



W.P.No.29823 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	13.12.202
		3
PRONOUNCED ON	:	27.03.202
		4

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.29823 of 2023
and W.M.P.No.29427 of 2023

Regal Palm Garden Apartment
Owners Association,
rep. By its Secretary,
Mrs.Ahalyakumari.E,
383, Velachery-Tambaram Road,
Velachery, Chennai 600 042

... Petitioner

Vs.

1. M/s.Cee Dee Yes Housing and
Infrastructure Private Ltd.,
(Formerly Cee Dee Yes Housing and Finance Ltd.)
Rep. By its Managing Director.

2. M/s.Cee Dee Yes Housing and
Infrastructure Private Ltd.,



W.P.No.29823 of 2023

(Formerly Cee Dee Yes Standard Towers Pvt. Ltd.)
Rep. By its Managing Director.

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3. C.Devadasasundaram
4. M/s.Standard Fire Works Pvt. Ltd.
Rep. By its Managing Director
- 5.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008
6. The Housing Secretary
Government of Tamil Nadu,
5, Kamarajar Salai,
Chepauk, Chennai 600 005
7. The Sub Registrar, Velacherry,
O/o the SRO Velacherry,
Velacherry, Chennai
8. M/s.Cee Dee Yes Property Services
No.42, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai 600 040
9. Greater Chennai Corporation
Rippon Building,
Ponnamalle High Road,
Chennai 600 003

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fifth respondent to initiate



W.P.No.29823 of 2023

action in pursuance to the notice dated 17.05.2018 in Letter No.EC/S-II/9754/2017 and restore the property as per PP No.332 dated 02.05.2002 and take necessary action for the violations committed by the respondents 1 to 4 along with the 8th respondent in violation of the said sanctioned plan and PP.No.332 of the fifth respondent.

For Petitioner : Mr.Muralikumaran,
Senior Counsel

For RR 1 to 3 : Mr.Kabir, Senior Counsel
For Mr.T.Jayaraman

For R-4 : Mr.A.Sivaji

For R-5 : Mr.R.Thamarai Selvan,
Standing Counsel

For RR 6 & 7 : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.Stalin Abimanyu

For R-8 : No Appearance

For R-9 : Mr.D.B.R.Prabhu,
Standing counsel

ORDER

Per J.NISHA BANU, J.,



W.P.No.29823 of 2023

Seeking for a direction to the fifth respondent to initiate action in pursuance to the notice dated 17.05.2018 in Letter No.EC/S-II/9754/2017 and restore the property as per PP No.332, dated 02.05.2002 and take necessary action for the violations committed by the respondents 1 to 4 along with the 8th respondent in violation of the said sanctioned plan and PP.No.332 of the fifth respondent, the petitioner has preferred the present writ petition.

2. The 4th respondent/ M/s.Standard Fire Works Pvt. Ltd. had entered into an Memorandum of Understanding (MOU) on 28.03.2001 with the 1st Respondent, which is formerly known as "Cee Dee Yes Housing and Finance Ltd.", with respect to the property bearing Door No.383, (Old Door No. 37E), Velachery Main Road, Velachery. Chennai-600042. The said property comprised of 6.86 acres in Survey Numbers 329, 328/2, 256/2, 325/1, 325/3 and bounded on the west by Velachery-Tambaram Road.

3. For the purpose of obtaining planning permission the 4th respondent had submitted a Deed of Reconstitution to the 5th respondent with respect to the said property and the reconstituted extent with its boundary is found in



"Schedule-D" to the said deed.

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4. In the property found in "Schedule-D" of the reconstitution deed the 5th respondent granted building plan approval and the building permit on 02.05.2002 to the 4th respondent. The building plan approval was granted for construction of residential apartments of Ground+ 9 floors consisting of 8 blocks (1-5 and 7- 9) and 1 block (6th block) for commercial purpose consisting of ground+ 8 floors.

5. The 1st respondent, on the strength of the MoU with the 4th respondent, entered into Agreements of Sale with the prospective purchasers for construction of the apartments and for sale of Undivided Share of the land. The sale deeds were executed directly by the 4th respondent.

6. It is the case of the petitioner Association is that the building plan approval and the planning permission was obtained for the entire property consisting of 6.86 acres with an access of width of 45 meters in the Velachery-Tambaram road as access to the property. The Door No. was mentioned as 383, Velachery-Tamabaram Road both in the MoU dated



W.P.No.29823 of 2023

28.03.2001, entered into between the landowners, i.e. the 4th respondent and the developers, i.e., the 1st respondent and also the Agreements of Sale entered into by the 1st respondent with the prospective purchasers, all had the western side boundary as Velachery-Tambaram Main Road, and also Survey No.329 was shown as part of the property in which the Undivided Share of land was agreed to be sold and the apartments were being intended to be constructed.

7. But, when the Undivided Share was sold, by way of a fraud committed by the respondents 1 and 4, the access to the apartments was shown as Dr.Seetharaman Nagar and accordingly, the stamp duty was paid. This is a fraud committed by the respondents 1 and 4, as there was no property owned by the 4th respondent in Dr. Seetharam Nagar nor was there any property or access in Dr. Seetharam Nagar shown in the planning permission or building plan approved given by the 5th Respondent. This was the reason subsequently the Registration Department had demanded and collected the differential stamp duty with respect to the sale of Undivided



W.P.No.29823 of 2023

Share of land made to the apartment owners, treating the same as situated in the Velachery- Tamabaram Main Road having Door No. 383.

8. The 5th respondent, having issued a "Lock and Seal" notice for demolition of the dividing wall separating the residential and commercial complex on 17.05.2018, did not proceed further with the restoration of the property as per the original approved plan and therefore, the petitioner Association has sought for a direction to initiate action in pursuance to the notice dated 17.05.2018, to restore the property as per the planning permit and take action for the violations committed by the respondents 1 to 4..

9. The 4th respondent, though had filed a counter disputing the allegations made by the petitioner Association, Mr. A. Sivaji, learned counsel appearing for the 4th respondent, fairly stated that the 4th respondent, having given the property for development to the 1st respondent, neither is aware nor responsible for the subsequent actions.

10. Mr. Kabir, learned Senior Counsel appearing for the respondents 1 to 3 stated that the 1st respondent completed the construction of the



W.P.No.29823 of 2023

apartment complex and the Undivided Share in the land was sold by the 4th respondent in favour of the members of the petitioner's Association as early as 2002-2003 which clearly reads that the Undivided Share sold is comprised only in S.Nos.328/2, 327/1, 256/2, 325/1, 325/2 and 325/3 of 137, Velachery village and not in S.No.329 and S.No.329 formed the western boundary. The property tax receipt issued by the Greater Chennai Corporation also reads the address of the apartment owners as Door No.10, Dr. Seetharam Nagar Main Road, Velachery East, Chennai-600042 and not Door No. 383, Velachery-Tambaram Road, Chennai-600042. That the petitioner Association has filed a suit in C.S No.535 of 2019, that there is a direction by the Division Bench of this Hon'ble Court in OSA Nos.10 and 11 of 2022 to dispose of the suit as expeditiously as possible and status quo has been directed to be maintained on both sides. The petitioner Association, instead of letting in evidence and proving their case in the Trial in C.S No.535 of 2019, has initiated the present proceedings, which is a vexatious one. That the 1st respondent has already made a representation dated 19.05.2018 to the 5th respondent stating that the members of the Association have deleted the commercial land in Survey No.329 and have purchased the land only out of the residential property



W.P.No.29823 of 2023

choosing the Dr. Seetharam Nagar as the main road and that the compound wall constructed dividing the commercial and residential property is of permissible height and therefore no action could be taken.

11. Per contra, the learned Senior Counsel, N.Muralikumaran contended, that the Civil Suit filed by the petitioner Association has got nothing to do with the relief sought for by the petitioner Association in the Writ Petition, as judgement and decree sought for by the petitioner Association in the Civil Suit, is for a mandatory injunction directing the defendants 1 to 4 to specifically perform the terms of the MoU dated 16.03.2015 and a permanent injunction restraining the defendants 1 to 4 who are the respondents 1 to 4, from alienating the schedule mentioned property, whereas the present Writ Petition is to direct the 5th respondent to proceed further in the lock and seal notice issued by it.

12. The respondents 1 to 4 did not deny the fact that the MoU dated 28.03.2001 entered into between the 4th respondent and the 1st respondent is with respect to the property bearing Door No.383, Velachery Main Road,



W.P.No.29823 of 2023

Velachery, Chennai-600042, in Survey Numbers 329, 327/1, 328/2, 256/2, 325/1, 325/3 and also the reconstitution deed submitted by the 4th respondent for obtaining construction permission was inclusive of S.No.329 and the property that was the subject matter of building plan approval measured 6.86 acres in Velachery Main Road and the survey numbers mentioned in the western side of the said deed is that of the road. It is also not disputed that the planning permission No.332 was granted with respect to the property bearing Door No.383 Velachery Main Road, Velachery, Chennai-600042 and also the completion certificate dated 07.01.2005 was given with respect only to the property in Door No.383, Velachery Main Road, Velachery, Chennai-600042.

13. It is also not in dispute that the Agreements of Sale for sale of the apartments were entered into with the prospective purchasers, is of the property situated in Door No.383, Velachery Main Road, Velachery, Chennai-600042 which also comprises of S.No.329 and bounded on the west by Velachery-Tambaram main road. Therefore, it is evident that while executing the undivided share, the 4th respondent has not only violated the Agreements of Sale entered into with the prospective purchasers, but has also



W.P.No.29823 of 2023

violated the planning permission and building plan approval by deleting S.No.329 and by showing it as the western side boundary. Therefore, the same being a clear case of fraud played by the owner and promoter on the apartment owners, the same cannot confer any right to the owner or promoter nor will it affect the rights of the members of the petitioner Association.

14. Mr.Kumaresan, the learned Additional Advocate General appearing for the State, also did not dispute the fact that the Registration Department had subsequently collected the stamp duty treating the apartments as situated in Velachery-Tambaram Main Road.

15. As rightly pointed out by the petitioner Association while executing the Undivided Share of land, the property was shown as situated as situated in Dr.Seetharam Nagar Road, but not even door number was mentioned or shown. It is not known as to how the Registration department has admitted, collected stamp duties and registered the said documents without there being any door number or any access being specified. However since subsequently the Registration Department has treated the entire property as situated in



W.P.No.29823 of 2023

Velachery-Tambaram Main Road, this Court has got no hesitation to hold that the western side boundary of the undivided shares that were sold to the members of the Petitioner association is to be treated as that of Velachery-Tamabaram Main Road and they will be entitled for access to the same as per the approved plan that was granted by the 5th respondent originally before putting up the construction.

16. The entire access shown in the original approval plan will be available to the members of the petitioner Association, both for physical usage and approval in the case of reconstruction. A single planning permission having been obtained for construction of 9 blocks, any subsequent subdivision effected, without the permission of all the owners who had purchased the undivided share, would be an illegal one. Therefore, the 5th respondent is directed to restore the premises bearing Door No.383, Velachery Main Road, Velachery, Chennai-600 042 as per the original building plan sanctioned and approved by the 5th respondent by initiating action in pursuance to the Order dated 17.05.2018 issued by the 5th respondent in Letter No.EC/S-II/9754/2017. Since the Writ Petition pertains



W.P.No.29823 of 2023

only to the action to be initiated in pursuance to the lock and seal notice issued by the 5th respondent, which admittedly is not the relief sought for in the civil suit, nor there is any appeal or challenge to the same, the 5th Respondent is directed to proceed further with the lock and seal dated 17.05.2018 and complete the enforcement action within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.)

(N.M., J.)

27.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
sts

To:

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008

2. The Housing Secretary
Government of Tamil Nadu,



W.P.No.29823 of 2023

5, Kamarajar Salai,
Chepauk, Chennai 600 005

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3. The Sub Registrar, Velacherry,
O/o the SRO Velacherry,
Velacherry, Chennai
4. The Greater Chennai Corporation
Rippon Building,
Ponnamalle High Road,
Chennai 600 003



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W.P.No.29823 of 2023

J.NISHA BANU, J.,
and
N.MALA, J.,

sts

Order made in
W.P.No.29823 of 2023

Dated:
27.03.2024