



W.P. No. 34793 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34793 of 2023

P.Harak Chand Bhandari

... Petitioner

-VS-

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
Thalamuthu Natarajan Maaligai,
No. 1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.
2. The Deputy Planner,
Chennai Metropolitan Development Authority (CMDA),
Thalamuthu Natarajan Maaligai,
No. 1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.
3. The Executive Engineer,
Zone - 9,
Greater Chennai Corporation,
No. 4, 4th Cross Street,
Lake View road,
Nungambakkam,
Chennai - 600 034.
4. Mahaveerchand Katrela
5. Ashok Kumar Katrela
6. Prakash Chand Katrela
Respondents

...



W.P. No. 34793 of 2023

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First to Third Respondents to take appropriate legal action against the Fourth to Sixth Respondents for converting the residential flats to commercial flats illegally without obtaining permission or abide by rule in that respect based on the Petitioner's representation dated 20.11.2023 within the stipulated period fixed by this Court and consequently direct the First and Third Respondents to issue direction to restore the subject property as per the approved plan obtained from First to Third Respondents.

For Petitioner : Mr. Prakash Goklaney,
Senior Counsel
for Mr. D.Murugan

For Respondents : Mr. P.Kumaresan,
Additional Advocate General
assisted by
Mr. V.Sudalai Selvam,
Standing Counsel (for R1 & R2)

Mr. P.T.Ramadevi,
Standing Counsel (for R3)

Mr. Jayesh B. Dolia,
Senior Counsel
for M/s. Aiyar & Dolia (for R4 to R6)

O R D E R

Heard Mr. Prakash Goklaney, Learned Senior Counsel appearing for the Petitioner, Mr. P.Kumaresan, Learned Additional Advocate General assisted by Mr. V.Sudalai Selvam, Learned Standing Counsel appearing for the First and



W.P. No. 34793 of 2023

Second Respondents, Mr. P.T.Ramadevi, Learned Standing Counsel appearing for the Third Respondent and Mr. Jayesh B. Dolia, Learned Senior Counsel appearing for the Fourth to Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for directing the First to Third Respondents to take appropriate legal action against the Fourth to Sixth Respondents for illegally converting the residential flats to commercial flats without obtaining permission or abiding rule in that respect based on the representation dated 20.11.2023 made by the Petitioner within the time limit that may be fixed by the Court and to consequently direct the First and Third Respondents to issue direction to restore the subject property as per the approved plan obtained from the First to Third Respondents.

3. In furtherance of the order dated 21.12.2023 passed by this Court, the First and Second Respondents have filed Status Report dated 13.03.2024 in which it has been stated as follows:-

“7. It is further submitted that in continuation to the Notice dated 29.12.2023 issued by CMDA, the building was inspected on 11.01.2024 and the following were observed:



WEB COPY



W.P. No. 34793 of 2023

- *Stilt Floor + 3 Floors Commercial cum Residential building exists at the site.*
- *One of the stair case proposed in the approved plan leading to the first floor has been converted into store room in the stilt floor.*
- *In the First Floor JCS Gold Jewellery shop is functioning.*
- *In the Second Floor JCS Silver Shops, Pantry, Office is functioning.*
- *In Third Floor 2 dwelling units exists.*
- *In the setback area on the northern side 3 Nos. of Toilet and Genset exists.*
- *Water cans are dumped in the staircase leading from 2nd floor to 3rd floor, which is hinderance to reach 3rd floor (residential use – owned by Thiru. P.Harak Chand Bhandari).*
- *Projection of 0.77 m (Advertising board) wide exists in front of the building.*

It is further submitted that based on the inspection held on 11.01.2024 the deviation/violation were worked out as follows:-



W.P. No. 34793 of 2023

Sl. No.	Description	As per Approved Plan (m)	As on site (m)	Deviation to Approved Plan
1.	Floor	Stilt Floor + 3 Floors	Stilt (part)/Ground Floor (part) + 3 Floor	Stilt Floor Parking converted into Ground Floor (part) (Store Room)
	Stilt Floor	Parking	Stilt Floor – Store room and parking	Parking Non FSI converted into FSI Commercial use
	1 st Floor	Office	JCS Jewellery Gold Shop	----
	2 nd Floor	2 dwelling unit	JCS Jewellery Silver Shop, Pantry, Office	Unauthorized conversion of Residential to Commercial
	3 rd Floor	2 dwelling unit	2 dwelling unit	----
2.	Usage	Commercial (Office) cum Residential	2 nd floor residential converted into commercial use	Unauthorized conversion of Residential use to Commercial use.
3.	Setback			
	Stilt Floor level		At Stilt Floor	
	a) Rear Set Bank (North)	3.12 m	Nil – Due to existence of toilet structure in the setback space	Less by 3.12 m
		3.12 m	3.05 m	Less by 0.07 m
	b) Side Set Back (East)	2.50 m	2.20 m	Less by 0.30 m
		2.50 m	2.20 m	Less by 0.30 m
	c) Side Set Back (West)	2.50 m	2.42 m	Less by 0.08 m
		2.50 m	2.42 m	Less by 0.08 m
	d) Front Set Back (South)	4.57 m	3.80 m	Less by 0.77 m
		4.57 m	3.80 m	Less by 0.77 m
4.	Plot Extent	445.93 sq.m.		
5.	Approved FSI Area	658.95 sq.m.	676.12 sq.m. (approx.)	Excess by 17.17 sq.m.
6.	FSI	1.477	1.516	Excess by 0.039
7.	Parking Car/Two Wheeler	Car – 7 Nos.	Car – 4 Nos.	Car-Less by 3 Nos. - (Due to existence of Genset and Toilet structure.)
		Two Whellers – 8 Nos.	Two Wheelers – 7 Nos.	Two Wheeler – Less by 1 Nos.
8.	Height of the Building	12.00 m	12.00 m	--
9.	Genset and Toilets erected in the setback which are unauthorised affecting the setback space requirement and parking			



W.P. No. 34793 of 2023

WEB COPY

8. *It is further submitted that in view of the above deviation/violation worked out as above, the Form IV – Notice for compliance of Planning Permission in respect of Unauthorised Development carried out in contravention of Planning Permission was issued on 18.01.2024 with a request to secure compliance as per the Planning Permission issued by CMDA by demolishing/altering the building or works or carying out on land the works of unauthorised deviation construction within 30 days from the receipt of the Form – IV notice.*

9. *It is further submitted that if the compliance of the permission has not been secured within the specified period, appropriate action will be taken under sub-section (5) of Section 56 of the Tamil Nadu Town and Country Planning Act, 1971 (Tail Nadu Act 35 of 1972), for demolition or alteration of any building or works or carrying out of any building or other operations as it may consider necessary, without any further notice. If the owner or occupier has not discontinued the use of land or building within the specified period, appropriate action*



W.P. No. 34793 of 2023

WEB COPY

under sub-section (2-A) of Section 56 of the said Act will be initiated by locking and sealing of the subject premises. The unauthorised conversion of office into shop in First Floor attracts additional car parking requirements which is in violation.

10. It is further submitted that meanwhile, the Hon'ble High Court of Madras by it's order dated 20.02.2024 in the above said Writ Petition had directed as follows:-

“ This Court during the earlier hearing on 21.12.2023, has passed the following self-explanatory order:-

“3. The First to Third Respondents shall file report of the action taken on the representation dated 20.11.2023 made by the Petitioner relating to the deviations of the approved plan said to have been committed by the Fourth to Sixth Respondents. If the First to Third Respondents are not able to take any action, Counter-Affidavit shall be filed explaining the reasons for the same before the next hearing.”



W.P. No. 34793 of 2023

Electricity Board. Also, the power supply for the Second Floor,

First Floor were disconnected by the TANGEDCO Officials.”

In view of the aforesaid action taken, nothing remains for further consideration in the Writ Petition, but the Fourth to Sixth Respondents are not precluded from making any representation for removal of their belongings in the premises as sought by Learned Senior Counsel appearing for the Fourth to Sixth Respondents in Court today and if such representation is made by the Fourth to Sixth Respondents, the First Respondent shall duly examine the same on merits and in accordance with law.

4. It is needless to add here that nothing said in this order shall inhibit or impede the Government of Tamil Nadu from passing any order, interim or final, as it may deem fit in the Revision Petition said to have been preferred by the Fourth to Sixth Respondents in the Writ Petition under Section 80 of the Tamil Nadu Town and Country Planning Act, 1971, assailing the action taken by the First and Second Respondents in the matter.

In the result, the Writ Petition is disposed with the aforesaid observations.

No costs.



W.P. No. 34793 of 2023

13.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 26.03.2024.

vjt



W.P. No. 34793 of 2023

To

WEB COPY

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA),
Thalamuthu Natarajan Maaligai,
No. 1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.
2. The Deputy Planner,
Chennai Metropolitan Development Authority (CMDA),
Thalamuthu Natarajan Maaligai,
No. 1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.
3. The Executive Engineer,
Zone - 9,
Greater Chennai Corporation,
No. 4, 4th Cross Street,
Lake View road,
Nungambakkam,
Chennai - 600 034.



WEB COPY



W.P. No. 34793 of 2023

P.D. AUDIKESAVALU, J.

vjt

W.P. No. 34793 of 2023

13.03.2024