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WP.No.5772/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5772 of 2020
& WMP.No.6747 of 2020

M/s.Marg Properties Ltd
Rep. by its Manager – Legal
Mr.K.S.GajendraBabu,
Sri Sai Subhodaya Apartments,
No.57/2B, East Coast Road,
Thiruvanmiyur, Chennai – 600 041.

...Petitioner

vs.

1.The Adjudicating Officer,
Tamil Nadu Real Estate Regulating Authority (TNRERA),
No.1A, 1st Floor, Gandhi Irwin Bridge Road,
Egmore, Chennai – 600 008.

2.Dr.S.Padmapriya
3.N.Srinath

4.The District Collector,
Kanchipuram District,
Kanchipuram.
(the 4th respondent is *suo motu*
impleaded by this Court Vide order
dt.03.01.2024 by SMSJ)

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the file of the 1st Respondent pertaining to EP No.32 of 2019 in CCP No.91 of 2018 and quash the order dated 27.11.2019 passed by the 1st Respondent as being arbitrary and without jurisdiction.

For Petitioners : Mr.Alagendran
for Ms.S.Gowri

For R1 & R4 : Mr.G.Krishna Raja,
Additional Government Pleader

For R2 and R3 : No appearance

ORDER

The writ on hand has been instituted challenging the validity of the order passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai in execution proceedings.

2.The learned counsel for the petitioner made a statement that they have given a change of vakalat.

3.The EP order dated 27.11.2019 is sought to be quashed mainly on the ground that the Real Estate Regulatory Authority has no



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jurisdiction to issue an order of recovery warrant. It is stated that Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 provides for recovery only of interest, penalty and compensation and does not deal with enforcement of a direction or order to refund the money to a purchaser. Enforcement of an order of the Real Estate Adjudicating Officer is provided under Section 40(2) of the Real Estate (Regulation and Development) Act and therefore, the order passed under Section 40(1) of the Act is under challenge. Question arises as to what is the modality contemplated under Section 40 of the Act for recovery of the interest, penalty or compensation and enforcement of order passed under the Act and Rules. Section 40(1) reads as under;

“If a promotor or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.”



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4.Section 40(2) reads as under;

“If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

5.Section 40(1) in unambiguous terms stipulates that if any promotor or an allottee or a real estate agent fails to pay interest, penalty or compensation imposed on him by the adjudicating officer or regulatory authority or the appellate authority as the case may be, then the amount shall be recovered from such promotor or allottee or the real estate agent in such manner as may be prescribed as an arrears of land revenue. So also Sub Section 2 contemplates that such recovery can be made in such manner as may be prescribed. Therefore, it is clear that the orders are executable and the recovery of interest, penalty or compensation are to be



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made in the manner as may be prescribed as an arrears of land revenue.

6.In the present case, it is not in dispute that the CCP filed by the parties were already disposed of. Once the main case was disposed of and the decree holder filed an execution petition and consequently, the regulatory authority passed an order under Section 40(1) of the Act, the order impugned would reveal that the recovery warrant was issued under Section 40(1) of the RERA Act and it was sent to the District Collector, Kanchipuram District, Kanchipuram to recover the money to satisfy the clients under the order passed in favour of the complainants in the CCP proceedings. Therefore, the adjudicating authority has not exceeded its limits beyond the scope of the powers conferred under Section 40(1) of the Act. The regulatory authority treated the recovery of amount and issued a warrant under Section 40(1) of the Act to the District Collector, Kanchipuram District for the purpose of recovering the same by invoking the provisions of the Revenue Recovery Act and that being the scope of the order, this Court do not find any infirmity.



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7.The District Collector on receipt of such order is bound to initiate all appropriate actions to recover the amount as per the order passed in the CCP by following the procedures as contemplated and accordingly, settle the money in favour of the complainants.

8.The District Collector, Kanchipuram District is *suo motu* impleaded as the fourth respondent.

9.Mr.G.Krishna Raja, learned Additional Government Pleader takes notice for the fourth respondent.

10.The District Collector, Kanchipuram District shall proceed with the recovery of amount as per the order passed by the CCP and the EP proceedings by the Regulatory Authority. The said exercise is directed to be completed within a period of 12 weeks from the date of receipt of a copy of this order. The Registry is directed to communicate a copy of this Order to the District Collector, Kanchipuram District.



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11.The Writ Petition stands disposed of accordingly. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Internet:Yes/No

Speaking Order/Non-speaking Order

To

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2.The District Collector,
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S.M.SUBRAMANIAM , J.



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