



W.P.No.18.....

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.18539 of 2023
and
WMP.No.17772 of 2023

S.Vaidhiyanathan ... Petitioner
Vs.

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

2.V.G.Selvaraja ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in Letter No.EC/C-1/30619/2000 dated 26.05.2023 passed by the respondent and quash the same as illegal and arbitrary and without jurisdiction.

For Petitioner : Mr.K.Suresh

For R1 : Mr.R.Sivakumar,
Standing Counsel for CMDA

For R2 : Mr.S.Kamadevan



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ORDER

[Order of the Court was made by N.MALA,J.]

This Writ Petition is filed to call for the records relating to the impugned order in Letter No.EC/C-1/30619/2000 dated 26.05.2023 passed by the respondent and quash the same as illegal and arbitrary and without jurisdiction.

2.The petitioner is the absolute and exclusive owner of the property at Shop No.9, having a built-up area of 2615 sq.ft. in the ground floor of Shopping INN Block in Chitra Avenue, situated in T.S.No.189, Block No.16, Sowrastra Nagar, 1st Street, Choolaimedu, Chennai. The petitioner let out the said shop to M/s. Hanifa Super Market, a partnership firm for running a departmental store. The petitioner states that originally the ground floor of shopping INN Block in Chitra Avenue was allotted for Departmental stores as per the approved plan dated 23.10.2000. The original owner sold the said shop to the petitioner's vendor M/s.Greenland Super Market Private Limited vide sale deed dated 15.03.2000 and the vendors in turn entered into a Builder Agreement with the promoters on 02.08.2000 for the purpose of constructing the



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Departmental Store. On completion of the said construction, the entire area was utilized only as a Departmental Store. The petitioner purchased the said property on 17.03.2005 and has been using the same as a Departmental store without any deviation from the approved plan. While so, Mr.V.G.Selvaraja filed a writ petition in W.P.No.6384 of 2019 alleging unauthorised construction in Chitra Avenue. The petitioner impleaded himself as 16th respondent in the above said writ petition and this Court vide order dated 02.03.2023 disposed of the said writ petition with the following directions:

"The issue whether there is an violation can be decided by the Chennai Metropolitan Development Authority (CMDA) after inspection of the premises. The Chennai Metropolitan Development Authority (CMDA)/the 2nd respondent is directed to inspect the premises within a period of two weeks from the date of receipt of a copy of this order. If there are any unauthorised constructions or deviations, it shall issue notice to the occupier/s and the owner/s within two weeks thereafter. The occupiers/owners shall submit their explanation as per Section 56(3) of the Town and Country Planning Act, 1971. Thereafter, Chennai Metropolitan Development Authority (CMDA) shall take an appropriate action".

3.The petitioner states that after the disposal of the writ petition, the respondents passed the impugned order directing him to discontinue the development immediately



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without providing any opportunity for explanation or clarification from him. The petitioner states that as the ground floor of the shopping INN Block was specifically allotted for Departmental stores to provide commercial amenities to the flat owners in Chitra Avenue, there was no violation of the approved plan. According to the petitioner the approved plan does not mention a single Departmental store, rather, it allows for more than one Departmental stores within the same Block. According to the petitioner as his shop is used only as a Departmental store as per the approved plan there is absolutely no violation. The petitioner, therefore, prays that the writ petition be allowed.

4. When the matter was taken up for hearing on 23.06.2023, this Court in pursuance of the contention of the learned counsel for the petitioner that without disclosing anything on the alleged deviation or unauthorised construction of the shop in question, the respondent had issued the impugned notice alleging unauthorised development directed the CMDA to issue notice to the petitioner, inspect the property in question on 27.06.2023 between 10 a.m. and 12 noon in the presence of the petitioner and file a detailed report before this Court as to whether any violation was found in the complex. On 05.07.2023, when the matter came up for further hearing, this Court recorded the submission of the Report by the respondent and gave two weeks time to the petitioner to file his reply to the report. Thereafter the matter was adjourned on



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several occasions.

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5.In the Status Report dated 04.07.2023 the respondent stated as follows:

“a.Location of the shop: South West Corner of Block - I
(as per the approved plan).

b.The length of the shop
(facing Choolaimedu

High Road) = 16.4 mts., (53 ft. 9 inches)

c.The width of the shop = 12.45 mts., (40 ft. 9 inches)

d.Length wise, along with the shop of the petitioner,
there are 12 other shops are also existing.

e.Apart from these 13 shops, 3 temporary shops are also
existing in the area reserved for Front Set Back Space as per the
approved plan. Out of the 3 temporary shops, one is attached along
with the petitioner's shop. The said temporary portion is used by
the writ petitioner as vegetable shop.

6.In the Status Report the first respondent stated that according to the approved
plan the width of the portion approved for Departmental Store was only 7.01 mts. and
the width of the residential portion was 5.41 mts., put together the total width of the



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Block – I was 12.45 mts. The existing breadth of the petitioner's shop was 12.45 mts., which conclusively proved that the petitioner's shop was in deviation to the approved plan and the residential portion was converted into shop.

7.At the time of hearing on 07.12.2023 the learned counsel appearing for the petitioner brought to our notice the order dated 17.03.2023 of the Additional Secretary to Government, Technical Housing and Urban Development Department, Secretariat, Chennai in the revision petition filed under Section 80-A of the Town and Country Planning Act by the owners of the apartment complex. The order reads as follows:

“13. After careful examination of the records, submissions made and to bring clarity to the petitioners/occupants, the Government hereby direct Chennai Metropolitan Development Authority to conduct a through inspection of all the buildings in the premises and issue a fresh notice covering all the deviations/violations to the approved plan in a tabulated statement to all the flat owners/occupiers of the 10 blocks in consonance with the direction of the Hon'ble High Court dated 02.03.2023 in W.P.No.6384 of 2019, after reconciling the discrepancies in respect of the number of dwelling units. The said notice shall be issued by following all the statutory procedures prescribed in Tamil Nadu Town and Country Planning Act, 1971 in compliance with G.O.(Ms).No.195, Housing and Urban Development (UD4(1)



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Department, 05.11.2022 and no coercive action shall be taken until the above said statutory procedures are completed. The revision petitioners are directed to approach appropriate forum for operation of lift as directed by the Hon'ble High Court of Madras in order dated 18.07.2018 in W.P.No.16454 of 2018.”

8.The Additional Secretary (Technical) has directed the CMDA to conduct a fresh inspection of all the buildings in the premises and issue a fresh notice covering all the deviations/violations to the approved plan in a tabulated statement to all the flat owners/occupiers of the 10 Blocks in consonance with the order dated 02.03.2023 passed by this Court in W.P.No.6384 of 2019 and further directed not to take coercive action until the above statutory procedures were completed.

9.Considering the aforesaid order, We are of the view that it would suffice if a time frame is given for completing the fresh inspection. We therefore direct the CMDA to complete the fresh inspection by giving notice to all the owners, occupiers within a period of three months and thereafter, if any deviations are found from the approved plan then individual notices shall be issued to each owner/occupier of the 10 blocks, mentioning the particulars of deviation. Based on the replies, further enforcement action shall be taken in accordance with law as expeditiously as possible.



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10. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

J.N.B.J., N.M.J.,
07.12.2023

Index : yes/no
Internet : yes/no
Speaking order/Non-speaking order
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To

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



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