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IN THE HIGH COURT OF JUDICATURE AT MADRAS

A.S.No.601 of 2011

Date of Reserving the Judgment	Date of Pronouncing the Judgment
26.06.2024	11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.601 of 2011

and

M.P.No.1 of 2013 & C.M.P.No.20366 of 2019

La Palace Apartment
Owners Association
rep.by its President
No.24, 3rd Cross Street
Ormes Road
Kilpauk, Chennai-600 010

... Appellant

-VS-

1.L.Muthiah
Proprietor
Premier Estates
73-A, Landon's Road
Kilpauk, Chennai-600 010

2.Chennai Metropolitan
Development Authority
rep.by its Member Secretary
Having its office at
Thalamuthu Natarajan Maligai
Gandhi Irwin Road
Egmore, Chennai-600 008



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3. Corporation of Chennai
rep. by the Commissioner
Ripon Buildings, Chennai-600 003

4. R. Sivakumar
[R4 is impleaded *vide* Court order dated
04.04.2024 made C.M.P.No.13161 of 2022]

... Respondents

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree, dated 22.07.2011, made in O.S.No.11897 of 2010, on the file of the learned Additional District Judge, Fast Track Court No.I, Chennai.

For Appellant : Mr.K.V.Sundararajan

For Respondents : No appearance for R1
Ms.K.Mageswari, Standing Counsel, for R2
Ms.K.Aswini Devi, Standing Counsel, for R3
Mr.N.G.R.Prasad
Senior Counsel
assisted by Mr.C.Prabakaran for R4

J U D G M E N T

For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

2. The unsuccessful plaintiff is the appellant herein. The first defendant is the proprietor of M/s.Premier Estates, who constructed the



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building and he remained *ex parte* before the Trial Court. Defendants 2 and 3 are officials, namely, Chennai Metropolitan Development Authority and Corporation of Chennai.

3. Suit in O.S.No.11897 of 2010 is for a recovery of a sum of Rs.12,00,000/- from the first defendant with interest at the rate of 24% per annum and for permanent injunction restraining the first defendant from putting up any further construction on the fourth floor of the suit property and mandatory injunction directing the officials, who are defendants 2 and 3, to pull down the superstructure measuring 30'6" X 12' on the ground floor of the suit property, which is in violation of the sanction plan also to pull down the construction already carried out on the fourth floor of the suit property.

4. After taking into consideration the oral and documentary evidence adduced, the Trial Court dismissed the suit. Challenging the same, the plaintiff has preferred this appeal suit.

5. The following points arise for consideration:

- (i) Whether the first defendant has constructed additional construction without sanctioned plan?



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- (ii) Whether there is violation of the approved building plan as pleaded by the plaintiff?
- (iii) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (iv) Whether the plaintiff is entitled for mandatory injunction as against the defendants 2 and 3 to pull down the superstructure, which is put up in violation of the approved plan?
- (v) Whether the plaintiff is entitled for mandatory injunction to pull down the construction already put up on the fourth floor of the suit property?
- (vi) Whether the plaintiff is entitled for Rs.12,00,000/- towards damages with interest?

6. The first defendant remained *ex parte* before the Trial Court.

7. The suit is for recovery of a sum of Rs.12,00,000/- from the first defendant and for permanent injunction and mandatory injunction as against the defendants 2 and 3.



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8. According to the plaintiff, the property bearing No.24, III Cross Street, Ormes Road, Kilpauk, Chennai-600 010, was promoted and developed by the first defendant. As per the sanctioned plan, the building was to comprise of ground + three floors. After completion of the building work, all the flat owners formed the plaintiff Association and it was registered on 22.09.2000 with a registration No.1048/2000 and it is represented by its President.

9. Further, according to the plaintiff, in violation of the sanctioned plan, the first defendant has put up additional construction as a temporary office in the ground floor common area and also put up construction in the fourth floor and there were other deviations. However, the authorities concerned have not taken any action despite the representation sent to them in this regard and therefore, the present suit for damages and for other reliefs.

10. Advocate Commissioner appears to have been appointed by the Trial Court. But, his report was not marked. Though the learned Trial Court has come to the conclusion that as per the Advocate Commissioner Report, there is a deviation to the sanctioned plan, however, refused to grant the relief on the ground that the plaintiff is not entitled to the relief because,



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what was sold by the owner was only 14 shares out of 18 shares and remaining four shares were retained by the land owner and therefore rejected the suit.

11. C.M.P.No.20366 of 2019 was filed by the plaintiff for injunction. Injunction was granted by this Court.

12. By order dated 10.03.2020, the Chennai Metropolitan Development Authority and the Corporation of Chennai, who are respondents 2 and 3 herein, were directed by this Court to take necessary action against unauthorized construction put up by the first defendant / first respondent and to file a report before this Court by 20.03.2020. Since there was a Covid lock down period during the said period, the matter was not listed.

13. Subsequently, while C.M.P.No.13161 of 2022 was heard, the plaintiff / appellant sought for the compliance report as per the directions issued by this Court on 10.03.2020 in C.M.P.No.20366 of 2019 and accordingly, an order was passed by this Court on 01.02.2023 directing the Chennai Metropolitan Development Authority and the Corporation of Chennai viz., defendants 2 and 3 to file a report as per the order of this Court dated 10.03.2020 made in C.M.P.No.20366 of 2019.



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14. Pursuant to the said directions, a status report has been filed by the Chennai Metropolitan Development Authority, in the open Court on 14.06.2023 through their Standing Counsel Ms.K.Mageswari. Since it is an appeal suit, in exercise of the powers conferred upon this Court under Section 151 read with Order XLI Rule 27 Clause 3 of the Code of Civil Procedure, in the interest of justice and for adjudication of the *lis* between the parties, it is necessary for the status report to be marked as an exhibit. Both the parties have no objection for the same.

15. Accordingly, this Court *suo motu* marks the status report filed by the Chennai Metropolitan Development Authority / second defendant / respondent before this Court on 14.06.2023 as Ex.C1.

16. In view of the *lis* between the parties, this Court called upon the plaintiff to file quantum of the shares with detailed calculation. It was disputed by the first defendant and hence, the status report filed by the Chennai Metropolitan Development Authority / second defendant, which is marked as Ex.C1, was taken into consideration.



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17. Paragraph Nos.3 and 4 of the status report, which are more significance, are extracted hereunder:

“It is submitted that a part Fourth Floor was found with 2 dwelling units in the building against the approved building plan and detailed deviations against the approved parameters are enumerated below:

Sl.No.	Description	As per approved plan	As on site	As per Tamil Nadu Combined Development & Building Rules-2019 rule-35(b)	Violations / Deviation with reference to approved plan.
1.	No. of Floors	Stilt (pt) / Ground Floor (pt) + 3 Floors	Stilt (pt) / Ground Floor (pt) + 3 Floors + 4 th Floor (part)	Unauthorized 4 th Floor (part)	Open To Sky portion in Stilt floor constructed as rook. OTS Portion part in First Floor constructed as Toilet. 4 th Floor (part) with 2 dwelling units is constructed unauthorizedly with reference to approved plan.
2.	Floor Space Index	1.495	1.853 (2791.7 3m ²)	2.00 (1506.70 X 2.00 = 3013.40 m ²)	Excess FSI by 0.358 Excess area = 534.96m ²
3.	Dwelling units	14	18	-	Excess by 4 dwelling units. (2 dwelling units unauthorized & 2



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					dwelling unit in 3 rd floor splitted into 4 dwelling units)
4.	Usage	Residential building	Residential building	-	-
6.	Parking	Car – 15 Nos.	Car – 15 Nos.	Car – 18 Nos. TW – 36 Nos.	Less by 3 Nos. Less by 36 Nos.
7.	Setback details				
	FSB(E)	6.35m 7.15m	6.35m 7.15m	4.50m 4.50m	- -
	SSB(N)	4.25m 4.20m 4.15m	4.25m 4.20m 4.15m	3.00m 3.00m 3.00m	- - -
	SSB(S)	4.30m 4.90m	4.30m 4.90m	3.00m 3.00m	- -
	RSB(W)	7.75m 7.65m	7.75m 7.65m	3.00m 3.00m	- -

4.It is submitted that after recording the violations to the approved Building plan, a notice under Rule:5(b) of the Tamil Nadu Town and Country Planning (Removal of Unauthorized Development) Rules, 2022 was issued by CMDA vide letter No.EC/N-I/9389/2023 dated 28.04.2023 requiring the owner requiring compliance of the planning permission within 30 days from the date of service of the notice.”

18. Mr.N.G.R.Prasad, learned Senior Counsel appearing for the fourth respondent herein, would contend that the dwelling unit, though it was



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constructed in violation of the sanctioned plan, what was sold is lesser in number and therefore, it need not be demolished.

19. I am unable to appreciate the above contention of the learned Senior Counsel, since the remaining shares are said to have been with the first defendant / first respondent. Once the competent authorities, namely, defendants 2 and 3 have filed the status report noting the unauthorized construction, the same cannot be allowed by raising the quantum of share.

20. My attention was drawn to the schedule of the properties in Ex.A2 – Agreement of Sale executed by the first defendant. In Ex.A2, A-Schedule property is the entire property. B-Schedule property is the property that was agreed to be conveyed. As per Ex.A2, 1/18 undivided share share of Schedule-A was agreed to be conveyed. A-Schedule property in Ex.A2 – sale agreement is the entire property that has been constructed by the first defendant. 1/18 undivided share in Schedule-A was sold to the proposed flat owners as could be seen from Ex.A2 -sale agreement. Approval is only for 18 flats and hence, the Trial Court has calculated the share.

21. According to the plaintiff, they are having only 14/18 share



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and therefore, the Trial Court has said that since the plaintiff is having only 14/18 share, they cannot prevent the land owner from constructing on the remaining 4/18 share. However, the Trial Court has been totally misled by the said submission for more than one ground. What was sanctioned as per the status report was completed and over. Besides the sanctioned plan for construction, the first defendant had indulged in unauthorized construction. Unauthorized constructions cannot be upheld in the eye of law and hence, the finding rendered by the Trial Court that the first defendant, though not filed any written statement, is entitled to proceed with the unauthorized construction in the alleged share of 4/18. The extent of the land is one thing. Construction of the building according to the approved plan is the yet another thing. Landlord cannot be permitted to put up construction unauthorizedly, since construction without plan is liable for demolition as per the concerned Corporation Act. This vital aspect appears to have been forgotten by the Trial Court.

22. After perusing Ex.A11, copy of the sanctioned plan and



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Ex.A13, photographs showing the constructions in the suit property and Ex.A14, estimate given by the approved Engineer, it is seen that unauthorized construction cannot be allowed to be present in the approved layout and hence, I find that unauthorized construction put up by the first defendant has to be demolished and it appears from Ex.C1 that the Chennai Metropolitan Development Authority has already initiated action for demolition of the unauthorized construction and therefore, the prayer in the suit regarding mandatory injunction in the prayer (C) and (D) has already been commenced by the defendants 2 and 3 and since the defendants 2 and 3 are statutory bodies, they are at liberty to implement the same and to initiate necessary action for demolition. Accordingly, they have also initiated action.

23. With regard to prayer (B) in the suit, relief of permanent injunction is concerned, absolutely, where there is no approved plan, the first defendant cannot proceed with the unauthorized construction and hence, the plaintiff is entitled for the relief of permanent injunction.

24. As against the claim of Rs.12,00,000/- as damage (prayer (A)),



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after perusing the report filed by the Authorized Engineer and taking note of the entire circumstances, I find that a sum of Rs.6,00,000/- would meet the ends of justice and accordingly, this appeal suit is liable to be partly allowed to that extent.

25. It remains to be stated that in W.A.No.5765 of 2020 filed by the Flat Owners Association against the Promoter and the land owner, the Honourable Division Bench of this Court has observed that the Authorities should not yield to the attempts made by the land owner or the builder to have non-FSI area converted into a commercial area and the flat owners are entitled to the actual undivided share calculated by the authorities concerned. Normally, the undivided share in the land is calculated by dividing the land area by the total constructed area and by multiplying it by the size of the apartment. However, by artificially increasing the total built up area, the Promoter cannot get their actual entitlement on the undivided share in the land and finally, it was held that the vacant non-FSI area to be handed over to the Flat Owners Association.

26. In the result,



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- (i) This appeal suit is allowed.
- (ii) The Judgment and Decree, dated 22.07.2011, made in O.S.No.11897 of 2010, are hereby set aside.
- (iii) The suit in O.S.No.11897 of 2010 is partly decreed to the limited extent of Rs.4,00,000/- (Rupees four lakhs only) with interest at the rate of 9% per annum from the date of suit till the date of its realisation.
- (iv) With regard to prayer (B) in the suit *viz.*, relief of permanent injunction is concerned, absolutely, where there is no approved plan, the first defendant cannot proceed with the unauthorized construction and hence, the plaintiff is entitled for the relief of permanent injunction.
- (v) No costs.
- (vi) Consequently, connected miscellaneous



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petitions are closed.

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11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1.The Additional District Judge,
Fast Track Court No.I,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

RMT.TEEKAA RAMAN, J.

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JUDGMENT
IN
A.S.No.601 of 2011
and
M.P.No.1 of 2013
and
C.M.P.No.20366 of 2019

11.12.2024