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W.P.No.23700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Delivered on : 08.03.2024

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.23700 of 2023
and WMP.23212 of 2023

Ashwin Varma

... Petitioner

Versus

1.The Member Secretary

Chennai Metropolitan Development Authority

'Thalamuthu Natarajan Maaligai

No.1, Gandhi Irwin Road

Egmore, Chennai-600 008

2.CMDA Enforcement Wing

O/o Chennai Metropolitan Development Authority

'Thalamuthu Natarajan Maaligai'

No.1, Gandhi Irwin Road

Egmore, Chennai-600 008

3.The Principal Secretary/Commissioner

Greater Chennai Corporation

Ripon Building

Chennai-600 003



W.P.No.23700 of 2023

4.Meenakshi Sundaram

The Inspector of Police

J-6 Police Station

No.8, Sannathi Street

Thiruvannamipur

Chennai-600 041

5.The Sub Registrar

O/o The Sub Registrar

Saidapet

Chennai-600 015

6.Meera Rajagopal

7.N.Jagannathan

8.M/s.Ramaniyam Real Estate Ltd

Rep. By its Managing Director

Mr.V.Jagannathan

No.14, 3rd Main Road

Gandhi Nagar, Adyar

Chennai-600 020

9.N.Raveendran

10.Soora Ramgopal

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of WRIT OF MANDAMUS directing respondents 1 to 3 and 5 to take action against the respondents 6 to 10 for the statutory violations and illegal activities committed by them.



W.P.No.23700 of 2023

WEB COPY

For Petitioner : Mr.J.Murali Kumaran, Senior counsel

for M/s.MCGAN Law Firm

For respondents : Mr.P.Kumaresan, Addl.Advocate General

Asst. by Mr.C.N.Vinobha,

Standing counsel for R1 and R2.

Mr.D.B.R.Prabhu, Standing counsel for R3

Mr.C.E.Pratap, Govt.Advocate for R4

Mr.P.Gurunathan, Addl.Govt.Pleader for R5

Mr.S.Ilamvaludhi for R6

Mr.G.Rajagopalan, Senior counsel for

Mr.S.Sundaresan for R8

Mr.R.Thiagarajan for R9

R7- No appearance

Mrs.G.Saseedhevi for R10

ORDER

Per J.Nisha Banu J.

This writ petition is filed praying for a direction to respondents 1 to 3 and 5 to take action against the respondents 6 to 10 for the statutory violations and illegal activities committed by them.



W.P.No.23700 of 2023

WEB COPY

2. It is the case of the Petitioner, that he and his wife are the owners of the Flat 2-A in “Ramaniyam Swarnamukhi” apartments in Kalakshetra Colony, Besant Nagar which was promoted by the 8th Respondent, M/s. Ramaniyam Real Estate.

3. It is averred in the writ petition that the owners who are arrayed as 6th and 7th respondent and the promoter who is arrayed as 8th respondent has converted the non-FSI area approved and earmarked for pump room, store room, generator room, watchman room and toilet into an apartment and sold to the 9th respondent. The 9th respondent who claims to have purchased the flat in the ground floor started to encroach the common areas including the set back areas which are admittedly common areas.

4. The petitioner further submits that 8th respondent-promoter is habitual in committing these kinds of violations as is evidenced by the Division Bench order of this court in W.P.No.5765 of 2020 dated 20.01.2023.

5. The Petitioner being aggrieved by the conversion of non-FSI area into an



W.P.No.23700 of 2023

apartment by the 6th and 7th Respondents, who are the owners of the land along with the 8th Respondent-promoter and selling of the same to the 9th Respondent, has approached this Court. It is submitted by the petitioner that the construction of Ground floor apartment in the Non-FSI area is illegal and the same being done in the common area.

6. Mr. N. Muralikumaran, Senior Counsel, appearing for the Petitioner, pointing out that the Order passed in W.P.No.5765 of 2020 dated 20.01.2023 would clearly show that the 8th Respondent is a habitual offender and that the sale effected by him to the 9th Respondent of the apartment constructed in the non-FSI area is an illegality which cannot be cured and the sale is also illegal. The said decision was also confirmed by the Supreme Court in SLP (Civil) Diary No.16011/2023.

7. The learned Senior Counsel also contended that when the Petitioner and others resisted the attempted encroachment of the common area by the 9th Respondent, they preferred a complaint on 02.04.2023 before the 4th Respondent and also to the 1st Respondent and with a view to threaten the Petitioner, an F.I.R was



W.P.No.23700 of 2023

registered on the complaint of the 9th Respondent.

WEB COPY

8. The learned senior counsel appearing for the petitioner further submits that the above referred to illegality has been committed with the connivance of the regulating body and brought the attention of this court to the following points:-

(i) The 1st respondent/CMDA instead of filing a status report as directed by this court by order dated 10.08.2023 chose only to file their counter on 26.09.2023.

(ii) The communication of the 1st respondent/CMDA has been purposefully issued excluding the promoter and the owner, when the violation was committed by them.

(iii) Even though the CMDA was asked by this court to state what are the violations that were set out in the letter dated 14.08.2023 in Letter No.G/GOI/11797/2023 and Notice dated 11.09.2023 in Notice No.EC/S-I/2409/2023, are capable of being regularized/curable and what could not be regularized, the CMDA chose not to answer this specific query of this court.

(iv) When admittedly the conversion of the non-FSI common area into an apartment was evidenced in Sl.No.4 of the notice dated 11.09.2023 of the 1st respondent and putting up of the illegal dividing wall was committed by the owners and promoters as evidenced in Sl.No.8 of the notice dated 11.09.2023 of the 1st



W.P.No.23700 of 2023

respondent, the CMDA/1st respondent has chosen not to issue any notice to them.

(v) The counter affidavit dated 22.09.2023 of the 6th respondent would read as follows:-

“ 14. I respectfully submit that a representative of CMDA visited the spot of Ramaniyam Swarnamukhi Apartment and he has not filed his report so far. In fact the CMDA authority also advised all the flat owners to settle the issue amicably without earning any displeasure among the other flat owners.”

The act of the 1st respondent/CMDA not issuing notice to the landowners, in spite of the specific stand of the 8th respondent-promoter stating that he is only a contractor and he has constructed the building as per the clear and specific instructions from the landowners would show the nexus of promoter-owner-CMDA officials.

9. The learned counsel for the 6th respondent would submit that out of total area of 7440 sq.ft , they retained 1339 sq.ft and sold the balance land to six purchasers. They own the flats of area 1050 sq.ft on the ground floor and 1222 sq.ft., on the third floor. The UDS for ground floor is 624.96 sq.ft; but the petitioner calculation of showing 624.96 sq.ft., as common area and approached this court is nothing with



W.P.No.23700 of 2023

ulterior motive.

WEB COPY

10. The learned counsel for 6th respondent would submit that by entering into construction agreement and subsequently sale deed, each and every flat owner were assigned appropriate proportion for the consideration. He also submitted that the role of the 6th respondent is over as soon as the land was handed over to the 8th respondent.

11. It is also submitted that in the agreement, in para 2, it is stated that “The Builder hereby indemnifies the Contracting Party against any statutory liabilities.....”. The 6th respondent would submit that one Ravindran one of the flat owners lodged a police complaint against the writ petitioner and the contractor. An FIR was registered in No.254/2023 dated 17.06.2023 under Sections 294(b), 427, 506(I) of IPC. The petitioner, challenging the FIR, approached this court for his redressal. Since the petitioner is only the 2nd purchaser, he does not have any direct access even with the 8th respondent.

12. Mr. G. Rajagopal, learned Senior Counsel appearing for the 8th Respondent, contended that all the purchasers of the flat agree for putting up additional construction on the ground floor and also they have agreed not to make any claim in



W.P.No.23700 of 2023

the terrace area allotted to the 3rd floor flat owner. Since the 1st Respondent has caused a notice dated 11.09.2023 initiating action with regard to the unauthorized construction, the writ has become infructuous as nothing survives. Further on issuance of the notice of lock and seal of the 1st Respondent, a retention application has been filed under Section 56(3) of the Town and Country Planning Act. The 8th Respondent being only a construction contractor has got nothing to do with the violation and it is unwarranted and ill motivated.

13. It is submitted by the learned senior counsel appearing for the 8th respondent that the petitioner is only a recent purchaser in the year 2017; 9th respondent has purchased the property in the year 2022 and the petitioner who attempted to buy the property for a lesser price failed to achieve the same, filed this writ petition.

14. It is also submitted by the learned senior counsel appearing for 8th respondent that petitioner's allegations are baseless. It is submitted that since the application for regularisation has been filed as early as on 2001 by flat owners, CMDA authorities who is having decision making power has to decide the issue. As regards no notice served on the 8th respondent is concerned, it is stated by the learned



W.P.No.23700 of 2023

senior counsel that the deviations from the permit plan was advised by the original purchasers, therefore, no notice is required to be served on the 8th respondent contractor.

15. The learned counsel appearing for the 8th respondent-Ground floor flat owner would submit that the said flat was in existence from 2001 and the same was assessed to Corporation Tax. The 9th respondent is a bonafide purchaser for a value. However, the petitioner with the help of musclemen demolished the private bifurcating wall and the Car Park. It is further stated that the Corporation authorities issued lock and seal notice dated 11.09.2023 and owners of the apartment preferred a statutory appeal before the Secretary, Housing and Urban Department. When the statutory authority is seized of the appeal filed by the flat owners, it is for the statutory authority to deal with the application for regularization and appeal in accordance with law.

16. The learned counsel appearing for the 10th respondent would submit that he purchased flat No.3B in the 3rd floor on 26.04.2023 under the registered Sale deed and as such the complaint filed by the petitioner is not maintainable. He would further submit that there are violations beyond the approved plan in the petitioner's apartment and hence, the complaint made by the petitioner is the one which suppressed material



W.P.No.23700 of 2023

facts before this court.

WEB COPY

17. The Counsel appearing for the 10th Respondent contended that the Petitioner is not an original purchaser and that the Writ Petition is bad in law for not joining the wife of the 10th Respondent who is also a co-owner. That the Petitioner is not the original purchaser of the apartment and there are violations even in the apartment of the Petitioner even beyond the approved plan.

18. Mr. Kumaresan, Learned Additional Advocate General appearing for the 1st Respondent placing reliance on the counter filed by the 1st Respondent contended that the non-FSI use space meant for Generator Room, M.E.S Room, Store Room, Pump Room and a watchman room with an attached toilet has been proposed in the rear part of the Stilt floor and no dwelling unit is proposed in the stilt floor. He also pointed out to the notice issued by the 1st Respondent dated 11.09.2023 regarding the violations that were found at the time of inspection. However for a specific query poised by this Court, as to what are the violations found in the notice dated 11.09.2023 that could not be regularized and what are the violations that could be regularized, for which there was no response. Also there is no explanation as to why



W.P.No.23700 of 2023

the violation notice was not issued to the 8th Respondent who is the promoter.

WEB COPY

19. In the Order passed in W.P No.5765 of 2020 dated 20.01.2023, this Court has held that the conversion of the non-FSI area meant for common usage and the sale of the same is illegal and had directed the 1st Respondent to forthwith handover the same to the apartment owners. The said Order was also confirmed by the Supreme Court in SLP(Civil) Diary No.16011 of 2023. In the said case also the promoter is the 8th Respondent.

20. Admittedly, the non-FSI area which is meant for Generator Room, M.E.S Room, Store Room, Pump Room and a watchman room as per the approved plan has been converted into an apartment by the owners and the 8th Respondent and was sold to the 9th Respondent and the said sale was an illegal one. However it is open to the 9th Respondent to recover whatever amount has been paid by him for the said purchase. The 8th Respondent having taken a stand that no notice has been issued to him by the 1st Respondent for the violations committed as he is only a contractor, cannot be accepted and the 8th Respondent is equally liable as a promoter for all the



W.P.No.23700 of 2023

violations which are found in the notice dated 11.09.2023.

WEB COPY

21. In view of the above observation, the Writ Petition is allowed with the following directions:-

(i) The first and second respondents are directed to forthwith take action to restore the non FSI area as per the sanctioned plan and handover the same to the apartment owners for its common usage ;

(ii) The 1st and 2nd respondents are directed to take necessary enforcement action to remove all the unauthorized construction in the common area.

(iii) The 1st and 2nd respondents are directed to serve necessary notice to the flat owners/occupiers and take action as directed above and complete the above exercise within a period of twelve weeks from the date of receipt of a copy of this order.

[J.N.B.J.]

[N.M.J.]

08.03.2024

Index : yes/no
nvsri

To

1.The Member Secretary

Chennai Metropolitan Development Authority

13/15



W.P.No.23700 of 2023

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WEB COPY



W.P.No.23700 of 2023

nvsri

ORDER
IN
W.P.No.23700 of 2023

08.03.2024