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W.P. No.15661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.15661 of 2023
and WMP.Nos.15155 & 15156 of 2023

Mrs.Usha Sivakumar

... Petitioner

Vs

- 1.The Chief Electrical Inspector to Government
Thiru.Vi.Ka. Industrial Estate
Guindy, Chennai - 32.
- 2.Electrical Inspector/Chennai (South)
O/o.The Chief Electrical Inspector to Government
Thiru.Vi.Ka. Industrial Estate
Guindy, Chennai - 32
- 3.The Member Secretary
Chennai Metropolitan Development Authority
No.2, Gandhi Irwin Road
Egmore, Chennai - 600 008
- 4.The Commissioner
Greater Chennai Corporation
Park Town, Chennai - 600 003
- 5.Jagdish V.Chhabria
- 6.Sunil R Shete



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7. Palm Apartment Owners Association
Represented by Mr. Jagdish V. Chhabria
No.45, Palm Apartments
Ground Floor, East Wing
4th Main Road,
Raja Annamalai Puram
Chennai - 600 028

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st to 4th respondent to inspect the schedule property namely Palm Apartments, situate at 4th Main Road, Raja Annamalai Puram, Chennai - 600 028 and to stop the illegal installation/operation of the lift, by considering petitioner's representation dated 22.03.2023 and 14.05.2023.

For Petitioner : Mr. Arun C. Mohan

For Respondents : Mr. N. Naveen Kumar,
Govt. Advocate for R1 and R2

Mr. V. Sudalaiselvan for R3

Mr. E. C. Ramesh for R4

Mr. S. Sivaraman for R5 and R7

Mr. Ajay Francis for R6



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ORDER

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The present petition is filed for a direction to the respondents 1 to 4, who are all officials of the Government or the local body, to inspect an apartment named "Palm Apartments" located at the 4th Main Road, Raja Annamalaipuram, Chennai - 600 028 and to stop illegal installation or erection of any concerning which the petitioner has given representations dated, 22.03.2023 and 14.05.2023.

2. The facts fall within a very narrow compass. Palm Apartments was constructed sometime in 1985, comprising of Ground Floor + 3 Floors with seven dwelling units. The apartment did not have a lift facility. Nearly 40 years had rolled by and the owners of the apartment have now become senior citizens. Some of them have even developed certain age related ailments. These senior citizens now find it difficult to ascend and descend the staircase. It is in these circumstances, the learned counsel for the petitioner, on instructions, submitted that the Residents Association of the apartment by a majority chose to erect a lift outside the apartment and in a place where the design of the apartment leave some space open to sky.



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3. The petitioner's only grievance is that the proposal to erect the lift is without any legal sanction and requires that the legal procedure for making the lift be complied with. Therefore, she gave two representations dated 22.03.2023 and 14.05.2023 to the authorities concerned, but they evoked no response. It is in these circumstances, the petitioner has approached this court with a direction to the authorities to consider its prayer as extracted above.

4. Mr.Arun C.Mohan, the learned counsel for the petitioner, has made a fair statement on instructions that the petitioner on principle is not averse to the erection of the lift as even she agrees that it is a felt necessity for all the apartment owners. All her concern is that it must be legal.

5. The learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 5 to 7 made a joint statement that the Residents Association had already purchased a German make hydraulic lift worth around Rs.35.0 Lakhs, and the petition was filed right at the time when the lift was about to be erected. They also conceded that at that point of time the Association was not familiar with the Tamil Nadu Lifts and



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Escalators Act, 1997, and the rules framed thereunder. They now undertake that the lift will be erected only after due compliance of the provisions of the statute. Indeed they submitted that the Residents Association have filed an application to the CMDA.

6. The learned counsel for the third respondent/CMDA submitted that in terms of the Tamil Nadu Lifts and Escalators Act, 1997, permission of CMDA is mandatory for erection of any lift. He submitted that it is now obligatory for the Resident's Association of Palm Apartments to obtain necessary permission from CMDA. The learned counsel for the Residents Association informed the court that an off-line application has already been made. The learned counsel for the third respondent also informed this court on instruction that given the nature of circumstances, CMDA had received the said application as an exception, and it is being processed. He added that the Residents Association has submitted a building stability certificate, but it has to be done as contemplated in the Rules. He then submitted a memo where the CMDA has indicated its requirements for considering the application of the Residents Association for erection of the lift. They are:

- All the flat owners have to sign in the Planning Permission



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Application and submit a registered sale deed in their favour for proof of ownership.

- Patta in favour of the present owner is to be furnished.
- Temporary structures constructed in the minimum required setback space have to be removed.
- The existing building is more than 35 years old and hence structural soundness certificate from PWD/Anna University/IIT Madras has to be furnished for proposed erection of lift within the building.

7. There are two parts to the whole issue. The first relates to the fact that this apartment desperately needs a lift facility for the benefit of the senior citizens, and the second is that the lift cannot be erected without the sanction of the CMDA. The objective here is therefore, to ensure that the CMDA grants necessary permission but in accordance with the provisions of the Act. One difficulty that was initially faced was that the application was to be made online. But for apartments such as Palm Apartments, the on-line mode cannot be utilised as the online format posed some difficulty. This has now been sorted out. Mr.Arun C.Mohan, learned counsel appearing for the petitioner, on his part would submit that subject to the Residents Association



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complying with the legal provisions, the petitioner is willing to sign any consent letter or forms for obtaining permission from CMDA.

8. The learned counsel for the petitioner as well as the respondents 5 to 7 have submitted that seven of the residents of the apartment in question, six have already submitted their necessary forms as contemplated under Law.

9. Eventually this Court sees that a consensus has emerged among the warring residents of Palm Apartments. They all now agree that the lift could be erected only as per law, which implies that they are all on the same side in seeking permission from the authorities concerned. Now the Residents Association is required to produce a building stability certificate from any of the authorities mentioned as well as a stability certificate from the fourth respondent. The petitioner is also required to sign such necessary forms as are required, consistent with the statement made by her counsel before this court.

10. With the above direction, the writ petition is disposed of. No costs.



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Consequently, the connected miscellaneous petitions are closed. This court appreciates the assistance provided by the officials of the CMDA in concluding this proceedings, more particularly, its gesture in receiving the off-line application as an exception to accommodate the desperate request of the Residents Association of the apartment.

19.03.2024

Index : Yes / No

Speaking order / Non-speaking order

Asr

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High Court, Madras

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N.SESHASAYEE.J.,

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