



WMP Nos.11903 of 2023 and WMP No.14630 of 2023

in

WP No.12064 of 2023

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in
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N.ANAND VENKATESH., J.

The writ petitioner has challenged the revised planning permission granted by the 1st respondent through proceedings dated 12.08.2022.

2. The case of the writ petitioner in brief is that respondents 4 to 6 were owning a larger extent of land in Velachery Road and they decided to develop the land into an integrated residential, non-residential and commercial development in the year 2012. The commercial portions of the property consists of “Phoenix market city” and “Phoenix Palladium”. The residential portions includes “The Crest” and “Crest Towers” and there is yet another residential tower at Block D.

3. The main grievance that has been projected in the



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affidavit filed in support of the writ petition is that respondents 4 to 6 are permitting to conduct concerts / events in the place demarcated as the “Courtyard” and thereby, semi-permanent structures are erected and nearly 1500 - 2000 people attend the concerts/events. This has eventually created a situation where the entire driveway gets obstructed and in case of any fire accident, there will be no space for the fire department to operate the aerial ladder platform and that it can lead to a disastrous situation. That apart, the petitioner has also complained that water tankers are also parked in the set back area obstructing the movement in the driveway. This act of respondents 4 to 6 is termed as illegal and according to the petitioner, the authorities turned a blind eye and are refusing to intervene and set right the illegality.

4. The petitioner has made a further complaint to the effect that respondents 4 to 6 had ear-marked separate entry and exit gates for the vehicles both for the residents as well as

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the general public visiting the commercial portion and whereas the residents are not able to use the entry and exit points for ingress and egress to the residential units. In addition to this grievance, the petitioner has further stated that respondents 4 to 6 had closed the gate that was originally marked as entry gate and exit gate and it was re-routed through the set backs provided to the residential blocks and access paths belonging to the residents of “the Crest and Crest Towers”. Thereby, there is a violation of the right of the residents for unhindered ingress and egress to their property.

5. The other grievance that has been expressed by the petitioner is that as per the earlier approved plan that was granted in the year 2017, a residential portion was to be constructed over the terrace portion of the commercial space called “Phoenix Palladium”. However, respondents 4 to 6 started constructing commercial units over the terrace plate of the existing “Phoenix Palladium”. According to the petitioner,



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the construction is put up by respondents 4 to 6 pursuant to the approval granted by the 1st respondent through proceedings dated 12.08.2022 and such an approval has been given without any application of mind and without taking into consideration the interest of the residents who are already facing a lot of hardship in terms of ingress and egress to their respective property.

6. When the matter came up for admission on 20.04.2023, this Court issued notice to the respondents and also granted an order of status quo for a limited period.

7. The respondents 4 to 6 have filed counter affidavit along with a petition to vacate the interim order granted by this Court.

8. These respondents have taken a stand to the effect that they are the owners of the property measuring a larger



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extent of 66915.90 Sq.mts (7,20,015 Sq.ft). They submitted an application for development of the property consisting of an integrated residential cum non-residential / commercial development. For this purpose, these respondents had also gifted an extent of 70,211 Sq.ft towards Open Space Reservation (OSR) and an extent of 20,156 Sq.ft. towards road widening. Ultimately, the planning permission was granted through proceedings dated 20.02.2017. The respondents also had put up construction in line with the planning permit issued to them. Among other things, the 6th respondent promoted the development in the nature of a Luxury Mall called as “Palladium”.

9. The amendment was brought into Tamil Nadu Combined Development and Building Rules, 2019, which came into effect from 04.02.2019. Taking into consideration the applicable rules and norms, the respondents filed an application for revision of the plan. Accordingly, the respondents sought for



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permission for constructing commercial towers over the terrace plate of Palladium. The respondents have taken a very specific stand that the petitioners are aware of the fact that the residential towers were part of an integrated mixed-use development and the development agreement that was entered into made it clear that in a commercial space like a Mall, it will attract more footfalls and the petitioners knowing fully well about the nature of usage of the place, had chosen to purchase the flats. The petitioners were also aware that there is scope for future development over the property identified as “Palladium” and the respondents retained their right to make a fresh application for future construction over the property which will be in the nature of residential or any other appropriate use sanctioned.

10. The respondents have also taken a stand that the allegation made by the petitioner as if the respondents had occupied the entire driveway and thereby, caused hindrance to



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the ingress and egress of the vehicles, is completely misleading.

Insofar as the ingress and egress into the property, the respondents have explained that Radha Mohan Street was used as an exit point from the year 2013 onwards and the petitioner came into the scene only in the year 2016 and they were fully aware of the fact that the exit of vehicles was only through Radha Mohan Street. The petitioners were also using the said exit and all of a sudden have chosen to raise it as an issue on the ground that it transgresses into the OSR area.

11. The respondents have taken a stand that they are incurring losses running to several crores every month by virtue of the interim orders passed by this Court and that the construction activity has come to a grinding halt and hence, have sought for vacating the order of status quo passed by this Court on 20.04.2023.

12. The 2nd and 3rd respondents have also filed counter



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affidavits.

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13. Heard Mr.Sathish Parasaran, learned Senior Counsel for Mr.Ganesh and Ganesh, learned counsel for Respondents 4 to 6 and Mr.S.R.Rajagopal, learned Senior counsel for M/s.L.Muralikrishnan, for the writ petitioner and Mr.P.Kumaresan, learned Additional Advocate General, Assisted by Mrs.R.Revathy, learned counsel for 1st respondent and Mr.S.Arumugam, learned Government Advocate for 2nd and 3rd respondents.

14. The 1st respondent viz., CMDA has not filed any counter affidavit in this case and the learned Additional Advocate General appearing on behalf of 1st respondent sought for time to file the counter in the main writ petition.

15. This Court has carefully considered the submissions made on either side and the materials available on record.



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16. This Court is inclined to deal only with the miscellaneous petitions and hence, this Court will not go deep into the merits of the case since it will have a bearing while deciding the main writ petition. The only issue to be considered in this order is as to whether the interim order granted on 20.04.2023 has to be continued or it is liable to be vacated.

17. There is no dispute with regard to the fact that respondents 4 to 6 were the original owners of a larger extent of property. They wanted to develop the property consisting of an integrated residential cum non-residential, commercial developments. For this purpose, they had also gifted lands towards OSR. Initially, the planning permission was granted by the 1st respondent in the year 2011. As early as in the year 2013, a communication was made by the Assistant Commissioner of Police, Traffic, to the owner of the property suggesting for certain traffic arrangements considering the congestion that can



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be caused by the vehicles entering and exiting the Mall. Even at that point of time, the entry of vehicles through Radha Mohan Street was suggested. The petitioners (owners of various flats who formed into an association) entered into a development agreement in the year 2016 with the respondents. The agreement had made it clear in clause 9 (E) that in a commercial space like a Mall, it will have more footfalls during week ends and holidays and it will cause nuisance in terms of parking and noise. The allottee was sufficiently warned that he / she should not raise any issue in this regard at a later date. That apart, the agreement also contemplated future developments and more particularly, over the C schedule property which is now identified as the “Palladium”. The allottee was informed that construction will be put up over the C Schedule property and that the allottee should not raise any objection on the ground of nuisance, inconvenience etc., and that it is left open to the developer to obtain sanction for residential or any other appropriate use and it should not be objected by the allottee on



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the grounds that were also stipulated in the agreement. One such ground was the change of use of the building. Therefore, the allottees who are the members of the petitioner association were aware about the nature of property they are going to occupy and the nuisance factor that could be caused due to more footfalls since the commercial property was a Mall.

18. The respondents preferred a revision to the original plan that was given in the year 2011 and the revised planning permit was granted on 20.02.2017. The 6th respondent promoted the development in the nature of a luxury mall referred to as “Palladium”. Initially the sanction was obtained for residential use over palladium and by virtue of the revised planning permit issued by the 1st respondent, they have converted it into commercial use. This was done by taking advantage of the amendment to the Tamil Nadu Combined Development and Building Rules, 2019, which came into effect from 04.02.2019. It is brought to the notice of this Court that pursuant to the



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permission granted by the 1st respondent, the construction activities have been going on for the last eight months.

19. On a careful reading of the affidavit filed in support of the writ petition, it is seen that the petitioner has approached this Court with a variety of grievances. The main projection in the affidavit pertains to the respondents putting up semi-permanent structure in the driveway and thereby, causing hindrance to the smooth ingress and egress to the property belonging to the members of the petitioner association. It is brought to the notice of this Court that pursuant to the interim order passed by this Court on 20.04.2023, an inspection was conducted and the official respondents have ensured that no concerts / events are conducted in the driveway or in the set back area. The learned Senior counsel appearing on behalf of respondents 4 to 6 further assured this Court that the respondents will not cause any hindrance to the vehicles using the drive way and they will not violate any of the conditions



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imposed on them while granting the sanction. That apart, the learned Senior Counsel submitted that the official respondents can be directed to make regular inspection to ensure that this complaint made by the petitioner is not repeated in future. As of now, the official respondents have ensured that the driveway is kept clear and no hindrance is caused for the movement of the vehicle. That apart, the fire and rescue services have also ensured that sufficient space is provided for the movement and operation of the Fire Department's Ariel ladder platform.

20. The allottees who are the members of the association are bound by the terms of the development agreement. If there is any violation of the terms of the agreement, they have to ventilate their grievance only before the appropriate forum and the same cannot be decided in a writ petition, since it involves disputed questions of fact.

21. The learned Senior counsel appearing on behalf of the



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petitioner submitted that the 1st respondent had granted planning permission without any application of mind and without considering the fact that the OSR land that was already gifted to the Corporation is being utilized for movement of vehicles and as a result, the exit of vehicles takes place only through Radha Mohan Street. This according to the learned Senior counsel runs contrary to the original approval that was granted. The learned Senior counsel also pointed out to the fact that the 1st respondent did not take into consideration the additional space that is required for parking vehicles for the proposed commercial units that are to be constructed by the respondents.

22. The available records read along with the pleadings shows that the exit of vehicles through Radha Mohan street was agreed even in the year 2013 which is much before the allottees came into the picture in the year 2016. The allottees are also using the same exit and in fact, there are three ingress points and two egress points which is presently being utilized by the



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residents. While so, it will not lie in the mouth of the petitioner to now complain about the exit point provided through the Radha Mohan Street. Certainly, this will not be a ground for interfering with the construction activity which has already commenced long back.

23. The present construction activity is carried out as per the sanction given by the 1st respondent in a completely different building / block/ tower viz., over the terrace plate of “palladium” and it has no relevancy or connectivity to the residential buildings of the allottees who are the members of the petitioner association. There is also no bar in granting sanction for putting up commercial blocks. The allottees even at the time of entering into the development agreement were aware of the fact that the developer retained the right to put up residential or commercial units over C schedule property which is presently identified as “Palladium”.



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24. The pleadings in the affidavit filed in support of the writ petition as well as the submission of the learned Senior Counsel appearing on behalf of the petitioner mainly bordered around apprehensions. Most of the complaint that was made was on the apprehension that the residents who are already in occupation will be put to hardship and that, they will not have sufficient parking space and that the sanction itself has been granted by the 1st respondent without any application of mind.

25. The available materials before the Court demonstrates the fact that the officials have considered all eventualities in line with the existing rules and the approval has been granted. This Court must keep in mind that approval is granted by a committee consisting of experts and this Court normally will not sit in judgment over such decision taken by experts unless an apparent illegality or gross arbitrariness is shown to the Court. The decision taken by the authorities cannot be tested on the basis of apprehensions. The tenor of the



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affidavit filed in support of the writ petition clearly shows that the writ petition was moved mainly due to the hindrance caused to the residents due to concerts/ events that were conducted by putting up a semi-permanent structure. Most of the averments centers around the traffic congestion, hindrance towards smooth ingress and egress to the property etc., While mentioning about the sanction that was granted in favour of the respondents, except making a general allegation that it suffers from non application of mind and based on certain apprehensions, no effective ground has been raised to come to a conclusion that the sanction accorded by the 1st respondent suffers from any patent illegality or manifest arbitrariness.

26. In view of the same, this Court holds that the petitioner has not made out a *prima facie* case to put on hold the sanction that was granted by the 1st respondent in favour of the respondents 4 to 6.



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27. It is brought to the notice of this Court that the Construction had commenced much before the present writ petition was filed before this Court. It has been pleaded in the Counter affidavit that the construction commenced during September 2022 and it was carried out for nearly eight months. Unfortunately, this fact has not been stated in the affidavit filed in support of the writ petition.

28. While considering the *prima facie* case, this Court must be satisfied that there is a serious question to be tried in the writ petition and materials are available to the Court at the time of hearing to come to a conclusion that a *prima facie* case has been made out. The same is absent in the present case.

29. While considering the balance of convenience, this Court must see if damages could be an adequate remedy and whether the party would be in a financial position to pay such damages for the losses incurred by the party against whom the



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interim order is passed. In short, the extent to which the disadvantages which each party may suffer and would be incapable of being compensated in damages in the event of one of the parties ultimately succeeding, is a significant factor in assessing whether the balance of convenience lies.

30. Applying this test to the facts of the present case, it can be seen that the construction activities had commenced during September 2022 and it is going on for more than eight months. Obviously, the respondents were incurring huge expenses towards construction. If ultimately, the petitioner fails in this writ petition, the respondents cannot be adequately compensated and hence, this Court holds that the balance of convenience leans in favour of the respondents.

31. Insofar as the test of irreparable loss and hardship is concerned, the Court must take the comparative mischief or inconvenience which is likely to arise. If the Court finds that such



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comparative mischief or inconvenience which is likely to arise from withholding a injunction will be greater than that which is likely to arise from granting it, the irreparable harm will be suffered more by the person against whom such an order of injunction is granted.

32. In the instant case, the respondents are carrying on with the construction for more than eight months with a valid sanction / approval granted by the 1st respondent. This Court has already held that there are no strong materials to prima facie come to a conclusion that the approval suffers from illegality or arbitrariness. In view of the same, on considering the comparative mischief or inconvenience, the respondents will suffer more irreparable loss and hardship than the petitioner if an order of injunction is granted in favour of the petitioner.



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33. In the light of the above discussion, this Court finds that all the traditional three tests applied to the facts of the present case goes in favour of the respondents. In view of the same, no injunction can be granted restraining the respondents from continuing with the construction in line with the approval granted by the 1st respondent. Accordingly, the order of status quo granted by this Court on 20.04.2023 stands vacated.

34. It is made clear that insofar as the usage of the driveway and the ingress and egress to the property belonging to the members of the petitioner association is concerned, no hindrance shall be caused by the respondents. The respondents will comply with all the conditions that have been imposed while granting sanction and also by the fire and rescue service and the police authorities. In the event of any violation of the condition, it is left open to the authorities to take action in accordance with law.



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35. In the result, WMP No.11903 of 2023 stands dismissed
and WMP No.14630 of 2023 stands allowed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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