



W.P.Nos.19956, 20331 & 20333 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| <b>JUDGMENT RESERVED ON</b> | <b>JUDGMENT PRONOUNCED<br/>ON</b> |
|-----------------------------|-----------------------------------|
| 29.03.2023                  | 17.04.2023                        |

**CORAM:**

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**  
and

**THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN**

Writ Petition Nos.19956, 20331 & 20333 of 2021  
and W.M.P.Nos.21216, 21568, 21569, 21572 & 21573 of 2021  
and W.M.P.No.8498 of 2022

**W.P.No.19956 of 2021**

M/s. MEC International Private Ltd  
Rep by its Assistant Manager – Accounts  
Old No 37, New No. 6, Arcot Road  
Vadapalani, Chennai- 600 025.

.. Petitioner

**Vs.**

1. Greater Chennai Corporation  
Rep. by its Assistant Executive Engineer  
Unit 29, Zonal Office-10, Kodambakkam  
Chennai-600024.

2. Greater Chennai Corporation  
Rep. by its Assistant Executive Engineer  
Zone 10, No.117, N.S.K. Salai  
Kodambakkam  
Chennai-600024.



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3. Secretary  
Housing & Urban Development Department  
Government of Tamilnadu  
Secretariat  
Chennai-600009.

4. Member Secretary  
Chennai Metropolitan Development Authority  
1, Gandhi Irwin Road, Egmore  
Chennai-600008.

5. M/S. Doshi Constructions  
Partnership Firm, having its registered office at  
No.560, Teynampet, Chennai 600018.  
Rep. by its partner Mr. Mehul Doshi.

(R5 impeaded vide order of this Court  
dated 22.03.2022 made in WMP.1852/2022  
in W.P.No.19956/2021)

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of 3<sup>rd</sup> respondent's impugned order passed in Letter No. 23871/UD-VI(1)/2018-8 dated 18-08-2021 in respect of entire buildings & superstructures located on schedule lands described in Schedule A & B to this petition, situated at Old No.37, New No.06, Arcot Road, Vadapalani, Chennai-600026 and quash the same.

|                |                                                             |
|----------------|-------------------------------------------------------------|
| For Petitioner | : Mr.P.S.Raman, Senior Counsel<br>for Mr.K.V.Bhashyam Chari |
| For R1 & R2    | : Mr.D.B.R.Prabhu<br>Standing Counsel                       |



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For R3 : Mr.E.Vijayanand  
Additional Government Pleader  
For R4 : Ms.P.Veena Suresh  
For R5 : Mr.R.Parthasarathy, Senior Counsel  
for Mr.Rahul Balaji

**Writ Petition No.20331 of 2021**

M/s. Namma Vivasayam Ltd  
Represented by its Chairman  
Sameena Begum  
W/o. Mohammed Kasim  
Old No. 37, New No.6, Arcot Road  
Vadapalani, Chennai-600026.

.. Petitioner

Vs.

1. The Secretary to the Government of Tamil Nadu  
Housing and Urban Development Department  
Fort St. George  
Secretariat  
Chennai-600009.

2. The Commissioner  
Greater Chennai Corporation  
Ripon Building, 1<sup>st</sup> Floor  
Raja Muthiah Road, Kannappar Thidal  
Periyamet  
Chennai-600003.

3. The Member Secretary  
Town and Country Planning Department  
Anna Salai  
Chennai-600002.



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4. The Executive Engineer  
Zone-10  
Greater Chennai Corporation  
No.117, N.S.K. Salai  
Kodambakkam  
Chennai-600024.

5. M/S. MEC International Private Limited  
Represented by its Managing Director  
Mr. Ashok P Shah  
S/o Late Sri Parasraj G Shah  
Old No.37, New No.6, Arcot Road  
Vadapalani  
Chennai-600026.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the notice issued by the 4<sup>th</sup> respondent vide Z.O.X.C.No./9452/2021 dated 09.09.2021 and direct the 4<sup>th</sup> respondent to not to de-occupy of the petitioner in the premises situated at Old No.37, New No.6, Arcot road, Vadapalani, Chennai-600026.

### **Writ Petition No.20333 of 2021**

M/s. Namma Unavagam Private Limited  
Rep by its Managing Director  
Mohammed Kasim, M/40 years,  
S/o. Rahamathulla  
Old No.37, New No.6, Arcot Road  
Vadapalani  
Chennai- 600 026.

.. Petitioner

Vs.

1. The Secretary to the Government of Tamilnadu



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Housing and Urban Development Department  
Fort St. George  
Secretariat  
Chennai-600009.

2. The Commissioner  
Greater Chennai Corporation  
Ripon Building, 1<sup>st</sup> Floor  
Raja Muthiah Road, Kannappar Thidal  
Periyamet,  
Chennai-600003.

3. The Member Secretary  
Town and Country Planning Department  
Anna Salai  
Chennai-600002.

4. The Executive Engineer  
Zone-10  
Greater Chennai Corporation  
No.117, N.S.K. Salai  
Kodambakkam  
Chennai-600024.

5. M/S. MEC International Private Limited,  
Represented by its Managing Director  
Mr. Ashok P Shah, M/61 years  
S/o Late Sri Parasraj G Shah  
Old No.37, New No.6, Arcot Road  
Vadapalani  
Chennai-600026.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the notice issued by the 4<sup>th</sup> respondent vide Z.O.X.C.No./9452/2021 dated 06.09.2021 and direct the 4<sup>th</sup> respondent



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to not to de-occupy of the petitioner in the premises situated at Old No.37, New No.6, Arcot road, Vadapalani, Chennai-600026.

**In both W.P.Nos.20331 & 20333 of 2021**

For Petitioner : Mr.M.Karthik  
For R1 : Mr.E.Vijayanand  
Additional Government Pleader  
For R2 & R4 : Ms.P.Veena Suresh  
For R3 : Mrs.R.L.Karthika  
Government Advocate  
For R5 : Mr.P.S.Raman, Senior Counsel  
for Mr.K.V.Bhashyam Chari

**COMMON ORDER**

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

W.P.No.19956 of 2021 is filed for quashing the impugned order of the 3<sup>rd</sup> respondent dated 18.08.2021 in respect of entire buildings & superstructures described in Schedule A & B to this petition, situated at Old No.37, New No.06, Arcot Road, Vadapalani, Chennai-600026.

W.P.Nos.20331 & 20333 of 2021 are filed challenging the notices issued by the 4<sup>th</sup> respondent dated 09.09.2021 & 06.09.2021 respectively and directing the 4<sup>th</sup> respondent to not to de-occupy of the petitioners in



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the premises situated at Old No.37, New No.6, Arcot road, Vadapalani, Chennai-600026.

(I). The issues involved in all the three Writ Petitions are one and the same and hence, they are disposed of by this common order. The parties are referred to as per their respective ranks in W.P.No.19956 of 2021 for the sake of convenience.

2. Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner in W.P.No.19956 of 2021 made the following submissions:

(A) The land measuring 8 acres situated in Survey Nos.186 (part) & 187 (part), old No.37, New No.36, Arcot Road, Vadapalani, Chennai-600 026 belonged to SMS Bucary Wakf Al Aulad Estate (hereinafter referred to as 'SMS Bucary Wakf'). According to the petitioner, one Abdul Sheriff and Yusuf Sheriff were the lessees of the entire land. They purchased the superstructure in Court auction in Company Application No.144/1962 in Company Petition No.27/1961. After various lease deeds to third parties, the petitioner became lessee of the land by lease agreement dated 26.02.2000 entered into between SMS Bucary Wakf and the petitioner. The superstructures were put up by predecessors in title.



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The said Abdul Sheriff and Yusuf Sheriff sold the lease hold right over the entire land and superstructure in favour of M/s.Estate Traders by the sale deed of the year 1963. M/s.Estate Traders subleased the schedule properties to M/s.Premraj Ganpatraj & Company Private Limited by registered lease deed dated 23.09.1963. At a later stage, M/s.Premraj Ganpatraj & Company Private Limited was renamed as M/s.Madras Electrical Conductors Private Limited as per due process of law. M/s.Estate Traders partnership firm was dissolved on 06.01.1968 and a fresh lease deed was entered into between SMS Bucary Wakf and partners of M/s.Estate Traders in their individual capacity on 31.07.1974. M/s.Madras Electrical Conductors Private Limited continued to remain as sub-lessee under the individual partners of M/s.Estate Traders. Subsequently, the individual partners of M/s.Estate Traders surrendered the lease and SMS Bucary Wakf leased out the schedule property to M/s.Madras Electrical Conductors Private Limited. The partners of M/s.Estate Traders transferred entire superstructure in the name of M/s.Madras Electrical Conductors Private Limited. Thus M/s.Madras Electrical Conductors Private Limited became the absolute owner of the superstructure of building. Later M/s.Madras Electrical Conductors Private Limited was renamed as MEC International Private Limited, the



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petitioner herein.

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(B) After purchase, the petitioner let out the various portions of the superstructure to third parties for commercial purpose and retained a portion of superstructure for its own use. While so, the 1<sup>st</sup> respondent by notice dated 09.09.2016 called upon the petitioner to produce the approved building plan. The 1<sup>st</sup> respondent also issued notices to all the tenants. The petitioner sent interim reply dated 12.09.2016 and also informed the 1<sup>st</sup> respondent that petitioner is absolute owner of entire superstructure and notices issued to the tenants are *void ab initio*. The petitioner sent a detailed reply dated 22.09.2016 to the 1<sup>st</sup> respondent. The predecessor in title obtained prior approval and constructed superstructure. The said superstructure was assessed for property tax from the year 1995, revised from time to time and petitioner company is paying the property tax regularly. The assessment of property tax by the 1<sup>st</sup> respondent will clearly reveal the approval of the building plan as 1<sup>st</sup> respondent will not assess the property without approved building plan. The building is 50 years old. The petitioner requested the 1<sup>st</sup> respondent to search in their office for the approved plan and furnish a certified copy to the petitioner.

(C) The petitioner shifted their registered Office at Karoli, Gandhi



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Nagar, Gujarat State. All the old records were kept in the godown in the ground floor of the property in question. During the floods in the year 2015, all the records were washed away. The petitioner gave a complaint to K.K.Nagar Police Station and CSR has been issued.

(D) While so, the petitioner received lock & seal and demolition notice dated 14.10.2016 from the 1<sup>st</sup> respondent and 1<sup>st</sup> respondent also issued notices to all the tenants knowing fully well that the petitioner is owner of the entire superstructure. This issue of notice to the tenants created confusion and some tenants filed individual appeals. The petitioner Company filed an appeal under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as “Act”) to the 3<sup>rd</sup> respondent on 21.10.2016 along with stay petitions. The petitioner also filed W.P.No.38680 of 2016. The First Bench of this Court quashed the notice and observed that property is not under construction and the 1<sup>st</sup> respondent has to take into account this aspect for future notices. The petitioner has withdrawn the appeal filed before the 3<sup>rd</sup> respondent. The 1<sup>st</sup> respondent without following the order of this Court again issued lock & seal, demolition notice dated 18.01.2017 in the same line when there is no change in circumstances. The petitioner on 07.02.2017 filed appeal under Section 80A of the Act to the 3<sup>rd</sup>



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respondent along with stay petition. Since no order was passed, the petitioner filed Writ Petition No.5356 of 2017. This Court by the order dated 20.07.2017 directed the 3<sup>rd</sup> respondent to dispose of the appeal. After order of this Court in the Writ Petition, the 3<sup>rd</sup> respondent by the order dated 05.10.2018 rejected the appeal without giving any opportunity to the petitioner. Hence, the petitioner filed review petition on 12.11.2018.

(E) While review petition was pending, the 2<sup>nd</sup> respondent issued de-occupation notice dated 25.01.2019 to the petitioner as well as to all the tenants. The petitioner filed Writ Petition No.3549 of 2019 challenging the de-occupation notice and Writ Petition No.5581 of 2019 challenging the order of the 3<sup>rd</sup> respondent dated 05.10.2018. The First Bench of this Court by the common order dated 11.03.2019 disposed of both the Writ Petitions directing the 3<sup>rd</sup> respondent to pass orders in the review petition without reference to earlier order. The 3<sup>rd</sup> respondent by the impugned order dated 18.08.2021 rejected the review petition without considering the submissions made by counsel for the petitioner with regard to above facts.



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(F) Learned Senior Counsel appearing for the petitioner submitted

that 3<sup>rd</sup> respondent failed to consider that the respondents 1 & 2 themselves admitted that all the superstructures are not unauthorised. The First Bench of this Court in the order dated 07.11.2016 made in W.P.No.38680 of 2016 held that it is the bounden duty of 2<sup>nd</sup> respondent to verify their records with regard to approved plan, tally the same with the existing building and if there is any deviation, take action. The 2<sup>nd</sup> respondent without complying with said order had issued notice dated 18.01.2017. The 5<sup>th</sup> respondent purchased the entire property from SMS Bucary Wakf. There is a dispute between petitioner and 5<sup>th</sup> respondent. The 5<sup>th</sup> respondent filed suit C.S.No.574 of 2010 and the same is pending and interim orders are passed in the appeal as well as in the suit. The learned Senior Counsel for the petitioner submitted that the petitioner's predecessors have put up 95000 sq.ft. in the year 1958, 90000 sq.ft. in the year 1985 and 35000 sq.ft. in the year 1989 without any violation. There is no violation of side setback. The said superstructures were put up in the heart of the city and the said buildings could not have been put up without approved plan. The 5<sup>th</sup> respondent has purchased the land and has reserved Rs.15,00,00,000/- to be paid to the petitioner



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being the value of the superstructures and without paying value of superstructures in spite of order passed by the Division Bench, the 5<sup>th</sup> respondent is pressurising to evict the petitioner.

3. The 2<sup>nd</sup> respondent filed counter affidavit denying various averments. Learned Standing Counsel appearing for the respondents 1 & 2 submitted that on receipt of the complaint from the general public, the building in question was inspected by the Executive Engineer of 2<sup>nd</sup> respondent along with Assistant Engineer and found that building was constructed without any approval. Immediately, after inspecting the site, a notice under Sections 56 & 57 of the Act dated 09.09.2016 was issued to the petitioner and 26 tenants in the building in question calling for approved plan. They failed to comply with the said notices. The 2<sup>nd</sup> respondent issued notice dated 14.10.2016 to the petitioner and 26 tenants for locking & sealing and de-occupation of the premises.

3(i) The learned Standing Counsel for the respondents 1 & 2 referred to various proceedings taken by the petitioner, orders passed by this Court in the Writ Petitions and order dated 20.07.2017 made in W.P.No.5356 of 2017, wherein this Court directed the 3<sup>rd</sup> respondent to



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consider the maintainability of the appeal as preliminary issue and proceed to pass orders and submitted that as per the order of this Court dated 20.07.2017, the 3<sup>rd</sup> respondent considered the submissions made by the counsel for the petitioner, objectors and officials of respondents 1 & 2 and rejected the appeal. The petitioner filed review petition. Pending review, the petitioner also filed two Writ Petition Nos.3549 & 5581 of 2019. The First Bench of this Court by the common order dated 11.03.2019 closed both the Writ Petitions directing the 3<sup>rd</sup> respondent to pass orders in the review petition without making reference to the earlier order. The 3<sup>rd</sup> respondent considering the submissions of the learned counsel for the petitioner, objectors & Officials of the respondents 1 & 2, rejected the review.

3(ii) Learned Standing Counsel appearing for the respondents 1 & 2 contended that the area in question wherein the superstructure now standing was originally within the jurisdiction of Panchayat. The question of respondents 1 & 2 granting building plan approval did not arise and no approved plan is available with the respondents 1 & 2. The petitioner submitted in the year 1998 the returns for assessment of Property Tax. Learned Standing Counsel appearing for the respondents 1 & 2 referred



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to the said returns filed in the typed set of papers and submitted that the petitioner themselves stated only 25000 sq.ft. was RCC roofing and remaining structures are with asbestos sheet. On inspection, now it is found that all the buildings are of RCC roofing. Learned Standing Counsel appearing for the respondents 1 & 2 further referred to the objections filed by the petitioner to the status report of the respondents 1 & 2 and submitted that the statement of the petitioner that original approved plan was produced before Officials of 2<sup>nd</sup> respondent within two months from the date of property tax returns is false. The petitioner has not taken such a stand in the affidavit filed in support of Writ Petition.

3(iii) Learned Standing Counsel appearing for the respondents 1 & 2 further submitted that petitioner has constructed huge building in 8 acres without any approval. Assessment of property tax will not amount to the building being put up after obtaining approval. The respondents 1 & 2 will take further action for removal of unauthorised construction and prayed for passing suitable orders.

4. The 3<sup>rd</sup> respondent filed counter affidavit. The learned Additional Government Pleader appearing for the 3<sup>rd</sup> respondent referred to various



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proceedings initiated by the respondents 1 & 2, appeals and Writ Petitions filed by the petitioner and orders passed by this Court, submitted that in the review petition, learned counsel appearing for the 5<sup>th</sup> respondent filed objections claiming to be owner of the property having purchased the same by registered sale deed dated 22.12.2006. Learned Additional Government Pleader referred to civil proceedings pending between the petitioner and 5<sup>th</sup> respondent mentioned in the counter affidavit filed by the 3<sup>rd</sup> respondent and submitted that 3<sup>rd</sup> respondent considering all the materials placed before him and order of this Court made in Contempt Petition No.668 of 2019 in W.P.No.2814 of 2018 rejected the review as not maintainable. In view of the rejection of review petition, the 3<sup>rd</sup> respondent rejected the appeal filed by the petitioner challenging the de-occupation notice dated 25.01.2019.

4(i) The learned Additional Government Pleader referred to the counter affidavit filed by the 3<sup>rd</sup> respondent, wherein the 3<sup>rd</sup> respondent has given details of unauthorised construction put up by the petitioner and submitted that entire construction put up by the petitioner in 8 acres is unauthorised and in view of the same, impugned order of the 3<sup>rd</sup> respondent is valid and legal and prayed for dismissal of the Writ



Petition.

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5. The 4<sup>th</sup> respondent filed counter affidavit. The learned Standing Counsel appearing for the 4<sup>th</sup> respondent submitted that the 4<sup>th</sup> respondent has not issued any approval to the petitioner for construction of property in question. As per the orders of this Court, 4<sup>th</sup> respondent verified their records and found that no approved plan was issued to the petitioner. As per the delegated power, the respondents 1 & 2 are entitled to take action against the unauthorised construction as per the provisions of the Town and Country Planning Act as well as Chennai City Municipal Corporation Act. The review filed by the petitioner was rejected by the 3<sup>rd</sup> respondent. The said order was communicated to the respondents 1 & 2 along with letter of 4<sup>th</sup> respondent dated 08.02.2022 for further action and prayed for passing suitable orders in the Writ Petition.

6. The 5<sup>th</sup> respondent filed counter affidavit. Learned Senior Counsel appearing for the 5<sup>th</sup> respondent submitted that 5<sup>th</sup> respondent has purchased 5 acres 71 cents in S.No.186/1 (part) and 1 acre 87 cents in S.No.187/1 (part) totally measuring 7 acres 58 cents by registered sale deed dated 22.12.2006 from and out of 8 acres 84 cents from SMS



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Bucary Wakf. The petitioner is claiming lease hold right over the property by unregistered lease deed dated 26.02.2000 for more than one year. The petitioner cannot claim right under the lease deed. In any event, the lease period expired on 31.12.2018. The 5<sup>th</sup> respondent has filed C.S.No.574 of 2010 against the petitioner and 26 sub-tenants. In O.S.A.Nos.259 to 262 of 2012 and subsequently in O.A.No.1017 of 2018 in C.S.No.574 of 2010, this Court restrained the petitioner from inducting any sub-tenants beyond 31.12.2018. As per the earlier orders passed by this Court in the Writ Petitions filed by the petitioner, the respondents 1 & 2 verified their records and found that there is no approved building plan granted to the building in question. In the reply dated 29.09.2016 by the petitioner to the notice dated 09.09.2016 issued under Section 56(1) & 57 of the Act, the petitioner has stated total extent of built up area is 2,20,000 sq.ft. The petitioner has stated that an extent of 95000 sq.ft. was 40 years old earlier to 1998 and remaining buildings were 9 or 13 years old buildings. The respondents 1 & 2 and 4<sup>th</sup> respondent have stated that they have not issued any approved plan to the petitioner or building in question. In the property tax assessment application made by the petitioner in 1998, the petitioner has stated that corporation approvals are “not available”. The buildings in question are not multistorey buildings but single storey



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individual building, used as godowns. After the order of this Court dated 07.11.2016 made in W.P.No.38680 of 2016, the Officials of the 2<sup>nd</sup> respondent inspected the property and issued the notice which reflects the stand of the 2<sup>nd</sup> respondent, which is as per the provisions of Town and Country Planning Act.

6(i) In the interim reply dated 12.09.2016, the petitioner did not state that the original approved plans were washed away in the year 2015 floods. Only in the reply dated 22.09.2016, the petitioner has come with such stand which is only an after thought. The contention of the petitioner that original approved plans were shown to Officials of the 2<sup>nd</sup> respondent is only an after thought and it is unbelievable. The petitioner has not produced a copy of the complaint given to the Police but they produced only a copy of CSR. Only if copy of the complaint is produced, the list of documents alleged to have been washed away in 2015 floods can be found out. The copy of the CSR produced does not disclose the details of documents alleged to have been washed away in 2015 floods. In view of the said submissions, the present claim of the petitioner that all the records including the approved plan were washed away in the flood during 2015 is only an after thought and it is clear that entire



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superstructure is unauthorised, the petitioner is not entitled to the relief sought for in the Writ Petition. Learned Senior Counsel further submitted that 5<sup>th</sup> respondent has paid Rs.15,00,00,000/- to the SMS Bucary Wakf and filed the receipts in the suit C.S.No.574 of 2010 filed by them in this Court and prayed for dismissal of W.P.No.19956 of 2021.

7. The petitioner filed reply affidavit to the counter affidavit filed by the 5<sup>th</sup> respondent. The petitioner reiterated the averments made in the affidavit filed in support of the Writ Petition. In addition to the same, the learned Senior Counsel appearing for the petitioner submitted that in the sale deed dated 22.12.2006 registered as document No.402/2007 by which the 5<sup>th</sup> respondent purchased the land in question, it has been mentioned that lease in favour of the petitioner is valid till 31.12.2018. In the sale deed, it has been mentioned that 5<sup>th</sup> respondent is retaining a sum of Rs.15 Crores to be paid to the petitioner for the value of the superstructure.

7(i). The claim of the 5<sup>th</sup> respondent that they became owner of the superstructure is without merits. In suit C.S.No.574 of 2010 filed by the 5<sup>th</sup> respondent for eviction of petitioner from the property in question, the 5<sup>th</sup> respondent filed various applications including application for



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direction to the petitioner and sub-tenants to deposit the rent. The said relief was rejected by the learned Judge. In O.S.A.Nos.259 to 262 of 2012, the Division Bench of this Court held that lease in favour of the petitioner expired only on 31.12.2018.

7(ii). The learned Senior Counsel appearing for the petitioner submitted that lease is only with regard to land and building absolutely belongs to the petitioner. The claim of ownership of land by 5<sup>th</sup> respondent is in dispute. One of the beneficiaries of petitioner's lessor SMS Bucary Wakf filed O.S.No.6661 of 2018 seeking declaration that sale deed dated 22.12.2006 bearing document No.402/2007 executed by SMS Bucary Wakf in favour of the 5<sup>th</sup> respondent is null and void and not binding on them. Another O.S.No.4635 of 2015 filed by one M/s.Sundaram Constructions against the petitioner, 5<sup>th</sup> respondent and SMS Bucary Wakf is also pending adjudication before the learned XV Assistant Judge, City Civil Court, Chennai in respect of very same property. The 5<sup>th</sup> respondent himself admits that 95000 sq.ft. was constructed prior to commencement of Town and Country Planning Act and prayed for allowing the Writ Petition.



8. The petitioner also filed objections to the status report filed by the 2<sup>nd</sup> respondent corporation and submitted that for the first time, the 2<sup>nd</sup> respondent has taken a stand that in the Property Tax return Form-I, the petitioner has stated that approved plan is not available. At the time of filing property tax application, all the approved plans were available with Mrs.Yashodha G.Shah in Ahmedabad and after obtaining particulars telephonically, the returns were filed. Subsequently all the original plan approval documents were produced before the then Officials of the 2<sup>nd</sup> respondent to their satisfaction. No objections were raised and they were satisfied. The documents which were kept in the record rooms in the ground floor were washed away in the flood during December 2015. The stand taken by the respondents 1 & 2 that petitioner did not obtain approved plan is not correct and prayed for allowing the Writ Petition.

9. Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner, Mr.D.B.R.Prabhu, learned Standing Counsel appearing for the respondents 1 & 2, Mr.E.Vijayanand, learned Additional Government Pleader appearing for the 3<sup>rd</sup> respondent, Ms.P.Veena Suresh, learned Standing Counsel appearing for the 4<sup>th</sup> respondent and Mr.R.Parthasarathy, learned Senior Counsel appearing for the 5<sup>th</sup>



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respondent and perused the entire materials on record.

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10. From the materials on record, the following are the admitted facts:

(a) Originally land in question belonged to SMS Bucary Wakf.

(b) One Abdul Sheriff and Yusuf Sheriff purchased the lease hold right of the land and superstructures in the Court auction, which was confirmed by this Court in Company Application No.144/1962 in Company Petition No.27/1961.

(c) The said Abdul Sheriff and Yusuf Sheriff sold their lease hold right over the land and superstructures to M/s.Estate Traders by the sale deed in the year 1963.

(d) M/s.Estate Traders sub-leased the lease hold right of the land and superstructures to M/s.Premraj Ganpatraj & Company Private Limited under the registered lease deed dated 23.09.1963. M/s.Premraj Ganpatraj & Company Private Limited was renamed as M/s.Madras Electrical Conductors Private Limited.

(e) M/s.Estate Traders partnership firm was dissolved on



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06.01.1968.

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(f) SMS Bucary Wakf entered into a fresh lease with partners of M/s.Estate Traders in their individual capacity. Later, partners surrendered the lease agreement and SMS Bucary Wakf leased out the property in question to M/s.Madras Electrical Conductors Private Limited vide lease deed dated 26.02.2000.

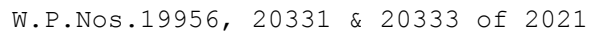
(g) M/s.Madras Electrical Conductors Private Limited was renamed as MEC International Private Limited, the petitioner herein.

(h) The 2<sup>nd</sup> respondent inspected the property in question and issued notice dated 09.09.2016 calling upon the petitioner to produce the approved plan. Failure on the part of the petitioner, the 2<sup>nd</sup> respondent issued lock & seal and demolition notice dated 14.10.2016.

(i) The petitioner filed an appeal under Section 80A of the Act and also Writ Petition No.38680 of 2016. The First Bench of this Court by the order dated 07.11.2016 set aside the notice and also held appeal is disposed off as infructuous.

(j) The 2<sup>nd</sup> respondent again issued notice under Sections 56(1) & 57 read with Section 85 of the Act on 18.01.2017 to produce the approved plan.

(k) The petitioner filed an appeal and also filed W.P.No.5356 of



*“6. In the view of the above, the Government directs the Greater Chennai Corporation to verify facts by causing inspection and then decide on the violations. Therefore as on site plan signed by the appellant and his Architect/Licensed Surveyor must be produced within a month to the Greater Chennai Corporation and thereafter Greater Chennai Corporation will determine the violation and pursue enforcement action.”*

<https://www.mhc.tn.gov.in/judis>



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The First Bench of this Court by common order dated 11.03.2019 held that nothing further survives and closed both the Writ Petitions. The paragraph 4 and 5 of said order is extracted hereunder:

*“4. Mr. V. Jayaprakash Narayanan, learned Government pleader (i/c) submitted that the third respondent had already issued a notice to the petitioner and also heard the submissions made on behalf of the petitioner on 07-03-2019. He further submitted that the third respondent would pass a detailed order based on the submissions made on behalf of the petitioner without making reference to the earlier order.*

*5. In view of the above submission made by the learned Government pleader (i/c), nothing further survives for adjudication in these writ petitions. It is open to the third respondent to pass orders in accordance with law, without making reference to the earlier order. These writ petitions are closed. No costs. Consequently, W.M.P. Nos.3870 and 6353 of 2019 are closed.”*

(m) The 3<sup>rd</sup> respondent by the impugned order rejected the review as not maintainable and directed the respondents 1 & 2 to pursue necessary enforcement action.



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11. In addition to the above admitted facts, the following facts are on record.

M/s.Doshi Constructions, has impleaded themselves as 5<sup>th</sup> respondent. According to the 5<sup>th</sup> respondent, they have purchased 7 acres 84 cents in the property in question by the deed of sale dated 22.12.2006 registered as document No.402/2007 from SMS Bucary Wakf. The 5<sup>th</sup> respondent has filed C.S.No.574 of 2010 for eviction of the petitioner and tenants from the 7 acres 84 cents purchased by them. The said suit is pending. The petitioner has submitted that one of the beneficiaries of petitioner's lessor SMS Bucary Wakf filed O.S.No.6661 of 2018 seeking declaration that sale deed dated 22.12.2006 bearing document No.402/2007 executed by SMS Bucary Wakf in favour of the 5<sup>th</sup> respondent is null and void and not binding on them. M/s.Sundaram Constructions filed O.S.No.4635 of 2015 against SMS Bucary Wakf, petitioner and 5<sup>th</sup> respondent and others for declaration and permanent injunction.

12. From the above materials, it is seen, the 5<sup>th</sup> respondent is claiming title over 7 acres 84 cents in the property in question. The petitioner has mentioned suits challenging the sale deed in favour of the 5<sup>th</sup> respondent and also for declaration and injunction are pending. The



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claim of the 5<sup>th</sup> respondent with regard to title and suits pending are not relevant to decide the issue in the present Writ Petition. The only issue to be decided is whether construction put up in the property in question was put up after obtaining building plan approval or construction is an unauthorised one.

13. From the materials available in the record, it is seen that total extent of construction in the property in question is 2,20,000 sq.ft. According to the petitioner, entire construction is put up after obtaining prior building approval and constructions are as per the approved plan. The petitioner has not produced alleged building plan approval. According to the petitioner, the building plan approval along with other documents were washed away in November and December 2015 flood. Further claim of the petitioner that entire property is assessed for property tax and the respondents 1 & 2 would not have assessed the property for tax without approved plan. On the other hand, the respondents 1 & 2 have stated that in the Property Tax Form-I filed by the petitioner in the year 1998 for assessment of property tax itself, the petitioner has stated that approved plan is not available. The learned Standing Counsel appearing for the respondents 1 & 2 submitted that in view of the said



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submissions, claim of the petitioner that approved plan along with documents were washed away in November & December 2015 flood is an after thought, which cannot be accepted.

14. From the three property tax applications filed by the petitioner in the typed set of papers from page nos.106 to 150, it is seen that the petitioner has stated that the predecessors have constructed present superstructures in three phases. It is also stated 25000 sq.ft. of building is RCC roofing and 70000 sq.ft. is asbestos sheet in one application. In the other two applications filed by the petitioner, it is seen, he has stated that 20000 sq.ft. and 28000 sq.ft. are asbestos sheet. From the stand taken by the petitioner in the Property Tax applications, the contention of learned Senior Counsel appearing for the petitioner that 2,20,000 sq.ft. were constructed in the year 1958, 1986 and 1989 is not acceptable and contrary to the materials on record. Further at present the entire construction is with RCC roofing. The petitioner has not stated as to when asbestos sheet has been replaced and put up construction with RCC roofing.

15. The learned Senior Counsel appearing for the petitioner



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submitted that after submitting application for assessment of property tax, the petitioner got the approved plan from Mrs.Yashodha G.Shah, who was residing in Ahemdabad and all the original approved plans were produced to the then Officials of the respondents 1 & 2, who verified the same and satisfied with the documents produced by the petitioner. The petitioner has not substantiated the same by any acceptable evidence except by filing Notary attested affidavit from Mrs.Yashodha G.Shah. A reading of affidavit filed by Mrs.Yashodha G.Shah shows that the contention in the said affidavit is only self serving statement and it cannot be taken into account to accept the case of the petitioner that originals were produced before the Officials of respondents 1 & 2 and they were satisfied with those documents.

16. The petitioner has stated that superstructures in the property in question were put up 40 years earlier and therefore, provisions of Town and Country Planning Act are not applicable. From the materials on record, it is seen that total construction in the property is 2,20,000 sq.ft. The petitioner has stated 25000 sq.ft. was put up before 1998. This shows remaining 1,95,000 sq.ft. was put up subsequently when the Town and Country Planning Act was in force. It is also to be noted that



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petitioner has stated in paragraph 37 of the affidavit that he has spent a sum of Rs.55,67,380/- for putting up superstructure in the property in question.

17. According to the petitioner, he became a lessee in the year 2000 for land and superstructure for 32 years 4 months commencing from 1986. In view of the admitted fact that petitioner has put up superstructure by spending Rs.55,67,380/-, he ought to have obtained prior approval for construction. The petitioner has not produced any approved plan. The petitioner claimed that approved plan including other documents were washed away in December 2015 flood and he has given complaint to the K.K.Nagar Police Station and Police gave CSR. The petitioner has not produced copy of the complaint given by him. The petitioner produced only copy of the CSR. A reading of the CSR shows that nature of the petition is '**document missing**'. Without copy of the complaint, it cannot be seen what are the documents were missing from the godown of the petitioner in December 2015 flood. The petitioner has not given any explanation for not producing the copy of the complaint given before the Police. Failure on the part of the petitioner to produce copy of the complaint creates doubt for the veracity of the claim of the



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petitioner that he gave a complaint to the Police about the loss of approved plan for the building in question. Further it is to be noted that the petitioner has produced documents relating to property tax assessed for the property in question. It is not known as to how these documents relating from 1998 are available with the petitioner when the petitioner claims approved plan and other documents were washed away in 2015 floods.

18. The contention of the learned Senior Counsel appearing for the petitioner that property in question was assessed for property tax by the respondents 1 & 2 and respondents 1 & 2 would not have assessed the property for tax without any approval is not acceptable. The property can be assessed for tax even for unauthorised building and the building constructed in deviation of the approved plan.

19. As rightly contended by learned Standing Counsel for the respondents 1 & 2 that in the year 1998 itself, the petitioner has stated that approved plan is not available. The submission of learned Standing Counsel for the respondents 1 & 2 that contention of petitioner that approved plan together with other documents were washed away in 2015 floods is an after thought, has considerable force and the same is



acceptable.

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20. In W.P.No.38680 of 2016 filed by the petitioner, this Court by order dated 07.11.2016 directed the respondents 1 & 2 to verify their records whether any approved plan is available and find out nature of construction and thereafter, issue notice and proceed in accordance with law. The relevant paragraphs are extracted hereunder:

“5. Now turning to the merits of the controversy, once it is stated that the petitioner is not in possession of the sanction plan, it is the bounden duty of the Corporation to have located from the records what was the sanctioned plan and tallied the construction with the same. If some unauthorised construction was found, then notice for locking and sealing and demolition could have been issued in respect of that portion, since the petitioner does not have any records.

6. We are, thus, of the view that the notice dated 14.10.2016 and the appeal filed thereafter is a futile exercise and set aside the notice and the appeal is thus disposed of as infructuous. The respondent Corporation is called upon to verify from its own records the position of the construction and thereafter issue notice and proceed in accordance with law.”



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21. The respondents 1 & 2 as well as 4<sup>th</sup> respondent have filed affidavits stating that they verified their records and found that no approved plan is available in their files. In view of the same, notice dated 18.01.2017 issued by the 2<sup>nd</sup> respondent calling upon the petitioner to produce approved plan is valid and legal.

22. The petitioner filed W.P.No.5356 of 2017 on 16.02.2017 for a direction to the 1<sup>st</sup> respondent to forbear from executing lock & seal and demolition notices in respect of entire buildings & superstructures located on schedule lands described in Schedule A & B, situated at Old No.37, New No.06, Arcot Road, Vadapalani, Chennai-600 026, pending disposal of the appeal filed on 07.02.2017 before the 2<sup>nd</sup> respondent, the Secretary to the Government of Tamil Nadu Housing and Urban Development Department. This Court after considering the submissions made by the learned Senior Counsel appearing for the petitioner, learned Standing Counsel and learned Additional Government Pleader appearing for the respondents 1 to 3 by the order dated 20.07.2017 directed the 1<sup>st</sup> respondent to consider the maintainability of the revision as a preliminary issue and depending upon the result of the same, proceed further to pass orders in accordance with law. The operative portion of the said order is



extracted hereunder:

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*“10. It is the categorical submission of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the second respondent that since the notice dated 18.01.2017, issued by Corporation of Chennai, merely called upon the petitioner to produce the Approval Sanction Plan, a Special Revision filed under Section 80-A, is not maintainable.*

*11. Be that as it may, it is the categorical stand of the petitioner that they have filed the revision by invoking the said provision before the first respondent and the first respondent shall consider the maintainability of the said revision as a preliminary issue and depending upon the result of the same, shall proceed further and pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till such time, the respondents shall defer further proceedings in respect of the notice dated 18.01.2017 calling for production of approved plan.”*

23. The issue in the present Writ Petition has to be considered in consonance with the facts stated above. The 2<sup>nd</sup> respondent by notice dated 18.01.2017 called upon the petitioner to produce the approved plan. The petitioner did not produce any approved plan, but filed appeal



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to the 3<sup>rd</sup> respondent challenging the said order. The 3<sup>rd</sup> respondent gave a personal hearing to the petitioner as well as to the respondents 1 & 2. The petitioner before the 3<sup>rd</sup> respondent contended that all the superstructures in the property in question were constructed as per the approved plan, the approved plan along with other documents were washed away in December 2015 flood. The second contention of the petitioner is that assessment of property tax clearly shows that superstructures were built as per the approved plan. The 3<sup>rd</sup> respondent considering these contentions and materials placed before him, did not accept the case of the petitioner and held that in the absence of the approved plan, all the constructions in the property in question are unauthorised and directed the respondents 1 & 2 to take action in respect of unauthorised construction. The 3<sup>rd</sup> respondent has given cogent and valid reason for rejecting the case of the petitioner. The petitioner filed review petition under Section 81 of the Act before the 3<sup>rd</sup> respondent to review the order dated 05.10.2018. In the review petition, the 5<sup>th</sup> respondent through their advocates filed their objections. The 3<sup>rd</sup> respondent rejected the review petition as not maintainable since the petitioner has not produced any new materials or pointed out any error in the order dated 05.10.2018.



24. The review filed by the petitioner is under Section 81 of the

Act. The said section is extracted hereunder for easy reference:

**Section 81 of the Town and Country Planning Act:**

“81. Review.- (1) The appellant or the applicant for revision or the respondent may apply for the review of any order passed under sections 76 to 78 and 80, on the basis of the discovery of new and important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made, or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason: Provided that no application for review shall be presented more than once in respect of the same order.

(2) Every application for review shall be presented within such time and in such manner as may be prescribed.

(3) The decision or order passed on the application for review shall be final.

(4) The authority competent to pass orders on the application for review may pass such interlocutory orders pending the decision on the application for review as it may deem fit.

(5) The authority referred to in sub-section (4) may award costs in proceedings under this section to be paid either out of the Fund Account or by such party to the application for review as it may deem fit.”



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As per this Section, review is maintainable only when the review is filed challenging the order passed under Sections 76 to 78 and 80 of the Act. Secondly, the review petition is maintainable when a new or important fact is discovered, after the order even though after exercising due diligence, the said fact could not be placed before the Appellate Authority or there is mistake or error apparent on the face of the order and or for any other sufficient reason.

25. The petitioner in the Review Petition has not mentioned any new or important facts which he could not produce in the appeal filed by him or there are errors on the face of the order passed in the appeal. The 3<sup>rd</sup> respondent has considered Section 81 of the Act and has given cogent and valid reason for rejecting the Review Petition.

26. One Abdul Sheriff and Yusuf Sheriff were declared as purchasers in Court auction held on 28.07.1962. This Court after confirming the sale, issued certificate of sale dated 05.10.1962. In the schedule to the sale certificate, the extent of land has been mentioned. But the extent of superstructure was not mentioned except stating “Together



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with all superstructures” etc. The schedule to the sale certificate is extracted hereunder:

### **SCHEDULE**

“The leasehold interest and other interest in the piece and parcel of land forming western part of Survey Nos.186/1 & 187/1, Kodambakkam, Saligram Village, Saidapet Taluk, Sub Registration District of Theogoroya Nagar, in the Registration District of Madras-Chingelpet, measuring 177 feet from West to East and 1200 feet from North to South, situate in Arcot Road, Kodambakkam, Saligram Village, Saidapet Taluk and bounded on the North by Arcot Road, on the East by the open land of S.M.S.Bucary's leased to Ponnaluri Bros (Private) Ltd., on the West by A.V.M.Studios and on the South by Government land measuring in all about 5 acres and with 2 wells, and Electric pump set 5 H.P. Motor and Pump, shed together with all superstructures, Electric installations and sanitary installations and all fixtures erected by Ponnaluri Bros (P) Ltd.

(b) The leasehold interest and other interest in the pieces and parcel of land bearing Survey Nos.186 and 187 in the village of Saligram, Saidapet Taluk, in the Sub Registration District of Saidapet, of now Theogoroyanagar, in the Registration District of Madras-Chingleput and forming part of Jaggargi Gardens, Arcot Road, bounded on the East by the land of Relangi Venkatramiah and others on the West by the land of S.M.S.Bucary leased to Ponnaluri Bros (P) Ltd., on the south by Government land and on the North by the building of S.M.S.Bucary and measuring North to South about 850 feet and East to West 157 feet, with a total extent of about 3 acres together with all superstructures electrical and sanitary



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installations, appurtenances and fixtures erected by Ponnaluri Bros., (P) Ltd.”

27. The lease agreement between SMS Bucary Wakf and its beneficiaries and M/s.Madras Electrical Conductors Private Limited relates to only lease of land. In the said lease agreement, M/s.Madras Electrical Conductors Private Limited stated that they are the absolute owners of the superstructure, but the extent of superstructure as on that date was not mentioned.

28. Except in Property Return Form-I filed on 30.12.1998, there is no particulars of age and extent of superstructure mentioned. In all the forms filed on 30.12.1998, it has been categorically stated that building plan is not available. In the said forms, the following particulars are mentioned with regard to nature of construction:

| <i>Sl.No.</i> | <i>Asbestos</i> | <i>RCC</i>                  |              |
|---------------|-----------------|-----------------------------|--------------|
| 1.            | 70000 sq.ft.    | 20000 sq.ft.<br>5000 sq.ft. | 40 years old |
| 2.            | 20000 sq.ft.    | -                           | 9 years old  |
| 3.            | 28000 sq.ft.    | -                           | 13 years old |
| 4.            | 21000 sq.ft.    | -                           | 13 years old |

The scanned copies of Property Return Form – I filed by petitioner are produced hereunder for easy reference:



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[illegible]

| S.No. | Particulars | NATURE OF CONTRIBUTION |        |       |       | Total |
|-------|-------------|------------------------|--------|-------|-------|-------|
|       |             | Self                   | Spouse | Child | Other |       |
| 1     | Self        |                        |        |       |       |       |
| 2     | Spouse      |                        |        |       |       |       |
| 3     | Child       |                        |        |       |       |       |
| 4     | Other       |                        |        |       |       |       |
| 5     | Total       |                        |        |       |       |       |



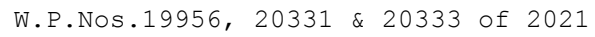
W.P.Nos.19956, 20331 & 20333 of 2021

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W.P.Nos.19956, 20331 & 20333 of 2021

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W.P.Nos.19956, 20331 & 20333 of 2021

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W.P.Nos.19956, 20331 & 20333 of 2021

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*[Handwritten signature]*

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10-8-01 Georgios Georgios Georgios Georgios Georgios

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City of Houston the amount of claims up to \$100,000.

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உறுதிப்பாடு / DECLARATION -

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I, Mrs. Joseph C. Hanger, hereby declare that the preceding is a true and correct copy of my knowledge. If any of the particulars herein stated are false or untrue, I understand that I will be liable to prosecution thereon per the Court.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_



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W.P.Nos.19956, 20331 & 20333 of 2021

In the Property Forms filed on 30.12.1998, the particulars furnished by the petitioner itself are vital to decide the issue in the Writ Petition.



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Having furnished these particulars the petitioner cannot contend that original approvals were produced subsequently. Similarly, the contention that original approved plan and other documents were washed away in the year 2015 flood cannot be accepted.

29. The petitioner even though claim that petitioner's predecessors and petitioner had put up construction as per the approved plan, the petitioner failed to produce the approved plan. The reason given by petitioner that approved plan and other documents were washed away in 2015 floods for the failure to produce the approved plan is not acceptable, when petitioner had produced four Property Return Form-I of the year 1998. As per the order of this Court, the 3<sup>rd</sup> respondent considered the entire materials and after hearing the petitioner, rejected the Review Petition by giving cogent and valid reason. Hence, there is no reason to interfere with the said order of the 3<sup>rd</sup> respondent.

30. For the above reasons, the petitioner is not entitled to the relief sought for and W.P.No.19956 of 2021 is dismissed as devoid of merits. The reason given for dismissing W.P.No.19956 of 2021 is applicable to the facts of W.P.Nos.20331 and 20333 of 2021 also. Hence, both



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W.P.Nos.20331 and 20333 of 2021 are also dismissed. No costs.

Consequently, connected WMPs are closed.

**(V.M.V., J) (V.L.N., J)**  
**17.04.2023**

Index : Yes / No  
Neutral Citation : Yes / No  
kj

To

1. Greater Chennai Corporation  
Rep. by its Assistant Executive Engineer  
Unit 29, Zonal Office-10, Kodambakkam  
Chennai-600024.

2. Greater Chennai Corporation  
Rep. by its Assistant Executive Engineer  
Zone 10, No.117, N.S.K. Salai  
Kodambakkam, Chennai-600024.

3. Secretary  
Housing & Urban Development Department  
Government of Tamilnadu  
Secretariat  
Chennai-600009.

4. Member Secretary  
Chennai Metropolitan Development Authority  
1, Gandhi Irwin Road, Egmore  
Chennai-600008.



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**V.M.VELUMANI,J.  
and  
V.LAKSHMINARAYANAN,J.**

Kj

5. The Secretary to the Government of Tamil Nadu  
Housing and Urban Development Department  
Fort St. George  
Secretariat, Chennai-600009.

6. The Commissioner  
Greater Chennai Corporation  
Ripon Building, 1<sup>st</sup> Floor  
Raja Muthiah Road, Kannappar Thidal  
Periyamet, Chennai-600003.

7. The Member Secretary  
Town and Country Planning Department  
Anna Salai, Chennai-600002.

8. The Executive Engineer  
Zone-10, Greater Chennai Corporation  
No.117, N.S.K. Salai  
Kodambakkam, Chennai-600024.

**Pre-delivery order made in**  
Writ Petition Nos.19956, 20331 &  
20333 of 2021  
and W.M.P.Nos.21216, 21568, 21569,  
21572 & 21573 of 2021  
W.M.P.No.8498 of 2022

17.04.2023