



W.P.No.13262 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	09.06.2025
PRONOUNCED ON	:	17.07.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.No.13262 of 2024

and W.M.P.Nos.14401, 14403 & 14404 of 2024

M/s.AVN Flat Owners

Association – Velacherry,

Rep.by its Secretary Mr.Binny S.teevert S.G.,

S/o Mr.Selwyn Gnanasekaran,

Flat No.S-4, AVN Apartments, 2nd floor,

Anna Nagar 5th main road, Velacherry,

Chennai 600 042

... Petitioner

Vs.

1.The Secretary,

Government of Tamil Nadu,

Housing and Urban Development Department,

Fort St. George, Secretariat,

Chennai 600 009

2. The Member Secretary,

Chennai Metropolitan Development Authority,

Chennai 600 009



W.P.No.13262 of 2024

3. The Commissioner,
Corporation of Chennai,
Rippon Building, Raja Muthiah Road,
Kannappar Thidal, Periyamet,
Chennai 600 003
4. The Executive Engineer,
Zone 13, Division 179,
Corporation of Chennai,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600020
5. M/s.AVN Constructions,
Rep. by its Proprietor Mr.Israel Jayakumar,
S/o. Mr. Vedachirromoney,
Plat No.14, Ponniamman Koil street,
Madipakkam, Chennai 600 091
6. Mr.V.Christopher
7. Mr.Anil Kumar
8. Mr.M.Sasikumar

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the entire records relating to the impugned order dated 04.04.2024, in letter No.16149/UD-VII(1)/2021-4 of the first respondent and quash the same, in so far as it relates to ordering action against the deviations/ violations in the building in 1st and 2nd floors in Block A, Block B and Block C of Plot No.138, AVN Apartments, Anna Nagar 5th Main Road, Velachery, chennai 600 042 and



W.P.No.13262 of 2024

consequently direct the respondents 3 and 4 to remove / demolish the unauthorised construction in the non FSI area/ stilt floor of Block -A, B & C at Plot No.138, AVN Apartments, Anna Nagar 5th main road, Velacherry, Chennai 600 042.

For Petitioner : Mr.Murualikumaran, Senior Counsel
For Mc. Gan Law Firm

For R1 : Mr.M.Venkateswaran,
Spl. Government Pleader

For R2 : Mr.R.Sivakumar, Standing Counsel

For RR 3 & 4 : Mr.G.T.Subramanian, Standing Counsel

For RR 5 to 8 : No Appearance

ORDER

(Order of the Court was delivered by **J. NISHA BANU, J.,**)

Seeking to quash the impugned order dated 04.04.2024 in letter No.16149/UD-VII(1)/2021-4 of the first respondent and for a consequential direction to the respondents 3 and 4 to remove / demolish the unauthorised construction in the non FSI area, the petitioner has preferred the present writ petition.



W.P.No.13262 of 2024

WEB COPY

2. The brief facts of the case are as follows:-

2.1. The petitioner is an Association comprising of apartment owners, collectively formed to represent and safeguard the common interests of its members residing in the said residential complex. The members of the petitioner Association are the purchasers of the Apartments, who have purchased flats approved by Corporation of Chennai. The builder/ 5th Respondent, after obtaining sub-division, dividing the land as plot A, B, & C, obtained 3 different approvals for construction of stilt + 2 floors with 4 dwelling units in each block. All approvals were granted on the same day, i.e., on 07.07.2008. The undivided share of land for all the 12 flats were sold to the members of the petitioner Association in the year 2011, except one, which was sold in the year 2010.

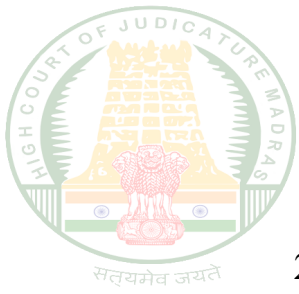
2.2. On 06.05.2011, the members of the petitioner Association made a complaint that the promoter is illegally converting the non-FSI into an apartment, which is actually meant for car parking area as per the approved plan. When no action was taken in that regard, the members of the petitioner association have approached this Court by way of filing a Writ Petition in W.P.No.18046/2021,



W.P.No.13262 of 2024

seeking to take action against the unauthorised construction which was put up by the promoter. This Court, vide its order dated 13.09.2021, disposed of the writ petition by recording the statement of the Corporation and CMDA that based on the representation of the petitioner Association, a lock and seal notice was issued to the builder on 02.09.2021 and granted liberty to the members of the petitioner association to file a fresh petition to ventilate their grievance in the manner known to law.

2.3. Though Writ Petition No.18046/2021 was disposed of by recording the statement made by Corporation and CMDA that based on the representation of the petitioner Association, a lock and seal notice was issued to the builder on 02.09.2021, it was found that lock and seal notices were addressed to all the Apartment owners pointing out the deviations in all the apartments. The Apartment Owners, therefore preferred a statutory revision petition under Section 80A of the Tamil Nadu Town and Country Planning Act, 1971, before the 1st respondent for regularisation of the same, contending that the deviations were done not by them but by the builder/5th respondent.



W.P.No.13262 of 2024

2.4. Subsequently, the petitioner Association filed several Writ Petitions in W.P.Nos.34746, 34748 & 34749 of 2023 seeking for a direction to initiate action in pursuant to the lock and seal notices, dated 31.08.2021, by removing the unauthorised construction in the non FSI area and the said Writ Petitions are still pending. Meanwhile, during the hearing of the revision petition preferred by the apartment owners under section 80A application before the first respondent, the 1st respondent refused to regularise the deviations, which was originally committed by the builder/5th respondent and dismissed the petition vide order dated 04.04.2024 in letter No.16149/UD-VII(1)/2021-4. Aggrieved against the same, the present writ petition has been filed.

3. It is the case of the petitioner that the builder/fifth respondent ought to have conveyed the UDS to the purchasers of the Apartments, in proportionate to the built up area, by multiplying the land area with a total constructed area of the apartment and dividing the same by the total built up area, which principle/formula stands approved by the Coordinate Bench of this Court in the case of *Abbotsbury Owners Association vs.Jaganathan* in W.P.No.5765/2020 dated 20.01.2023. The learned Senior Counsel also pointed out the Single Judge



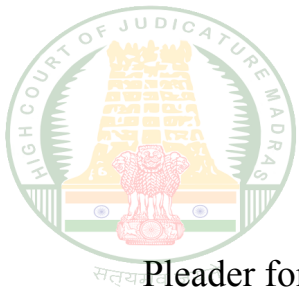
W.P.No.13262 of 2024

WEB COPY

judgment of the Karnataka High Court in W.P. No. 19151/2021 dated 25.04.2025 and also the *Abbotsbury Owners Association' case*, wherein it was held that the conveyance of UDS of land without related approved construction is invalid and the said document is a void document, and further contended that any retention of the land in violation of the above said formula would be illegal and any conveyance of the illegally retained UDS would be a perpetuation of illegality.

4. The writ petitioner assailed the impugned order stating that the act of the builder/5th respondent causing deviation in the apartments and selling the same to innocent 3rd party purchasers and blackmailing them at the threat of demolition, if they question the illegal construction subsequently put up by the promoter or any sale of undivided share of land illegally retained by the promoter/owner, is an illegality committed by the builder/5th respondent and in collusion with the regulating authority and the same is in direct violation of the principle and law laid down by the Supreme Court in the case of *Rajendra Kumar Barjatya* dated 17.12.2024 in Civil Appeal No.14604/2024.

5. Per contra, the stand taken by the learned Special Government



W.P.No.13262 of 2024

सत्यम् Pleader for the 1st respondent in the counter is as follows:-

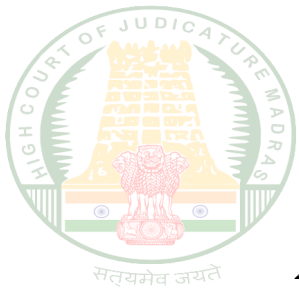
WEB COPY

“...There is Floor Space a possibility to apply for revised approval as per Tamil Nadu Combined Development and Building Rules, 2019 which permits the Index upto 2. However, the Flat Owners Association and all other flat owners of the subject buildings are not willing to get revised approval as per Tamil Nadu Combined Development and Building Rules, 2019 covering the unauthorised ground floor put up by the builder.”

It is not only per se illegal but also shocking and it vindicates the stand of the Writ Petitioner that they are blackmailed to give consent to approve the unauthorised construction.

6. The Supreme Court in the case of **Rajendra Kumar Barjatya** referred supra has come down heavily on the collusion of the regulating authorities with the violators and the lapses on the part of the authorities.

“...15. ...Even otherwise, we are of the view that there cannot be any estoppel against law. The lapses on the part of the authorities will not vest any person with a right to put up construction without planning approval and in violation of the conditions regarding usage. However, the fact that the notices issued by the authorities between 1990 to



W.P.No.13262 of 2024

WEB COPY

2013 did not culminate into demolition, would speak volumes about the lackadaisical attitude of the authorities and that also smacks of collusion with the violators.”

7. The regulating authorities cannot allow the builder to commit deviations and sell the deviated apartments to innocent purchasers and hold the innocent purchasers with the threat of demolition, if they failed to give their consent to the unauthorised construction by the builder/5th respondent. As held by the Hon'ble Supreme Court, this is a clear case of collusion between the violator and regulating authorities.

8. When this court posed a question as to how an illegal demand can be made by the 1st respondent when the apartment owners sought for the regularisation of the apartments the Special Government Pleader, Mr.M.Venkateswaran, learned Special Government Pleader appearing for the 1st respondent gave an evasive answer stating that it was only a suggestion. However, we see it only as a coercion, which when leashed by the regulating authorities would amount to tyrannical act by the State.



W.P.No.13262 of 2024

WEB COPY

9. Deviation is completely different from unauthorised construction.

While deviations are normally permissible to be regularised, the unauthorised construction is not. We do not know as to how the Tamil Nadu Combined Development and Building Rules, 2019 which increased the floor space index from 1.5 to 2 FSI, vests power with the 1st respondent to regularise the unauthorised construction. The car parking, which is a non FSI area, is a common area owned by all the apartment owners and any construction put up in the same, is an illegal one. The stand of the 1st respondent that it has got power under the Tamil Nadu Combined Development and Building Rules, 2019 to approve the said illegality, is an act of lawlessness. We also do not have hesitation to hold that any retention of UDS of land by the promoter by conveying lesser UDS to the apartment owners is illegal and sale of such illegal UDS is void.

10. Neither the 5th respondent nor the respondents 6 to 8, who are the purchasers of the UDS, without any corresponding approved apartment can be construed as owners. Therefore, the impugned order dated 04.04.2024, in letter No.16149/UD-VII(1)/2021-4 of the first respondent is set aside and the 1st



W.P.No.13262 of 2024

respondent is directed to consider the application of the members of the petitioner Association filed under Section 80A of the Tamil Nadu Town and Country Planning Act for the regularisation of deviations without insisting any consent from the promoter or other persons, as only the owners of the approved apartments are owners of the entire extent of land and building.

11. We also make it clear that for the violations committed by the builder/promoter, the authorities need to take action only against the builder/owner/promoter and not against the innocent purchasers, who admittedly made the purchases because of the certificates given by the regulating authorities such as “occupancy certificate”, “completion certificates”, etc., and the permissions and connections given by the respective authorities.

12. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [M.J.R., J.]
17.07.2025



WEB COPY



W.P.No.13262 of 2024

J.NISHA BANU, J.
and
M.JOTHIRAMAN, J.

sts

Index : Yes / No
Internet : Yes / No
NCC : Yes/No

Order made in
W.P.No.13262 of 2024

Dated:
17.07.2025