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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

AND

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.P.No.11408 of 2019

Gemini Parsn Apartments Owner's Welfare Association
Rep. by its Secretary
Suresh Mehboobani
No.599, Anna Salai
Chennai 600 006 .. Petitioner

Vs.

1.The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore
Chennai 600 008

2.The Commissioner
Corporation of Chennai
Chennai 600 003

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3.The Executive Engineer
Greater Chennai Corporation
Zonal Office-IX
No.1, 4th Cross Street
Nungambakkam
Chennai 600 034
(Near Tennis Stadium Lake Area)

4.M.Sivalingam

5.The Additional Secretary
Housing and Urban Development Department
Secretariat, Chennai 600 009
(R5 *suo motu* impleaded) .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 3 to take action against the illegal construction put up by the 4th respondent in E-3 ground and first floor, front and rear portion of Gemini Parsn Apartments and demolish the same in view of the rejection of his appeal for regularisation *vide* letter No.Z.O.IX/TP/203/2017 dated 02.05.2017.

For Petitioner	:	Mr.R.Vishnu
For 1st Respondent	:	Mr.C.N.Vinobha Standing Counsel
For R2 and R3	:	Mr.G.T.Subramanian Standing Counsel
For R4	:	Mr.Richardson Wilson
For R5 (*Suo Motu* impleaded)	:	Mr.A.Selvendran Special Government Pleader

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O R D E R

(Order of the Court was made by V.M.VELUMANI, J.)

The present writ petition is filed for a direction to the respondents 1 to 3 to demolish the illegal construction put up by the 4th respondent in E-3 ground and first floor, front and rear portion of Gemini Parsn Apartments.

2. Heard the learned counsels appearing for the parties and perused the materials on record.

3. This Court, *suo motu* impleads the Additional Secretary, Housing and Urban Development Department, Secretariat, Chennai 600 009 as 5th respondent.

4. Learned counsel appearing for the petitioner submitted that the petitioner is the Secretary of the petitioner association. In the said apartment complex, there are 6 blocks *viz*., A to D consisting of ground + 9 floors and E & F consisting of ground + 3 floors. The 4th respondent, who is

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the owner of a flat in E-Block, ground floor No.3, measuring 1370 sq.ft., had encroached the common area including car parking and constructed 960 sq.ft. without any approval by extending his flat unauthorisedly. The said unauthorised construction blocks the common usage of other flat owners and residents and drainage, water connection and car parking etc. One of the flat owners namely Anuradha Sridharan has sent a notice dated 10.01.2019 through her advocate to the petitioner Association to take action against the illegal construction put up by the 4th respondent in respect of E-3 ground + first floor, front and rear portion. The petitioner Association sent a letter dated 02.02.2019 to the 4th respondent. The reply sent by the 4th respondent on 16.02.2019 was not satisfactory. In such circumstances, the petitioner has come out with the present writ petition for a direction to the respondents 1 to 3 to take action against the illegal construction put up by the 4th respondent.

5. Learned Standing Counsel appearing for the 1st respondent submitted that in the counter affidavit filed by the 1st respondent, it is submitted by the 1st respondent that the complaint dated 18.03.2019

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received from the petitioner association was forwarded to the 2nd respondent to take action against the unauthorised construction. The Regional Deputy Commissioner, on 28.06.2019, informed the 1st respondent to take action against the 4th respondent, as the building plan was approved by the 1st respondent. The 1st respondent inspected the property and issued notice dated 07.08.2019 to the 4th respondent calling for the approved plan. The 4th respondent informed by his letter dated 19.08.2019 that at the time of purchase, the front and rear portion has already been constructed in the year 1986 itself and requested to drop further action against him. In view of the above, learned Standing Counsel appearing for the 1st respondent sought to dismiss the writ petition.

6. Learned Standing Counsel appearing for the respondents 2 and 3 submitted that the 3rd respondent has filed a counter affidavit averring that the 1st respondent is the competent authority to take action against the building in question and prays for dismissal of this petition.

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7. Learned counsel appearing for the 4th respondent also filed a counter affidavit and contended that at the time of purchase of the flat by the 4th respondent in the year 1986, the construction mentioned by the petitioner was in existence and the 4th respondent had only renovated his flat. The adjacent flats are also constructed along the same boundary on both the front and back portion. He further contended that due to personal enmity on the 4th respondent, the petitioner has filed this writ petition only against the 4th respondent and therefore, this petition is not maintainable.

8. From the above materials on record, it is seen that it is the case of the petitioner that the 4th respondent has put up unauthorised construction in his front, back and first floor of the flat , which affects the usage of common area of other flat owners. According to the 4th respondent, when the flat was purchased by him, the front, back and rear portion was already constructed in the year 1986 itself. It is his further case that in all the flats *i.e.*, E1 to E5, the construction is along the same boundary of his flat. The 1st respondent, after receiving the complaint from the petitioner, also inspected the property in question and issued notice to the 4th respondent to produce the approved plan. Apart from that, the 1st respondent has not taken any action.

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9. Learned counsel appearing for the 4th respondent submitted that against the notice issued by the 1st respondent, the 4th respondent has filed a revision on 09.03.2020 before the Government under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, and the same is pending.

10. In view of the submission of the learned counsel for the petitioner and the learned counsel appearing for the 4th respondent that all the flat owners in E1 to E5 have constructed extending the common area, the 1st respondent is directed to inspect the flat in question within two weeks from the date of receipt of a copy of this order and if there is any unauthorised construction, the 1st respondent is directed to take appropriate action, in accordance with law, within a period of four weeks thereafter. Since the revision filed by the 4th respondent is pending from 09.03.2020, the Government is directed to dispose of the same as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

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11. It is open to the petitioner to file a petition to implead him in the revision filed by the 4th respondent before the fifth respondent, the Additional Secretary, Housing and Urban Development Department, Secretariat, Chennai 600 009. If any such petition is filed, the 5th respondent is directed to dispose of the revision, after hearing the petitioner, 4th respondent, CMDA and other Corporation Officials.

With the above directions, the writ petition is disposed of. No costs.

(V.M.V.,J.) (V.L.N.,J.)

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Neutral citation : Yes/No
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