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W.P.No.13568 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13568 of 2017

A.Seethalakshmi,
Joint Secretary,
5C, Ramajayam Apartment
Owners Associations,
Kalaimagal Nagar,
Ekkaduthangal 1st Main Road,
3rd Cross, 1st Lane,
Chennai – 600 032.

...Petitioner

-Vs-

1. The Commissioner
Greater Corporation of Chennai,
Rippon Building,
Chennai.
2. The Member Secretary,
Chennai Metropolitan Development
Authority (CMDA),
Egmore, Chennai – 8.
3. The Tahsildar and Executive Magistrate,
Guindy Taluk Office,
Saidapet, Chennai – 600 015.
4. Murali Krishna Konjeti
5. Bhujanga Rao Peruri

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first and second respondents to revoke the sanctioned plan pertaining to the property situated in S.No.T.S.48, R.S.No.27 of the Ramajeyam apartment, Kalaimagal Nagar, 3rd Cross, 1st lane, Ekkattuthangal, Chennai – 600 032.

For Petitioner : Mr.S.Mahaveer Shivaji
For Respondents
For R1 : Mr.P.T.Ramadevi
Standing Counsel
For R2 : Mrs.P.Veena Suresh
Standing Counsel
For R3 : Mr.V.Manoharan
Additional Government Pleader
For R4 & R5 : Ms.Aparna Raju
For M/s.G.Vijay Anand Associates

ORDER

This writ petition has been filed for direction directing the first and second respondents to revoke the sanctioned plan pertaining to the property situated in S.No.T.S.48, R.S.No.27 of the Ramajeyam apartment, Kalaimagal Nagar, 3rd Cross, 1st lane, Ekkattuthangal, Chennai – 600 032.

2. The petitioner is representing the Ramajayam Apartment Owners Association. The Ramajayam apartment was constructed in the



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year 1987-1989 in T.S.No.48, R.S.No.27 and its total extent is 38 cents.

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3. The learned counsel appearing for the petitioner vehemently contended that Section 6 of the Tamil Nadu Apartment Ownership Act, 1994 says in respect of percentage of undivided interest, common area and facilities in relation to an apartment shall have a permanent character and shall not be altered and cannot be separated from the apartment to which it relates. Therefore, it is not saleable area and it can be used as children play area. He further submitted that it is necessary that an apartment that there must be 15% area to be reserved for common



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purpose in an apartment and its adornments cannot be infringed at any cost.

4. The learned counsel appearing for the first respondent submitted that the fourth and his wife had purchased the plot No.7A at measuring 1840 sq.ft., comprised in S.No.T.S.48, R.S.No.27, situated at Block No.1, Kalaimagal Nagar 3rd cross street, Ekkattithangal, Chennai, by the registered sale deed dated 03.09.2014 vide document No.10597 of 2014 from one R.Balagopal. The said Balagopal had purchased the said property from the power holder of the original owner of the property vide registered sale deed dated 10.02.1989. They were also issued patta and all the revenue records were mutated in favour of the fourth respondent and his wife name. On the strength of the sale deed and patta the fourth respondent applied for planning permission and after scrutinizing all the documents, the fourth respondent was granted planning permission vide proceeding No.PPA/WDCN13/01724/2016 and building approval vide BA/WDCN12/00361/2017 dated 31.01.2017 for construction of residential building consisting of ground floor and first floor after collecting the applicable charges.



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5. The learned counsel appearing for the fourth and fifth respondents submitted that after purchase of the subject property, the fourth respondent being a senior citizen had executed power of attorney in favour of the fifth respondent in order to develop the said property. The fifth respondent applied for planning permission and after scrutinizing all the revenue records, the fourth respondent was granted planning permission and building approval on 31.01.2017. She also pointed out that subject property was original purchased by one R.Balagopal by the registered sale deed dated 10.02.1989 from the original owner of the land viz., G.Mohan. She also produced the sale deed of plot No.7 purchased by one D.Jayavijayan, in which the boundaries have been categorically shown and the plot No.7 is bounded on the northern side by plot No.7A and south by plot No.6. Therefore, it is clear that plot No.7A is very much available as per the lay out. Though the lay out was not approved, the plot No.7A is available in un-approved lay out.

6. Heard the learned counsel appearing for either side and perused the material placed before this Court.



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7. The petitioner and other plot owners purchased their respective apartments in plot Nos.1 to 7, which were developed by the developer. The said property was also compounded by the developer along with plot No.7A. Admittedly the said plot Nos.7A is lying vacant. Further on perusal of the sale deed of the fourth respondent's vendor shows that the plot No.7A bounded northern side by plot No.7. As per the proposed lay out, the plot No.7A is very much available to an extent of 1840 sq.f., comprised in TS.No.48, R.S.No.27, situated at Kalaimagal Nagar 3rd Cross, 1st lane, Ekkattuthangal, Chennai. There is absolutely no records to show that the subject property is Open Space Reserve (OSR) land.

8. Admittedly the lay out is unapproved one and as per the proposed lay out, the plot No.7A is very much available. The said land was sold out by the developer to one Balagopal by the registered sale deed dated 10.02.1989 vide document No.604 of 1989. In turn the said Balagopal sold out the property in favour of the fourth respondent and his wife by the registered sale deed dated 03.09.2014 vide document



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No.10597 of 2014. Each of the plot has been regularized and they were granted planning and building permission. Accordingly the plots of the petitioner and other owners were constructed by the developer. Insofar as the plot No.7A is lying vacant and after purchased by fourth respondent and his wife, they decided to develop the same and obtained planning and building permission dated 31.01.2017.

9. That apart, the Tamil Nadu Apartments Ownership Act, 1994 which is relied upon by the learned counsel appearing for the petitioner, is now repealed and new Act came into force on 06.03.2024 in the government gazette. Further, the total extend of the proposed lay out is only 38 cents. It is below the requirement as per the Tamil Nadu Combined Development and Building Rules. Accordingly, in case of layout the minimum extent of plot shall be 32 sq.mts., for economically weaker section areas and 72 sq.mts. for other category of plots. In the case on hand, the total extent of the lay out is only 38 cents below 32 sq.mt. Therefore, the second respondent rightly granted the planning permission and building approval dated 31.01.2017 in favour of the fourth respondent.



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10. In view of the above, this Court finds no infirmity and illegality in the planning permission and building approval granted to the fourth respondent and the writ petition is devoid of merits and liable to be dismissed. The fourth respondent is at liberty to develop his property as per the planning permission and building approval dated 31.01.2017. Accordingly, the Writ Petition stands dismissed. There shall be no orders as to costs.

25.10.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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