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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.16741 of 2019

K.Senthil Kumar . .. Petitioner

Vs.

1.State of Tamil Nadu
Represented by its Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai- 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai- 600 008.

3.The Commissioner,
Greater Chennai Corporation,
Chennai-600 003.

4.Sri Venkateswara Homes,
Represented by Narendra G Jain
(Managing Director)
...Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus, directing the second and third respondents to implement the order of the first respondent dated 24.07.2017 followed by a demolition notice dated 08.11.2017 issued by the second respondent and consequently demolish the unauthorized portion of construction at No.18, VRISA Apartment, Lakshmi Hyagrivar Nagar, 4th Cross Street, Adambakkam, Chennai-600 088 within a fixed period of time and pass orders.

For Petitioner : Mr.Mohammed Fayaz Ali
For Respondents : Mr.A.Selvendran
Special Government Pleader
for first respondent
Mrs.P.Veena Suresh
Standing Counsel for CMDA
for second respondent
Mrs.P.T.Ramadevi
Standing Counsel for Corporation
for fourth respondent

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petition has been filed for a mandamus, directing the second and third respondents to implement the order of the first respondent dated 24.07.2017 followed by a demolition notice dated 08.11.2017 issued by the second respondent and consequently demolish the unauthorized portion of construction at No.18, VRISA Apartment, Lakshmi Hyagrivar Nagar, 4th Cross Street, Adambakkam, Chennai-600 088 within a fixed period of time and pass orders.

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2.1 The case of the petitioner is that he has purchased a flat bearing No.713-S1, VRISA Apartment, No.18, Lakshmi Hyagrivar Nagar, 4th Cross Street, Adambakkam, Chennai-600 088 from the fourth respondent, under a sale deed, registered as Document No.5933/2010 dated 09.12.2020 and construction agreement dated 25.11.2010.

2.2. The petitioner subsequently came to know that in the aforesaid residential complex, the fourth respondent herein had put up unauthorised construction in violation of the sanctioned plan as follows:

a) Construction of swimming pool with toilet in the front set back

b) Construction of Community hall, Gym, toilets, store rooms and club house at stilt floor.

c) Open terrace area in fourth floor (pt) converted as rooms.

d) Open balconies at first floor converted as closed balconies.

2.3. The petitoner made a representation to the second and third respondents on 23.11.2015 requesting to take necessary action

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against the unauthorised construction put up by the fourth respondent herein. Thereafter, the petitioner had filed W.P.No.11504 of 2016, before this court, seeking a direction to the second and third respondents to consider the aforementioned representation dated 23.11.2015 and to take necessary action. This Court, by order dated 29.03.2016, directed the authorities concerned to consider the representation dated 23.11.2015 and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of that order.

2.4. Pursuant to the said direction dated 23.11.2015, the second respondent on 27.01.2017 has issued a locking & Sealing and Demolition notice under Sections 56 & 57 read with Section 85 of the Town and Country Planning Act, 1971 as amended by Act 61 of 2008 to the the fourth respondent against the construction completed unauthorizely without planning permission required under Section 49 of the said Act. Challenging the said notice, the fourth respondent has preferred an appeal before the first respondent Government under Section 80 A and 80-A(3) of the Tamil Nadu Town and Country Planning Act, 1971. The first respondent, by its order dated

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24.07.2017, rejected the appeal filed before the Government.

2.5. Thereafter, the petitioner had made another representation dated 07.08.2017 to the second and third respondents to take necessary action against the fourth respondent for the unauthorized construction and deviation in the aforesaid property in question. As there was no response for the said representation, the petitioner has also filed W.P.No.26405 of 2017, before this Court, seeking a mandamus to consider the represenation and to direct the second and third respondents to intitate appropriate action against the unauthorized construction and deviation. This Court, by order, dated 10.10.2017 directed the respondents 2 and 3 to dispose the representation dated 07.08.2017 within a period of six weeks from the date of receipt of a copy of that order. In view of the said orders passed by this Court, the second respondent has served a notice dated 08.11.2017 under Section 56(2),(iii) of Tamil Nadu Town and Country Planning Act, 1971 to the fourth respondent to de-occupy the unauthorized constructed areas namely community hall, gym, store rooms, club house (at Stilt floor), open terrace converted as rooms (at 1st & 4th floor) and Swimming pool, Toilet/Dressing room (at FSB Northern side), within a period of seven days from the date of receipt

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of that notice, failing which, further enforcement action will be taken under the Sections 56 and 57 of the Act, without any further notice.

2.6. Subsequently, the second respondent by letter dated 24.01.2018 has made a request to the Commissioner of Police, Chennai to instruct S-8, Adambakkam Police Station, Chennai to provide police protection from 30.01.2018 for three days, as the second respondent has fixed demolition of unauthorized construction area on 30.01.2018. On the said date, the officials of the second respondent had demolished only the swimming pool alone and sealed the remaining unauthorized portion of the premises without demolishing the same. According to the petitioner the following unauthorized portion still continues to exist in violation of the sanctioned plan which has also been confirmed by the CMDA, the second respodnent herein under a RTI reply dated 10.04.2019:

a)Community hall
b) Indoor Games hall
c)Gym Room
d)Toilet
e)Store Room 2 nos.
f) Dressing Rooms (near swimming pools)

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g)Open terrace converted as rooms (at 1st & 4th floor) (not mentioned in the RTI Reply).

2.7. Therefore, the petitioner has filed the present writ petition for directing the second and third respondents to implement the order of the first respondent dated 24.07.2017 followed by a demolition notice dated 08.11.2017 issued by the second respondent and consequently demolish the unauthorized portion of construction of the building in question.

3. The second and thrid respondents have filed counter-affidavits and further a status report has also been filed before this Court.

4. On a careful consideration of the submission made on behalf of the petitioner as well as the status report filed by the CMDA, it is found that de-occupation notice dated 08.11.2017 was issued by the second respondent/CMDA against the unauthorized constructed portions. Pursuant to the said de-occupation notice, the second respondent/CMDA took enforcement action to demolish the unauthorizedly constructed portions including Swimming pool in the

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building under reference from 30.01.2018 onwards for 3 days. Accordingly, the swimming pool was demolished with the assistance of staff of Greater Chennai Corporation, Zone-8 and with police proctection by S-8 Police Station. Further the unauthorizedly constructed portions at stilt floor namely Community hall, gym, club house, store rooms(2 Nos) and dressing room (near swimming pool) were locked and sealed by the second respondent/CMDA on 31.01.2018 but not demolished since the other flat owners objected for demolition for the reason that such demolition would affect the stability of the structures in the property in question. Therefore, the second respondent/CMDA has locked and sealed those unauthorized portions of the building in question.

5. It is further clarified in the status report that as per Section 56 & 57 read with Section 85 of the Town and Country Planning Act, 1971, as amended by Act 61 of 2008, the appropriate planning Authority if prima facie satisfied may take action to discontinue the usage of such land or building by locking & sealing the premises in such manner as may be prescribed, irrespective of pendency of any application under Section 49 or Appeal under Section 79 or any

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litigation before a Court and that was the reason why the second respondent/CMDA had locked and sealed the portions of unauthorized constructions in the building in question.

6. Further it is clearly submitted in the status report that with reference to petitioner's contention of open terrace which was converted as rooms (at 1st & 4th Floor), De-occupation notice dated 08.11.2017 was issued by the second respondent/CMDA. Though these portions were not locked and sealed by the second-respondent/CMDA, subsequently, based on the petitions, De-occupation notice dated 04.07.2019 was issued to carry out the locking & sealing operation for the open terrace converted as rooms (at 1st & 4th floor). Accordingly, CMDA locked and sealed the 6 no's of open terrace converted as rooms i.e. J1 & Q1 at first floor and C4, L4 & S4 at 4th floor on 12.07.2019 out of 8 no's of open terrace converted as room at 1st and 4th floor. It is further stated in the status report that locking and sealing operation could not be carried out for the other two flats i.e. A1 at first floor and R4 at fourth floor, as the doors were locked. The report further states that three flat owners of M4, S4 and C4, have restored the building as per the approved plan. According to the respondent, out of the 8 dwelling

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units, three flat owners have restored the building as per the approved plan i.e. C4,S4,M4.

7. To sum up, out of 8 dwelling units, 3 units were restored as per the approved plan; two dwelling units were not sealed since at the time of enforcement action, doors were closed; and the remaining three dwelling units are retained as locked and sealed units. Thus, it is clear that out of the 8 units, 5 dwelling units are with unauthorized construction and accordingly there is no bar for taking action against those five flats for demolition.

8. At this juncture, it is expedient to refer the decision of the Hon'ble Supreme Court, ***Supertech Limited Vs Emerald Court Owner Resident Welfare Association*** & Ors, reported in ***2021 10 SCC page 1***, wherein the Hon'ble Supreme Court has held as follows:

> *"147 From commencement to completion, the process of construction by developers is regulatedwithin the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land,*

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sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire,garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. PART F Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law"

9. Therefore, in the light of the above decision of the Hon'ble Supreme Court and in view of the deviations/violations in the construction, we have safely come to the conclusion that the respondent is entitled for taking further action for demolition of the unauthorized construction which is contrary to the sanctioned plan. Hence we direct the second respondent to proceed with the further action in accordance with the Rules and take necessary action for demolition of the aforesaid unauthorized construction in the property

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in question. Though notice has been served on the fourth respondent, none appeared. The second-respondent shall issue notice to the present occupants of the unauthorized flats and also to the association, if necessary for carrying out the demolition of the unauthorized construction of the building as per the status report filed before this Court and the said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

10. With the above directions, the writ petition stands disposed of. There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
12.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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