent sent a letter dated 02.03.2023 to the petitioner seeking clarification as to why the petitioner alone had applied when the patta and other documents stood in the name of three owners. The petitioner sent a detailed reply to the said letter and as the respondents did not take further action the petitioner filed the above writ petition.

10.Part II of the Tamil Nadu Combined Building and Development Rules, 2019 deals with the manner of obtaining permission. Section 6 relates to application for planning permission and building permit. The relevant portions of the provisions are as follows:

“6.Application for Planning Permission and Building Permit.—

(1)For the purpose of obtaining planning permission or building permit, the applicant who should be the owner of the land or leaseholder or power of attorney holder who has right over the land to develop, shall submit an application on-line in the prescribed Form to the competent authority.



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(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8)*An application in Form - B in Annexure - II accompanied by proof of ownership, detailed plans, specifications, site plan, key plan and topo plan showing existing developments to a radius of 100 metres drawn to a scale of 1:500 and such other details as may be required from time to time shall be submitted to the competent authority, in the case of development of land and buildings, change of land and building use and in the case of site approval.*

(9)*An undertaking in Form - C in Annexure -III by the registered professionals to the competent authority in the case of developments such as Non High Rise*



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Buildings and High Rise Buildings and other developments as may be decided by the competent authority.

(10)The competent authority may seek any additional particulars as deemed fit for processing the application.”

11.From a reading of the above provisions it is clear that the consent or No objection certificate from the co-owners is not mandatory, but it is optional at the discretion of the competent authority, who may seek any additional particulars as deemed fit for processing the application. It would be relevant to note here that Rule 11 of the Tamil Nadu Combined Building and Development Rules, 2019 dealing with the limitation of permission states that the permission granted by the competent authority shall not mean responsibility or clearance of the title or ownership of the building.

12.Sub Clause 10 of Rule 6 only says the competent authority may seek any additional particulars as deemed fit for processing the application.



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In our view, when the petitioner has given cogent reasons in the reply letter to the clarification letter dated 02.03.2023, the respondents 1 to 3 ought to have considered the same. Moreso, when Rule 11 of the Tamil Nadu Combined Development and Building Rules, 2019, clearly stipulates that the grant of permission does not mean clearance of the title or ownership on the site or building. Hence, in our view the respondents 1 to 3 cannot insist on the consent of the co-owners as a condition precedent for processing the application.

13. In the light of the above, we are of the view that the respondents 1 to 3 shall process the application of the writ petitioner by taking into consideration the reply of the petitioner to the clarification letter dated 02.03.2023 and pass appropriate orders within a period of six (6) weeks from the date of receipt of a copy of this order. It is made clear that the reference and observations as to clause 3 of the sale deed shall not affect the right of the parties in the civil suit and such reference and observation is made in the writ petition for the purpose of determining the entitlement of the petitioner for planning permission alone and not for any other purpose.



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WEB COPY 14. With the aforesaid directions, this Writ Petition stands disposed of.

However, there shall be no order as to costs.

J.N.B., J. N.M., J.

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Index : yes/no

Internet : yes/no

Speaking order/Non-speaking order
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To

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.
2. The Executive Engineer,
Zone – IX, Greater Chennai Corporation,
No.1, Lake Area,
4th Cross Street,
Nungambakkam, Chennai – 600 034.
3. The Assistant Executive Engineer,
Town Planning Section – Works,
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Amma Maaligai,
Ripon Building,

14/16



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Chennai – 600 003.

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4.Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
Thalamuthu Natarasan Maaligai,
Egmore, Chennai – 600 008.

J.NISHA BANU, J.
&
N.MALA, J.



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PRE-DELIVERY ORDER IN
W.P.No.8990 of 2023

30.10.2023