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W.P.No.7144 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.7144 of 2021

1.D.Karthikeyan
2.S.Riyaz Ahmed
3.M.Premalatha
4.J.S.Jeyalakshmi
5.S.Kirubavathy

... Petitioners

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
Chennai – 600 008.

2.The Commissioner,
Pallavaram Municipality,
Pallavaram,
Chennai – 600 043.



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3.The Junior Engineer,
Tamil Nadu Electricity Board,
No.1, Ashoka Lane,
Old Trunk Road,
Pallavaram,
Chennai – 600 043.

4.The Sub-Registrar,
Registration Department,
Pallavaram SRO,
Pallavaram,
Chennai – 600 043.

5.M/s.Ever Star Homes (Builder)
represented by its Partner
P. Devaraj,
No.37 F, Tambaram Main Road,
Vijaya Nagar,
Velachery,
Chennai – 600 042.

6.B.Ramlal

7.B.Suresh

8.Sreemathi Rangarajan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 and 2 herein to take action in accordance with law and demolish the illegal construction put up by the respondents 5 to 8 herein in the Stilt area (Ground Floor) measuring about 1230 square feet and two shops situate at Old Door No.19-



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A, New No.12, Bharathi Nagar Main Road, Pallavaram, Chennai, being constructed in deviation of the approved building plan bearing Permit No.448/18, dated 29.11.2018, issued by the 2nd respondent.

For Petitioners	:	Mr.K.Govi Ganesan
For R1	:	Mr.P.Veena Suresh Standing Counsel
For R2	:	Mr.P.Srinivas Standing Counsel
For R3 and R4	:	Mrs.V.Yamuna Devi Special Government Pleader
For R5	:	No appearance
For R6 and R7	:	Mr.K.S.V.Sethuraman
For R8	:	Mr.P.Rajalingam for Mr.T.Sivagnanasambandan

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed for issuance of a Writ of Mandamus directing the respondents 1 and 2 herein to take action in accordance with law and demolish the illegal construction put up by the respondents 5 to 8



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herein in the Stilt area (Ground Floor) measuring about 1230 square feet and two shops situate at Old Door No.19-A, New No.12, Bharathi Nagar Main Road, Pallavaram, Chennai, being constructed in deviation of the approved building plan bearing Permit No.448/18, dated 29.11.2018, issued by the 2nd respondent. Despite notice being served on 5th respondent, no one appeared. Heard the learned counsel for the petitioner and all other respondents.

2.The petitioners are the owners of the Apartments, namely, Pallava Enclave Apartments, bearing Old No.19-A, New No.12, Bharathi Nagar Main Road, Pallavaram. The respondents 6 and 7 are the owners of the site in which the flats were constructed and 5th respondent is the promoter of the flats. All the petitioners have purchased independent flats in the apartments promoted by the 5th respondent. It is stated by the petitioners that the respondents 5 to 7 obtained building approval and planning permission from the 2nd respondent. It is admitted that permission was granted for building Stilt plus two floors by the 2nd respondent, by proceedings dated 29.11.2018, vide Planning Permit No.448/18. The total built up area permitted was 7080



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sq.ft. in the First and Second Floors and the Stilt area is to be left vacant for parking purposes as per the approved plan. It is not in dispute that the total number of flats agreed to be constructed in First and Second Floors is 12 in number and all the 12 flat owners have to park their cars and two wheelers in the Stilt area only. It is also not in dispute that the petitioners and other flat owners were assured by the respondents 5 to 7, even in the construction agreement, that each flat owner is entitled to covered car parking.

3.However, it is admitted that the respondents 6 and 7 have sold 280 sq.ft. of UDS land to the 8th respondent under sale deed dated 13.12.2019 and a construction agreement was also executed by the 5th respondent. It is now admitted that the respondents 5 to 7 have constructed on the entire Stilt area, which was reserved for parking. The Stilt area has now been converted and put to residential and commercial use. The 8th respondent has been sold a residential flat in the stilt Floor. It is in these circumstances, the petitioners have approached the 2nd respondent for taking proper action for removal of unauthorised construction and for demolition of the same and to restore the building as per the approved plan. Since the representation of



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the petitioners was not considered, the petitioners have caused legal notice dated 11.01.2020. Thereafter, the above writ petition is filed.

4.In the counter affidavit filed by the 8th respondent, the 8th respondent admits that he had purchased the flat on the basis of assurance given by the builder and it is the builder who has cheated him. Since the builder has not disclosed that he had built a residential unit and commercial shops by converting the area which is reserved for parking, without disclosing the fact that each owner of flat had been assured with a parking slot in the Stilt area, the 8th respondent has prayed for a direction to the official respondents to consider the deviations and pass appropriate orders to regularise the construction.

5.Though the 2nd respondent herein is the Commissioner, Pallavaram Municipality, it is now informed that the Pallavaram Municipality has now merged with the Tambaram Municipality. The Commissioner, Tambaram Municipality, has filed a counter affidavit, indicating that the building has been constructed in total violation of the approved plan and the builder has



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merged two separate buildings into one and by covering the entire plot without any set back space and has constructed two shops and a commercial space in the Stilt Floor. The facts narrated by the petitioners with regard to building plan permission, as approved by the 2nd respondent, is also admitted by the 2nd respondent.

6. Even from the approved plan, this Court finds that the construction put up by the 5th respondent is not in accordance with the approved plan. From the counter affidavit of the 2nd respondent, it appears that building permission was obtained only for construction of 6 units. Even construction of 12 units is in violation of building plan approval. However, it is open to the petitioners to seek regularisation of their 12 units, if it is permissible and in accordance with law. The private respondents have admitted that they have put up construction in violation of the building plan approval. It is also admitted that the car parking was provided to all the 12 flat owners in the remaining area. Even assuming that there is some space left in the Stilt floor, when the entire Stilt Floor is supposed to be vacant without any construction for parking cars and two wheelers, the offending construction



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in the area that was earmarked for parking cannot be permitted.

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7. Therefore, having regard to the admitted facts, **this writ petition is allowed** and the 2nd respondent is directed to take action in accordance with law to demolish the illegal construction put up by the respondents 5 to 8 in the Stilt area (Ground Floor) measuring about 1230 square feet and two shops in the building bearing Old Door No.19-A, New No.12, Bharathi Nagar Main Road, Pallavaram, Chennai, which is in deviation with the approved plan. No costs.

8. It is needless to say that the petitioners or the promoter may seek regularisation to protect their 12 units which are also in violation of the original approved plan. It is open to the 8th respondent to file a civil suit as against the respondents 5 to 7 for compensation or damages for selling a building which is totally unauthorised and which has now been directed to be demolished by this order.

(S.S.S.R., J.) (N.S., J.)
15.02.2024

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Neutral Citation : Yes / No



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