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W.P.No.12724 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

W.P.No.12724 of 2019

1.A.Soundara Raajan

2.J.Rebecca Anand Rajkumar Thomas

3.P.Ramesh

...Petitioners

VS.

1.The Secretary to Government,
Housing and Urban Development,
Government of Tamil Nadu,
Secretariat,
Chennai – 9.

2.The Member/Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Building,
Egmore,
Chennai – 8.

3.Mr.S.Shanmugam (Deceased)

4.S.Sasikala

5.S.Dakshan Raj

6.S.Mahalakshmi

7.The Commissioner,

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



Greater Chennai Corporation,
Ripon Building,
Poonamallee High Road,
Chennai – 600 003.

*(R4 to R6 are substituted as LR's of deceased R3,
as per order dated 06.02.2024 in W.M.P.No.
1957/2024 in W.P.No.12724/2019)*

*(R7-Impleaded as per order dated 17.04.2024
in W.M.P.No.7088/2024 in W.P.No.12724/2019)*

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the 2nd respondent to take immediate, appropriate and necessary action to prevent unauthorized construction on the terrace portion, being carried on by the 3rd respondent at the premises in No.9, 2nd Main Road, CIT Colony, Chennai – 600 004 in violation of the Building Permit granted by the 2nd respondent, by considering the petitioners' representation dt. 28.01.2019 within a reasonable time to be fixed by this Court.

For Petitioners : Ms.M.Meenakshi
for Mr.R.Kannan

For Respondents : Mr.R.Vigneswaran for R1
Government Advocate
Ms.P.Veena Suresh for R2
Standing Counsel
Mr.A.Jenasenan for R3 to R6
Mr.D.B.R.Prabhu for R7
Standing Counsel



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ORDER

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

This writ petition is filed for issuance of writ of mandamus to direct the second respondent to take immediate, appropriate and necessary action to prevent unauthorized construction on the terrace portion by the third respondent at the premises in No.9, 2nd Main Road, CIT Colony, Chennai – 600 004 by considering the petitioners' representation dated 28.01.2019 within a reasonable time.

2.Learned counsel appearing for the private respondents submitted that though the unauthorized construction is admitted, the private respondents are entitled to seek regularization of the building. Since the regularization application is pending consideration before the first respondent, he submitted that a direction may be issued to the official respondents to consider the same in accordance with law.

3.This Court is unable to accept the contentions of the learned counsel appearing for the private respondents for the simple reason that the entire building is owned by not only the petitioner but also other persons. The petitioner has undivided interest in the land as well share in all amenities including terrace. The petitioner and the third respondent



purchased the property. Though the private respondents relied upon before this Court the planning permission that was obtained in 1997, this Court is not convinced that the said plan alone will give any right to the predecessor in interest of the respondents 3 to 5.

4.The petitioners purchased property by virtue of sale deeds dated 26.02.1998, 10.07.1998 and 18.12.2006 respectively. The sale deed in favour of the petitioners shows that they had purchased 330 sq. ft., 485 sq.ft., and 485 sq.ft. of undivided share and interest in all that piece and parcel of the land mentioned in 'A' Schedule. The sale deed in favour of the third respondent indicates that the third respondent has purchased 212 sq.ft. of undivided share in the land and one bedroom residential apartment measuring 700 sq.ft., marked as Flat No.4 in the fourth floor along with exclusive use of terrace spaces in the Northern portion of the fourth floor measuring 350 sq.ft. and car parking space.

5.From the sale deed itself, it is seen that the third respondent was given only the right to use the northern portion of the fourth floor measuring an extent of 350 sq.ft. The right to use does not give title to the third respondent to use the space for putting up a permanent structure so as to deprive the other sharers who are also entitled to the undivided



share in the land as well as share in all amenities that are available as per the original plan.

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6.It is in the said circumstances, this Court finds that the regularization is not possible as the petitioners are also co-owners and entitled to all the amenities as per the approved plan.

7.Even though the dispute is purely civil in nature, this Court finds on the admitted facts, the respondents 4 to 6 cannot have any exclusive right to put up a construction in the fourth floor in the place which is available in the top floor.

8.Considering the peculiar facts and circumstances of the case, the second respondent is directed to take appropriate action against the private respondents for unauthorized construction in violation of the original building plan permission.

9.Before passing any orders, the second respondent shall conduct an enquiry and give opportunity to both sides to put forth their cases. Considering the documents, it is open to the second respondent to pass appropriate orders and then to take action against the offending



construction put up by the private respondents without permission or consent from other co-owners .

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10.As pointed out earlier, the second respondent shall consider the recitals of the documents as to ascertain the actual extent to which the petitioner is entitled to on the basis of the sale deed.

11.After filing of the writ petition, the third respondent died. Therefore, the respondents 4 to 6 were impleaded as Legal Representatives of the third respondent.

12.In case the regularization is not possible having regard to the dispute regarding ownership over the common terrace area, the seventh respondent shall proceed to take action as against the offending construction within a period of six weeks from the date of receipt of a communication from the second respondent as to the scope of regularization without the consent of the petitioners. It is also open to the parties to settle their disputes and report before the second respondent.



13. With the above directions, this writ petition is disposed of.

No costs.

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

03.07.2024

Index: yes/no

Speaking order: yes/no

Neutral Citation: yes/no

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To

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Housing and Urban Development,
Government of Tamil Nadu,
Secretariat,
Chennai – 9.
2. The Member/Secretary,
Chennai Metropolitan Development Authority,
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3. The Commissioner,
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