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W.P.No.15294 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19.10.2023
ORDER PRONOUNCED ON : 15.11.2023

CORAM

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

**W.P.No.15294 of 2021
and
WMP.No.16178 of 2021**

Karim Y. Currimbhoy

...Petitioner

Vs.

1. The Member Secretary,
CMDA, No.1, Gandhi Irwin Road,
Chennai -600 008.

2. The Commissioner,
Corporation of Chennai, Ribbon Buildings,
Chennai -600 003.

3. The Regional Deputy Commissioner,
Greater Chennai Corporation, Zone Central,
VI - X, 12 B, Pulla Avenue,
Thiru Vi Ka Park,
Shenoy Nagar, Chennai 600 030.

4. The Executive Engineer,
Zone No.9 Ward No.110,
Corporation of Chennai, Chennai.



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5. The Assistant Executive Engineer,
Zone No.9, Ward No.110,
Corporation of Chennai,
Chennai.

6. The Junior Engineer,
Zone No.9, Ward No.110,
Corporation of Chennai,
Chennai.

7. Jothivel

8. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort st. George,
Chennai.

(R8 Suo Motu impleaded vide order dt. 26.07.2021 made in
wp.15294/2021 and wmp.16178/2021)

9. INDUS TOWERS LIMITED,
Rep. by its Authorised Signatory Mr.S.Prasanna,
No.5, ESPEE IT Park , 5th Floor,
Jawaharlal Nehru Road,
Ekkatuthangal,
Chennai - 600097.

(R9 Impleaded vide order dt 27.09.2023 made
in wmp.28107/2023 in wp.15294/2021)

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India,
to issue a Writ of Mandamus, directing the respondents 1 to 6 to take
action under Section 49, 56 and 57 Country planning Act and also to
demolish the building situated at Door No.89 sterling Road,
Nungambakkam Chennai 600 034 constructed by the 7th respondent.



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For Petitioner : Mr.R.Rajarajan
For R-1 : Mr.R.Thamaraiselvan
For RR2 to 6 : Mr.E.C.Ramesh
Standing Counsel
For R7 : Mr.B.Karthikeyan
For R8 : Mrs.S.Mythreye chandru
Special Government Pleader
For R9 : Mr.P.J.Rishikesh

Mr.T.Saravanan
Advocate Commissioner

ORDER

(Order of the Court was made by N.MALA,J.)

The writ petition is filed for a writ of mandamus directing the respondent 1 to 6 to take action under Section 49, 56 and 57 of the Town and Country planning Act, so as to demolish the building situated at Door No.89 sterling Road, Nungambakkam Chennai, constructed by the 7th respondent.

2. The petitioner is the owner of a flat 3D on the third floor in Easdale Enclave Apartments, situated at Door No.84, Sterling road, Nungambakkam, Chennai.

3. Earlier the petitioner had filed a writ petition in W.P.No.37822



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of 2016 for demolition of the unauthorised and illegal construction of

Ground + 4th floor put up by the 7th respondent without any planning permission, on the ground that it obstructed free flow of air and light to the petitioner's flat. This Court vide order dated 01.11.2016 directed the CMDA to cause inspection of the 7th respondent's property and if unauthorised construction was found, to take decision within a maximum period of two months thereafter. The petitioner also filed contempt petition in Cont.P.No. 798 of 2017 for wilful disobedience of the aforesaid order of the Court by the respondents. The contempt petition was closed on 29.11.2018, recording the affidavit filed by the CMDA, wherein it was stated that the entire structure put up in the front setback space (Western side) was demolished from Ground floor to 4th floor including RCC water tank and the entire stair case and lift portion was removed to cut access to upper floors and side walls constructed along the eastern side boundary at 1st and 2nd floor level. In the contempt petition, it was made clear that the 7th respondent would not put up any unauthorised construction and the competent authority would have to monitor the same.

4. The petitioner states that the 7th respondent inspite of the orders



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passed in the earlier proceedings, taking advantage of the fact that unauthorised floors were not demolished, erected the illegal tower with powerful generator with huge battery backup on the 4th floor terrace. According to the petitioner, as the structural stability of the building was in question, the erection of the tower was a permanent threat to the neighbouring residents. The petitioner therefore filed the above writ petition for the aforesaid relief.

5. On the directions of this Court, the CMDA filed the status report on 25.08.2023. Thereafter on 14.09.2023, this Court directed the CMDA to inspect the subject property and file a fresh Report on 27.09.2023. When the matter was taken up, it was submitted by the learned counsel for the CMDA that the unauthorised construction would be removed and a status report would be filed before the Court on 27.09.2023. On 27.09.2023, when the matter was taken up, Indus Towers Limited/9th respondent filed WMP.No. 28107 of 2023 to implead themselves as party respondent in the writ petition and also sought for Ad interim injunction restraining the respondent No.2/ CMDA from removing the cell phone tower.



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6. It was the 9th respondent's case that an agreement was entered into between the 9th respondent and 7th respondent and thereafter the cell phone tower was erected as per Government Orders, executive instructions and as per the norms laid down, hence the same could not be called as an unauthorised one. The 9th respondent disputed the contention of the petitioner that the cell phone tower was erected on the 4th floor terrace. As there was a dispute as to on which floor the cell phone tower was erected, this Court appointed an Advocate Commissioner to inspect the subject premises and to file a detailed report. The Advocate Commissioner inspected the premises and filed a report stating that the cell phone tower was erected on a room situated on the terrace of the 2nd floor, which according to the 7th respondent was only a headroom. But according to the CMDA, it was not a headroom, because the room was not over the stair way. In other words it was contented by the CMDA that the room could be considered as a headroom only if the room was constructed over the stair way. The CMDA further stated that any room constructed separately in a floor would be considered as a separate floor. Probably, to get over the said



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objection, the 7th respondent stated before the Advocate Commissioner that the 1st floor was only a mezzanine floor and therefore could not be considered as a floor.

7. At the time of arguments, the learned counsel for the petitioner submitted that in the earlier round of litigation, a direction was issued to the CMDA to demolish the unauthorised construction and the same was also demolished which was recorded in the contempt proceedings. The 7th respondent thereafter unauthorisedly erected the cell phone tower over a room on the unauthorised portion. The learned counsel relied on the Advocate Commissioner's report and submitted that the constructions found on the 2nd and 3rd floor including the tower erected by the 9th respondent were liable to be removed.

8. The learned counsel for the 7th respondent submitted that the petitioner had no locus standi to file the writ petition, as he had no technical knowledge about the subject. The learned counsel further submitted that the 9th respondent who is his lessee since 23.02.2021, had obtained necessary permissions from all the authorities and after getting



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structural stability certificate had installed the cell phone tower. The learned counsel further submitted that without filing any documents to substantiate his claim, the writ petitioner filed the writ petition and therefore the same was liable to be dismissed.

9. The learned counsel for the 9th respondent reiterating the submissions of the 7th respondent submitted that the 9th respondent entered into a valid lease agreement with the 7th respondent and after obtaining necessary approvals, the 9th respondent had erected the cell phone tower. The learned counsel further submitted that this Court in earlier contempt proceedings recorded that the unauthorised floors were demolished. The counsel submitted that in the 2nd floor, there was a headroom and only over the headroom the tower was installed after obtaining the structural stability certificate. The counsel therefore submitted that the contention of the petitioner that the tower was constructed on the 4th floor was erroneous. The learned counsel denied that the room on the 2nd floor could not be construed as a headroom. According to the counsel, by no stretch of imagination, the said room could be called a 3rd floor as projected by the petitioner. According to the



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counsel, the petitioner was taking inconsistent stand by stating after the commissioner's report that the tower was erected on the 3rd floor, while initially stating that the tower was constructed on the terrace of the 4th floor. Finally the learned counsel submitted that, if for any reason, the Court concludes that the tower was erected on the 3rd floor terrace as contended by the CMDA, then the 9th respondent should be permitted to remove the cell phone tower from the said room and place it on the terrace of the 2nd floor and for the said purpose sufficient time could be granted, so as to ensure that the public were not affected by the network outage, as the residents of the area were dependent on the cell phone tower erected by the 9^h respondent for calls, internet, online studies, online Court hearings, entertainment and for other usages etc.,

10. We have heard all the learned counsels and we have perused the materials placed on record.

11. The learned counsel for the petitioner, 7th and 9th respondent filed their written submissions. As already stated the dispute is with regard to the erection of the cell phone tower on unauthorised floor.



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12. Though, initially the learned counsel for the petitioner stated that the tower was erected on the 4th floor terrace, after the submission of the Commissioner's report, the counsel stated that the cell phone tower was erected on the 3rd floor which was also an unauthorised construction.

13. The learned counsel for the 7th and 8th respondent contended that the cell phone tower was erected on the headroom of the 2nd floor. This Court appointed Advocate Commissioner because of the dispute as to on which floor the cell phone tower was installed. The learned Advocate Commissioner filed his report and in the said report in para '4' it was stated as follows:

"4. It is further submitted that the room situated on the terrace of the Second Floor, i.e., on the Third Floor was claimed as a head room by the Land Lord, but the CMDA Authorities and Greater Chennai Corporation Authorities objected for the same and stated that only if a room is over the stair way, it can be considered as head room. Whereas it is further stated that any room constructed separately in a floor should be considered as a separate floor. The entire floors except the house, stands in the pillar and beams with no side walls and demolished roofs and floors. The said building seems to be old structure and no new structure has been put up after the demolition conducted by the



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Authorities concerned earlier."

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14. Therefore the question is whether the construction on the 2nd floor terrace is a headroom or a room and how to construe it? If it is construed as a headroom, then the petitioner would have no case. If it is construed as a separate room and as a 3rd floor, then the 7th and 9th respondent would have to remove the structures.

15. The Advocate Commissioner has recorded that the CMDA and GCC authorities have stated that the room cannot be construed as a headroom, as the room is not over the stair way. According to the authorities, the room can be construed as a headroom, only if it is on a stair way. But if the room is constructed separately on a floor, the same could be construed only as a separate floor. Therefore the room over which the cell phone tower was erected could be construed only as 3rd floor.

16. In view of the categorical stand taken by the authorities who



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are the experts in the field, we are not inclined to accept the contention of the learned counsel for the 7th and 9th respondent that it was only a headroom. Once it is found that the cell phone tower was erected on an unauthorised floor, the permission obtained for installation of tower will not regularise the unauthorised construction i.e. the room on the 2nd floor terrace.

17. It is incredible that the 9th respondent was able to get a structural stability certificate for erection of the cell phone tower, when the CMDA did not consider it advisable to demolish the entire unauthorised construction, because of structural stability issue.

18. Be that as it may, as it is found that the cell phone tower is erected on the 3rd floor for which floor, there is no planning permission, the writ petition has to be allowed.

19. It is the contention of the learned counsel for the 9th respondent that considering the need for cell phone tower in the area, the Court should permit the 9th respondent to install the tower on the terrace of the



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2nd floor, which admittedly is not an unauthorised floor. The counsel further stated that sufficient time may be granted to the 9th respondent to remove the tower from the 3rd floor and shift it to the terrace of the 2nd floor, so as not to affect the network outage and services to several residents in the area who are dependent on the tower for their calls, internet etc.,

20. We have bestowed our best attention to the submissions of the learned counsels, but we are not inclined to accept the same. As per the structural stability certificate issued to the 9th respondent, the sanctioned load was 1.84 tonnes weight of Proposed 12m Tower, 1 tonne weight of Proposed DG Equipment and 1.5 tonnes weight of Proposed OD Equipment. We have also perused the photographs filed by the Advocate Commissioner and it is clear from the said photographs that only the beams of the building remain and the side walls and the roof of the unauthorised floors have been demolished. In view of the fact that the building is without walls and roof and also considering the weight of the cell phone tower and its accessories, we are not inclined to countenance the request of the learned counsel for the 9th respondent.



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21. The 1st respondent, CMDA is directed to remove the unauthorised structures including the cell phone tower within a period of eight (8) weeks from the date of receipt of a copy of this order.

In the result, writ petition is allowed with the above direction.

There shall be no order as to costs. Connected WMP is closed.

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

15.11.2023

Index: Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

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

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PREDELIVERY ORDER IN
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ORDER DELIVERED ON
15.11.2023