



W.P.No.14082 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2023

Delivered on : 30.10.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.14082 of 2020
and W.M.P.No.17477 of 2020

1.P.S.Chezian

2.T.N.Padmini

.... Petitioners

VS

1. Chennai Metropolitan Development Authority

Thalamuthu Natarajan House, No.01

Gandhi Irwin Road, Ansari Estate

Egmore, Chennai-600 008

2.The Commissioner

Directorate of Town and Country Planning

Chengalvarayan Building, 807, Anna Salai

Chennai-600 002

3.The Member Secretary

Town and Country Planning Department

Thalamuthu-Natarajan Maaligai

No.1, Gandhi Irwin Road, Egmore, Chennai-600 008

4.Vishnu Cars Private Limited

Dealer of Maruti Suzuki

No.31/A.N.P.Jawaharlal Salai

Ekattuthangal, Chennai-600 032

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Mandamus directing the 1st respondent to initiate action against the 4th respondent for establishing an automobile service station in Survey No.219/1A1, Poonamallee High Road, Kaatupakkam, Chennai-600 056, in violation of the planning permission.

For Petitioner : Ms.V.Srimathi
For Respondents : Mrs.P.Veena Suresh, Standng counsel
CMDA for R1
Mr.M.Elumalai for R2 and R3
Mr.Subba Reddy for R4

ORDER

Per J.Nisha Banu,J.

This writ petition is filed praying to issue a Writ of Mandamus to direct the 1st respondent to initiate action against the 4th respondent for establishing an automobile service station in Survey No.219/1A1, Poonamallee High Road, Kaatupakkam, Chennai-600 056, in violation of the planning permission.

2. The petitioner is the absolute owner of the property at Survey No.219/1A1 admeasuring an extent of 41,325 sq.ft., at Poonamallee High Road, Kaatupakkam, Chennai. The 4th respondent is an automobile dealer for Maruti and NEXA and approached the petitioner for establishing a showroom in the above said property.



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WEB COPY 3. A memorandum of understanding dated 17.12.2016 was executed and thereafter, a lease agreement was executed on 01.03.2017. As on date, the 4th respondent is operating a car dealership in the name of 'Vishnu Cars Private Limited'.

4. As per the understandig, the 4th respondent was obligated to pay development and other incidental charges for obtaining the approval towards construction of showroom in the schedule property.

5. The petitioner made an application to the concerned authority proposing to use the ground floor as a showroom and the basement as a car park. According to the petitioner, a separate parcel of land would be leased adjacent to the property for construction of service center. The approved plan issued on 25.05.2018 indicated construction of a showroom in ground floor and parking in basement. According to the petitioners, the 4th respondent had commenced his business activities even before the grant of approval.

6. The petitioner further submits that due to persistent issues regarding the tenancy, the lease was terminated and a notice was issued on 07.05.2019



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calling upon the 4th respondent to quit and deliver vacant possession of the property. The petitioner further submits that the 4th respondent has illegally converted the basement car park into a fully operational service center. There are no safety measures in the said place for those who are working there. The concerned authority, violated the approval norms. There was no safety standards as set out by the National Building Code, 2016, for service centre. The petitioner submitted a representation to the Commissioner, Town and Country Planning on 22.07.2020. A reply was issued for the representation on 28.07.2020 indicating that the file is transferred to CMDA for initiating action on the same. According to the petitioner, the respondents are duty bound to take action as against violation of parking facility used as a service workshop without taking precautions and attaching fixtures.

7. In the typed set of papers, Memorandum of Understanding dated 17.12.2016 is annexed. The terms would read that :-

“ Both the parties have negotiated and mutually agreed upon various terms and conditions for the above said Lease of the property. As the construction of the Showroom/Service Center in the said land requires proper plan approval, it is mutually agreed by both the parties that, the formal lease agreement can be entered into only after



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obtaining the said plan approval for the proposed construction of the showroom and/or service center in the proposed site. “

The tenure of the lease shall be 15 years from the date of lease agreement.

Clause 10 would read that

“a. Obtain the necessary plan approval for the construction of showroom/service center buildings/sheds by paying necessary infrastructure development charges etc for the same.. ;

b. Carry out the construction of showroom and service center buildings/sheds in the schedule property.; c. Obtain the necessary electrical connection from the TNEB by incurring the necessary expenses. “

8. The lease agreement entered into between the petitioner and the 4th respondent would also read that the lessee shall pay the necessary infrastructure development charges for obtaining the building plan permit, carry out the construction of showroom and service center buildings/sheds in the schedule property at their own cost and expense.

9. CMDA letter dated 09.08.2017 would show that the petitioner preferred the planning permission application and revised plan dated 03.05.2017 for the construction of the existing basement floor + ground floor



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(double roof height) commercial (car showroom cum office) building at the schedule property. CMDA payment receipt for development charges and other necessary charges for a sum of Rs.1,14,25,000/- was issued in the applicant's name P.S.Chezhiyan viz., the petitioner herein.

10. The petitioners would submit that the 4th respondent failed to pay the rent after taking possession of the said property. It is further contended that for the unauthorised constructions made, demand is made against him for payment of development charges. The petitioner also stated that the 4th respondent business premises was inspected on 12.10.2020 and following the same, Locking and Sealing and Demolition notice has been issued to the petitioner (P.S.Chezhiyan) and the violations in the said premises had been noticed.

11. The 1st respondent CMDA filed counter affidavit stating that the petitioner gave a petition on 22.07.2020 to the Commissioner, DTCP and the same has been forwarded to CMDA Member Secretary on 28.07.2020. In response to the petition, inspection was carried out on 12.10.2020 and observed that Ground floor car show room + Basement floor (part) Office and basement floor (Part) service station is functioning and a shed with sheet



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roofing of size 4.36 m* 10.28 m exists in south side set back. Notice calling for the approved plan was issued in notice dated 12.10.2020 to the 4th respondent. Since there was no response from the owner of the building to the Notice calling for approved plan issued on 12.10.2020, Locking and Sealing and Demolition Notice has been given in the name of petitioner Thiru.P.S.Chezhian/the writ Petitioner on 27.10.2020 with reference to approved plan and violations/deviations were noticed with regard to basement floor and superstructure. Since there was on site deviation from the approved plan and the usage has been changed from Non FSI area (two wheeler parking) into office and service station, it is in deviation to the approved plan. However, setback available as on site satisfies DR and with regard to renaming of floor and usage violation, the applicant/occupier has to obtain revised planning permission.

12. The learned counsel for the 4th respondent would submit that based on the lease agreement dated 01.03.2017 between the 1st petitioner and the 4th respondent, advance amount of lease i.e. Rs.40,00,000/- was paid for the purpose of showroom and service centre for Maruti Cars. Show room is in 4000 sq.ft., and the rest of area i.e.37325 sq.ft is only for service center. The petitioner/owner made an application for approval of showroom as well as



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service centre. The entire development charges of Rs.1,14,25,000/- was paid by the 4th respondent.

13. However, on 18.11.2017, the owner wrote a letter to the Electricity Board to disconnect power supply. With regard to disputes arose between the parties, suit has been filed before the Principal District Court on 05.03.2019 for recovery of a sum of Rs.4,24,73,663/- and the same is pending. The learned counsel would further submit that the petitioner/owner also filed a case before NCLT and the said case is also pending. The petitioner being the owner of the building, entered into lease agreement with the 4th respondent and also on his name, application for planning sanction was submitted. In such circumstances, he himself made a complaint to CMDA for demolition of building and therefore, the averments made in the writ petition is based on disputed facts.

14. Heard both sides and perused the records carefully.

15. Admittedly, the petitioners and the 4th respondent entered into lease agreement dated 01.03.2017 as per the Memorandum of understanding dated 17.12.2016. Based on the terms of the understanding, petitioners and the 4th



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respondent, lease agreement was executed for the purpose of running a car showroom by the 4th respondent. The 4th respondent sought for approval of construction from the concerned authorities. The approval is to be obtained in the name of the owners of the land. The 1st respondent-CMDA granted planning permission for the construction of car showroom cum office and service centre. In the counter affidavit filed by the 1st respondent-CMDA, it is pointed out that there is on site deviation from the approved plan and usage has been changed, however, set back available as on site satisfies DR and with regard to renaming of floor and usage violation, the applicant/occupier has to obtain revised planning permission.

16. The 4th respondent would submit that the petitioner did not cooperate even to complete showroom. Plan approval was made on 25.05.2018 and on the next date, the petitioner informed to Electricity Board officials, not to provide electricity connection and that the petitioners are trying to evict the 4th respondent from the place. It is further submitted that notice to occupier as per Section 56 and 57 of Tamil Nadu Town and Country Planning Act, 1971, was not served to them. It is also stated that the 4th respondent built showroom by spending several crores of rupees after entering into agreement with the petitioners, however, the petitioner who applied for



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planning sanction applied to CMDA to take action and also trying to evict them. The 4th respondent would further point out that they paid all necessary charges to CMDA on 26.05.2018, however, due to non-cooperation of the petitioners, they suffered loss and filed suit for recovery of money of Rs.4,24,73,663/-. The contention of the 4th respondent is that no opportunity was given to them to explain their stand to the planning authorities and all notices issued was based on the petition filed by the petitioners which is against principles of natural justice.

17. A perusal of the facts of the case would go to show that the entire action taken by the CMDA is based on the petition filed by the Petitioners who had entered into agreement with the 4th respondent for running a Car Showroom and service centre. By going into the terms of the agreement, we are clearly of opinion that merely because some allegations have been made by the petitioners with regard to construction of showroom, this court cannot give direction to the authorities to take action against the 4th respondent because it is very clear that there was non cooperation by the petitioners from the initial stage in terms of the agreement and petitioners failed to pay the necessary amounts due to the authorities and that was clerally borne out by records.



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WEB COPY 18. The issue on hand is not only with regard to deviation from the approved plan but also involving terms of agreement between the two parties, whereby, one party refuse to cooperate to the terms and making allegations of deviation. Further, it is very clear that in order to run the business, the 4th respondent paid substantial amounts to the planning authorities for construction after getting planning approval. The petitioners and the 4th respondent are bound by the terms of the agreement and this court cannot pass any orders in this writ petition as the owner who voluntarily entered into agreement with the 4th respondent himself has made complaint to CMDA for demolition and he himself made application for planning sanction. There is no sufficient reasons to entertain this writ petition as the parties have to approach the necessary forum for redressal of their grievance. The contention of the writ petitioners therefore fail. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

30.10.2023

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To

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

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Order in

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