



W.P.No.20487 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.20487 of 2023

S.Vijayakumar .. Petitioner
v.

1. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai
House, 01, Gandhi Irwin Road
Ansari Estate, Egmore
Chennai 600 008
2. The Commissioner
Corporation of Greater Chennai
Ripon Building
Chennai 600 003
3. The Executive Engineer (Buildings)
No.1, Thattankulam Street
Bazar Road, Madhavaram
Chennai 600 060
4. M/s R.S.Constructions
represented by its Proprietor



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N.Suresh
S/o G.Natarajan
No.2, Surapet Main Road
Vinayagapuram
Kalpalayam, Lakshmipuram
Chennai 600 099

5. V.Anish

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to consider the petitioner's representation dated 07.03.2023 to remove/demolish the unauthorized construction i.e. 470 sq.ft in the Ground Floor, in which the 5th respondent occupied within the time stipulated by this Court.

For Petitioner :: Mr.E.Udayachander

For Respondents :: Mr.C.N.Vinobha
Standing Counsel for R1
Mr.D.B.R.Prabhu
Standing Counsel for R2 & R3
Mr.V.Manisekaran for R5
R4 - No appearance

ORDER

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

This writ petition is filed for issuance of a mandamus directing the official respondents to consider the representation of the petitioner dated 07.03.2023.



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2. The petitioner appears to have purchased 428 sq.ft., of undivided share out of total extent of 2700 sq.ft., of land comprised in old Survey No.72/3A, as per patta and new Survey No.72/17 in Kathirvedu Village, Madhavaram Taluk, Tiruvallur District from the original owner. It is seen that the fourth respondent is the developer of the property and the petitioner as well as few others have purchased proportionate undivided share and entered into independent agreements for construction of flats with the fourth respondent. The grievance of the petitioner is that the fifth respondent has now occupied the common area in the ground floor, as the fourth respondent had made construction in the ground floor in deviation of the approved plan. It is in the said circumstances, the petitioner has described the construction by the fourth respondent in the ground floor as unauthorized and that the said construction has affected his right based on the sale deed as well as the construction agreement he had with the fourth respondent. The petitioner has submitted a representation on 07.03.2023 before the respondents 1 to 3 with a prayer to remove the unauthorized construction to an extent of 470 sq.ft., in the ground floor, which is in the possession and occupation of the fifth respondent.



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3. We have heard the learned counsels appearing for the parties. The petitioner appears to be one of the purchasers of undivided share from the original owner. Having regard to the nature of agreement the petitioner and others had entered into with the fourth respondent, this Court finds a serious dispute exists between the petitioner and other purchasers. The petitioner has not even impleaded all the persons who have purchased the undivided share and had entered into the construction agreement with the fourth respondent. In such circumstances, this Court cannot give any positive direction to the respondents 1 to 3. However, the grievance of the petitioner is about the unauthorized construction put up by the fourth respondent in deviation of the original planning permission obtained by the fourth respondent.

4. Though notice has been served on the fourth respondent privately and the name is printed in the cause list, none appeared for the fourth respondent. In the said circumstances, this Court is inclined to dispose of the writ petition with the following directions:-

(i) The second respondent is hereby directed to consider the



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representation of the petitioner dated 07.03.2023 after hearing the petitioner as well as the respondents 4 & 5 and other persons who have purchased the undivided share in the property and have entered into the construction agreements with the fourth respondent.

(ii) In case the fourth respondent has applied for regularization of the unauthorized construction, deviation or violation, the same shall also be considered before taking any coercive action or demolition of the existing construction.

(iii) In case the petitioner wants to establish any right on the basis of the construction agreement or as purchaser of the undivided share, it is open to the petitioner to approach the civil Court for appropriate relief.

(iv) The representation of the petitioner shall be disposed of after giving opportunity to every stakeholder, within a period of twelve weeks from the date of receipt of a copy of this order.

(v) It is also open to the parties to negotiate through mediation for an amicable settlement, as the representation of the petitioner for removal of the unauthorized construction will also affect the petitioner's portion.

There shall be no order as to costs.

Index : yes/no
Neutral citation : yes/no
SS

(S.S.S.R.,J.) (N.S.,J.)
24.01.2024



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