



Appeal Suit No.946 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 26.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.946 of 2014

and

M.P.No.1 of 2015 and CMP.No.10056 of 2020

1. M.Z. Ansari
2. K. Balasubramanyan
3. B. Renuka
4. Cyril John
5. Fatima Jessey
6. M/s. G.K.C.Clothing Company
Rep. By its Partner
Gope K.Chatlani
Ground Floor, BSV Villa,
New No.42, Old No.428
Kilpauk Garden, Main Road,
Kilpauk, Chennai – 600 010.
7. Jean Johnson
8. Indira Cookie Royle

.. Appellants

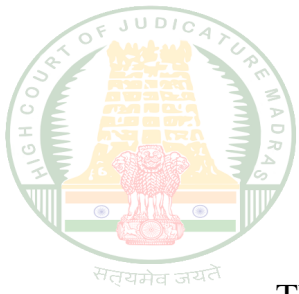
Versus

1. Xavier Britto
2. Vimala Rani Britto

.. Respondents

Appeal Suit is filed under Section 96 of Code of Civil Procedure, 1908, seeking to set aside the Judgment and Decree dated 17.06.2014 passed in O.S.No.11802 of 2010 on the file of the learned XIX Additional District Judge, City Civil Court, Chennai.

For Appellants	:	Mr. C. A. Diwakar
For Respondents	:	Mr. P. J. Gorge



Appeal Suit No.946 of 2014

JUDGMENT

This Appeal had been filed to set aside the Judgment and Decree dated 17.06.2014 passed in O.S. No. 11802 of 2010 on the file of the learned XIX Additional District Judge, City Civil Court, Chennai.

2. The Appellants are the Plaintiffs in the Suit in O.S.No.11802 of 2010. The Suit was filed in the Original Side of this Court as C.S. No. 443 of 2009 and subsequently it was transferred to the file of the City Civil Court, Chennai due to enhancement of pecuniary jurisdiction of the District Courts as per Act 9/2010. Upon transfer, the case was re-numbered as O.S.No.11802 of 2010.

3. The Suit was filed by the Plaintiffs seeking mandatory injunction directing the first and second Defendants to remove the offending construction both permanent and temporary put up on the open terrace (common area) of the multi storey building viz., BSV Villa, New No.42, Kilpauk Garden Main Road, Chennai; for permanent injunction to restrain the Defendants from in any manner interfering with the Plaintiffs access, use and enjoyment of the open terrace and for costs.

4. For the sake of convenience, the parties to this Appeal shall



hereinafter be referred to as “Plaintiffs” and “Defendants” as per their rank in the suit before the trial Court.

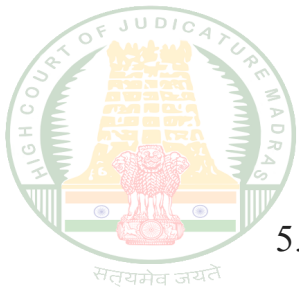
5. The averments of the Plaintiffs, set out in the Plaint, are briefly as follows:-

5.1. The First Defendant developed a multi storied residential building on a land owned by the Defendants. The multi storied building comprising of Ground +3 floors with a total built up area of 7806 sq. ft. was constructed on the plot measuring 5031 sq. ft. at New No.42. Kilpauk Garden Main Road, Kilpauk, Chennai. The building consists of 8 dwelling units. Defendants sold 4980 sq. ft. of divided share in the land to the Plaintiffs 1 to 7 and to the predecessor in title of the 8th Plaintiff under separate sale deeds. There were separate agreements for construction between the first Defendant and Plaintiffs and predecessor in title of the 8th Plaintiff. The sanctioned plan for the residential building was obtained by the Defendants to construct ground and three floors. It is also permitted to construct the generator room and lumber room and 242.250 sq.ft. on the terrace for the head room. Even though the actual extent of the plot is only 5031 sq.ft. the Defendants claimed that the total extent of land was 5442 sq.ft. As per the sanctioned plan, the extent of undivided share that remains with the Defendants is only $5031 - 4980 = 51$ sq. ft. The open terrace was part of the common area for the uninterrupted



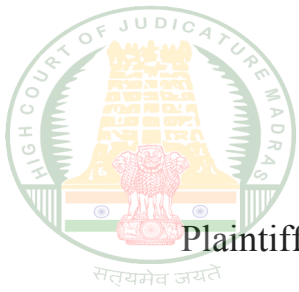
enjoyment and use of the Plaintiffs. Contrary to the sanctioned plan, the first

Defendant illegally constructed 850 sq. ft. on a portion of the open terrace and sought to regularize the illegal construction under the Regularisation Scheme announced by the CMDA. The illegal construction of the first Defendant in the open terrace is part of the common area which is liable to be removed. The Defendants have started construction activity on the open terrace in the month of April and on enquiry it was learnt that the Defendants are trying to sell the illegal construction on the open terrace along with the Defendants undivided share to some third party. Already the Defendants have sold 4980 sq.ft. of undivided share out of 5031 sq.ft. The illegal construction occupies almost 70% of the open terrace infringing on the Plaintiffs' right of access and enjoyment of the open terrace. The Defendants have no right to usurp the terrace which is a common area available for equal enjoyment of all the owners. The retention of 51 sq. ft. of undivided share will not give the Defendants the right to construct in violation of the statute and transgressing rights of the Plaintiffs. The construction, both temporary and permanent have been made on the open terrace, which is part of the common area, is illegal. The Defendants are bound to remove the same to ensure the free access of the terrace area and its enjoyment by the owners of the dwelling units. In those circumstances, the Plaintiffs have filed the suit.



5.2. On notice, the Defendants filed a written statement contending

inter alia that the question of measures to be taken in respect of applications for regularisation made after 1999 have been placed before the Monitoring Committee appointed by the First Bench of this Court and in respect of residential buildings leniency has been recommended and not demolition. Under the Tamil Nadu Ordinance No.2 of 2009, which has been extended by Tamil Nadu Act No.45 of 2010, *status quo* have been extended in respect of deviated constructions. The Monitoring Committee of the Chennai Metropolitan Development Authority and The Corporation of Chennai and Government of Tamil Nadu are necessary parties to the suit. The suit is also barred by limitation because the construction has been put up and the fourth floor was completed before 30.12.2000 and it is only the temporary shed which was constructed recently. The Defendants are willing to remove the temporary shed on appropriate orders by this Court. In fact, the permanent construction on the 4th floor had been completed even before several flats have been handed over to the Plaintiffs. The Plaintiffs are well aware of the same but filed the suit belatedly. The application for regularisation made by the Defendants was not only in respect of small portion on the 4th floor but in respect of extra areas of the Plaintiffs. The real objection of the Plaintiffs is only about the temporary structure which the Defendants have already undertaken to remove. The area owned by the Defendants is not a terrace area, till the filing of the suit. The

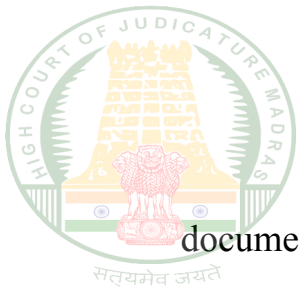


WEB.COM

Plaintiffs never objected to the Defendants portion on the fourth floor. There is a definite recommendation of the Monitoring Committee to deal with residential construction leniently. The Defendants have decided not to alienate or let out their portion on the fourth floor but to use it for themselves and for members of their families till their application for regularisation is allowed or till the disposal of the suit. The suit deserves to be dismissed with costs for the Defendants.

5.3. With the above pleadings, the Plaintiffs and Defendants went for trial. During trial, the fourth Plaintiff examined himself as P.W-1. The certified copy of the sale deed executed by the Defendants in favour of the Plaintiffs 1 to 8 were marked as Ex.A-1 to Ex.A-4, Ex.A-6 and Ex.A-7. The Encumbrance Certificate was marked as Ex.A-8. The photostat copy of agreement for construction dated 05.11.2001 was marked as Ex.A-5. The agreement for construction dated 05.11.2001 was marked as Ex.A-9. On behalf of the Defendants, the first Defendant examined himself as D.W-1 and marked 20 documents as Ex.B-1 to Ex.B-20. The copy of the approved plan for the entire building was marked as Ex.X-1 through P.W-1.

5.4. After full trial, the learned XIX Additional District Judge, City Civil Court, Chennai, had on appreciation of evidence, both oral and



Appeal Suit No.946 of 2014

documentary, observed that the learned Counsel for the Defendants agreed that already as per the order in the Writ Petitions, a Monitoring Committee has been appointed by this Court and no final order has been passed by the said Committee. Therefore, as per the order passed by this Court in the Writ Petitions on 23.8.2006 no Civil Court shall entertain any suit or proceeding or application in respect of the action taken by the CMDA or Corporation of Chennai in respect of illegal construction and encroachments on roads and pavements. While holding that the suit is not maintainable in view of the order passed by this Court, it was also observed that CMDA and Corporation of Chennai are necessary parties for adjudication of the suit, but they were not impleaded. It was further observed that the open terrace construction was completed in 2003 October itself, but due to personal reasons, the suit has been filed only in the year 2009. Above all, the Plaintiffs have not indicated the measurement of the offending construction and they are not sure about the extent or measurement of the construction made by the Defendants. Accordingly, the learned Trial Judge dismissed the Suit on 17.06.2014.

5.5. Aggrieved by the Judgment and Decree dated 17.06.2014 passed in Original Suit No. 11802 of 2010, this Appeal Suit had been filed.

6. The learned Counsel for the Appellants Thiru. C. A. Diwakar,



WEB COPY

submitted that the learned Trial Judge failed to appreciate that the permanent and temporary construction put up by the Defendants on the terrace is admittedly unauthorized, will remain unauthorized and illegal and efflux of time cannot legalize the same as has been observed by the First Bench of this Court in **2006 (1) LW 202** in the case of ***The Chairman, MMDA vs. S.Radhakrishnan*** wherein it was held that an illegal and unauthorized construction remains illegal till it is demolished and the question of limitation cannot save the structure. The construction of an unauthorized and illegal building is a continuing offence and even the statutory protection provided under Section 56 of the Town and Country Planning Act was read down by the First Bench of this Court leading to an amendment deleting the statutory limitation period of 3 years given under the Act to initiate action of demolishing such illegal construction. Above all, the scheme of regularization under which the Defendants sought regularization of the illegal construction has been quashed by this Court on 23.08.2006 in the W.P. No. 18898/2000. Therefore, the instant suit filed on 18.05.2009 by the Plaintiffs seeking demolition of the illegal construction on the terrace was well within time and is not barred by the law of limitation. In any event, the open terrace was part of the amenities and facilities promised and given under Ex.A-9, while so, putting up an illegal construction thereof is a breach and every day of such breach gives rise to a fresh cause of action in favour of the Plaintiffs to initiate legal



action against the Defendants. In such case, the question of limitation will not arise. Even otherwise, the sanctioned plan under Ex.X-1 clearly shows the terrace as an open and the unauthorized construction on the terrace is illegal and it has to be demolished.

7. The learned Counsel for the Plaintiffs proceeded to contend that when the entire construction on the terrace is illegal and unauthorized, there is no necessity to show the measurements of the construction. Therefore, the failure to mention or indicate the precise measurements of the unauthorized construction in the plaint will not be a ground to dismiss the suit. Even otherwise, the extent of the plot is only 6031 sq. ft. and the Defendants have sold 4980 sq. ft. to the Plaintiffs. The balance available is only 51 sq.ft of undivided share of land and such land is not proportionate to the unauthorized construction on the terrace. By reason of such unauthorised and illegal construction, the right of enjoyment of the open terrace has been deprived which the learned Judge failed to consider. The terrace is an open common area where construction of whatever dimension is clearly identifiable and therefore, the rejection of the relief of Mandatory Injunction on the ground of non-compliance of Order VII, Rule 3 of CPC is unsustainable. The provisions contained under Order VII, Rule 3 of CPC is curable and the Court is under an obligation to direct the parties to rectify the defect if the identification of the



portion requiring demolition is not clear. Therefore, the findings that suit filed for demolishing the illegal construction is not within time is unsustainable and untenable. The offending construction is liable to be demolished under the Tamil Nadu Town and Country Planning Act on the principle of continuous wrong. In such event, any person, whether directly affected by such illegal construction or not, is entitled to the relief of mandatory injunction of demolition. Therefore, the learned Counsel for the Plaintiffs contended that the Judgment and Decree passed by the Trial Court is perverse, legally not sustainable and it is liable to be interfered with. Accordingly, the learned Counsel for the Plaintiffs prayed for allowing this Appeal.

8. Per contra, the learned Counsel for the Defendants only submitted that the Judgment of the learned XIX Additional District Judge, City Civil Court, Chennai, is a well-reasoned Judgment and it does not warrant any interference of this Court. It is the contention of the learned Counsel for the Defendants that the Order passed by the first Bench of this Court in a W.P. Nos. 18898 of 2000, 19998 of 2001, 24316 of 2002 and 17646 of 2006, dated 23.8.2006 only reiterated that some leniency can be shown by the CMDA and other authorities to consider regularization of violation of building plan. The learned Counsel for the Defendants relied on the Judgment of the First Bench of this Court dated 23.08.2006. The relevant portion reads as follows:-



WEB COPY

“i) The amendments to [Section 113-A](#) of the Tamil Nadu Town and Country Planning Act, 1971 by Amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999 as far as applicable to the constructions made after 22.2.1999 are hereby declared ultra vires [Articles 14](#) and [21](#) of the Constitution. All orders for regularisation of such buildings (constructed after 28.2.99) passed pursuant to the amending provisions stand quashed.

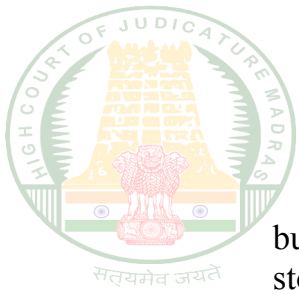
ii) A Monitoring Committee is hereby constituted consisting of the following :-

- a) The Vice Chairman, CMDA;
- b) The Commissioner, Corporation of Chennai;
- c) The Managing Director, Chennai Metro Water Supply and Sewerage Board;
- d) The Chairman, Tamil Nadu Electricity Board;
- e) The District Collector, Chennai;
- f) The Director of Fire Services;
- g) Mr.Louis Menezes (former Commissioner, Corporation of Chennai);
- h) Mr.M.G.Devasahayam (IAS retd.) (former Secretary, Housing and Urban Development);
- i) P.T.Krishnan, (Architect);
- j) Prof.Suresh Kuppuswamy, (School of Architecture and Planning, Anna University);
- k) Durganand Balsaver (Architect and Urban Planner); and
- l) Dr.A.Srivatsan (Architect and Urban Planner).

iii) The Monitoring Committee shall be provided with sufficient staff and infrastructure and all files pertaining to illegal constructions to be placed before it.

iv) The Committee shall first take up the multi-storied commercial complexes for consideration. This should cover all buildings which are more than four floors in height. Where the construction of the entire building is illegal, the building has to be demolished. Where an extra floor has been put up illegally, the same should be demolished. Necessary modifications/demolitions must be done for satisfying the norms for fire safety and car parking facilities within the building premises.

v) Special buildings should be categorized as those with actual construction of ground plus three floors. In the case of commercial special buildings, the same measures that apply to multi-storied



WEB COPY



Appeal Suit No.946 of 2014

buildings as above should be followed. In the case of residential multi-storied buildings and special buildings, the Monitoring Committee may suggest less stringent measures, bearing in mind the impact of retaining the building.

vi) The professional builders of illegal multi-storied and special buildings should be identified for imposition of heavy penalties. This amount should be used to compensate the unwary purchasers and to take remedial measures for alleviating the harm caused to the society.

vii) The Committee shall identify the officers at the CMDA and the Corporation, who are responsible for the failure to enforce the planning laws and make appropriate recommendation for prosecution and/or disciplinary action.

viii) The CMDA and the Corporation are directed to take action against the illegal multi-storied and special buildings, as per the recommendation of the Monitoring Committee. The Commissioner of Police, Chennai is directed to provide necessary police protection for taking action against illegal constructions.

ix) To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

x) The Chief Planner is directed to decide the applications for exemption pertaining to constructions prior to the cut-off date, i.e. 28.2.1999 and dispose of all the applications within a period of three months. It is needless to say that all the applications claiming exemption under the amended provisions of [Section 113-A](#) of the Act in respect of constructions made after 28.2.1999 shall stand dismissed and those applications shall not be entertained by the Government and/or the authority or officer authorised by the Government under [Section 113-A](#) of the Act. The Chief Secretary is directed to allot the hearing of appeals atleast to two officers in addition to the Housing and Urban Development Secretary.



WEB COPY

xi) Where claims are made that the unauthorised/deviated constructions were eligible for protection under the 1999 scheme - to determine the veracity of claims and evolve criteria for such identification which may include the following:-

- a) Date of planning permission and proof of completion;
- b) Electricity service connection and water connection; and
- c) Registration of sale deed conveying constructed area.

xii) The Monitoring Committee shall be consulted for applications claiming exemption under [section 113-A](#) of the Act as well as appeals under [section 113-A\(6\)](#). The Monitoring Committee shall also be consulted for changes in the Master Plan and Development Control Rules, which affect construction activity in the city.

xiii) The regularisation fee collected should be kept aside in a separate fund and not to be merged with the general account of the State of Tamil Nadu or its Agencies and this fund shall be used to alleviate the sufferings of the affected citizens in consultation with the Monitoring Committee.

xiv) The Corporation is directed to forthwith take steps to remove the encroachments on all busy streets like Ranganathan street, Natesan street, Madley road, etc. and the Commissioner of Police is directed to provide adequate police force at the disposal of the Corporation for the purpose of carrying out work of removal of encroachments.

xv) No Civil Court shall entertain any suit or proceedings or application in respect of the action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements. All pending and future petitions filed/to be filed against CMDA and the Corporation relating to the illegal and unauthorised construction of buildings and or encroachment, and the demolition notice shall be placed before the special bench to be nominated by the Chief Justice.”

9. The learned Counsel for the Defendants also relied on the Ordinance passed by the Government of Tamil Nadu No.2 of 2009 published in the Government Gazette by which the Government constituted a Committee



Appeal Suit No.946 of 2014

headed by a retired Supreme Court Judge to look into all aspects of developments and to suggest necessary modifications to the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972). The recommendations of the Committee aforesaid may involve substantial amendments to the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and some with retrospective effect, and in particular to the Provisions relating to construction and use of the premises, thereby changing the position as obtaining now under the said Act. Therefore, the Suit itself is not maintainable. The Plaintiffs have approached the Court with an ulterior motive. Taking note of the above facts, the learned Trial Judge rightly dismissed the suit filed by the Plaintiffs. The learned Counsel for the Defendants also submitted that the Defendants paid Rs.22,00,000/- seeking regularization to the CMDA and it is still pending. Therefore, the Appeal lacks merits and is to be dismissed.

Point for determination:

Whether the Judgment and Decree dated 17.06.2014 passed in O.S. No. 11802 of 2010 on the file of the learned XIX Additional District Judge, City Civil Court, Chennai, is to be set aside as perverse?

10. Heard the learned Counsel for the Plaintiffs and the learned



Appeal Suit No.946 of 2014

Counsel for the Defendants. Perused the documents marked on behalf of the Plaintiffs and Defendants and also the judgment of the Trial Court, which is impugned in this appeal.

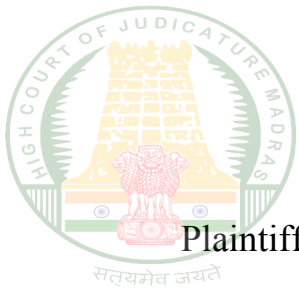
11. In the ruling reported in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others***, the First Bench of this Court had struck down the amendments to Tamil Nadu Act 17/2001 whereby all buildings constructed on or before 31st July 2001 become eligible to be considered for regularization was struck down. The First Bench of this Court appointed Monitoring Committee for regularization of such building pertaining to construction prior to cut off date 28.02.1999 and to dispose of the applications within a period of three months. The Applications claiming exemption under amended Provisions of Section 113-A made after 28.02.1999 shall stand dismissed and those applications shall not be communicated by the Government or Authority or Authorities by the Government under Section 113 of the Act. It was also held that no Civil Court shall entertain any Suit or proceedings or Applications, instead action shall be taken by the CMDA in respect of illegal construction on roads and pavements. All the pending and future Petitions against CMDA relying on illegal and unauthorized construction of building or encroachment and demolition notice shall be placed before the Special Bench nominated by Hon'ble Chief



Justice of this Court in *The Chairman, MMDA -Vs- S.Radhakrishnan (2006 (1)*

WEB COPY

CTC 241). The direction issued in this case is against the person who approaches the Civil Court seeking mandatory injunction against the CMDA or Corporation Authorities or against the Authorities directing the builder or the owner of the property for demolishing the offending construction. Here, the facts are different. The Plaintiff had purchased the flats as per the sale deed executed by the Defendants in their favour. The open terrace is for the common use of the purchasers of the property. After having purchased the property, the Defendants, as owners of the vacant site and builder of the flats had put up construction without obtaining prior approval either by Corporation of Chennai or by CMDA. The claim of the Defendant that the First Bench alone shall dispose of cases of this nature and the Civil Court has no jurisdiction in the light of the reported ruling in **2006 (4) CTC 483** in the case of *Consumer Action Group and others Vs. The State of Tamil Nadu and others*, will not hold good as far as the facts of this case is concerned. The Plaintiffs suffered injury, due to a continuous wrong perpetrated by the Defendants. As per the reported ruling in **2022 (4) SCC 103** in the case of *Samruddhi Co-operative Housing Society Limited vs. Mumbai Mahalaxmi Construction Private Limited* the Hon'ble Supreme Court in Para No.17 thereof had interpreted continuous wrong and injury which does not attract limitation. Therefore, the question of limitation does not get attracted in this case to be put against the



WEB COPY

Plaintiffs. The breach committed by the Defendants is a case on continuous breach. Therefore, dismissal of Suit by the Trial Judge on the ground that the Suit is barred by limitation since the Plaintiff has in cross-examination stated that the construction was completed in the month of October 2000. The offending construction by the Defendants is a continuous wrong by which permanent injury has been caused to the Plaintiffs/purchasers, thereby they have lost the common enjoyment guaranteed in the sale deed executed in their favour. The Plaintiffs are entitled to share in the common space/terrace which had been violated by the Defendants/owner of the site and builder of the flats. The conduction of first and second Defendants attract promissory estoppel having sold the property with a promise. The purchasers/ Plaintiffs are entitled to a share in the open terrace/common space and denying it after sale of the property is illegal. The Plaintiffs believing the guarantee given by the Defendants purchased the flats. However, after purchase by the Plaintiffs denying the same amounts to depriving the rights guaranteed to them. The Plaintiffs have instituted the present suit only after the Judgment in **2006 (4) CTC 483** in the case of **Consumer Action Group and others Vs. The State of Tamil Nadu and others** and that is the reason why they had approached the Court in the year 2009 and it is found reasonable. The First Bench of this Court in the reported ruling in **2006 (4) CTC 483** in the case of **Consumer Action Group and others Vs. The State of Tamil Nadu and others** had clearly



WEB COPY

given guidelines to regularize construction that were completed in the year 1999. The cut off date was mentioned and all those construction made after the cut off date cannot be treated leniently by the Authorities. Therefore, the claim of the Defendants that they paid Rs.22,00,000/- towards regularization and it is pending cannot be a ground to permit them to retain the offending construction.

12. The submission of the learned Counsel for the Defendants that they have paid Rs.22,00,000/- for regularisation and the subject matter is pending before the Monitoring Committee appointed by the First Bench of this Court as per the ruling reported in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others***, is found not acceptable. On perusal of the minutes of the 52nd Meeting of the Monitoring Committee held on 04.02.2015 at 5.00 p.m. at Main Conference Hall at CMDA, among the subject matter, the property of the Defendant before the trial Court is not found in the list of properties taken for consideration. Further, as per the reported ruling, the amendment brought about by the State Government to regularise violations in the building plan time and again had been struck down by the Division Bench. Also in the same judgment, they had quashed the regularisation for the buildings constructed after 28.02.1999. Therefore, the claim of the Defendants that they are expecting regularisation does not hold good. The submission of the learned Counsel for the Defendants



WEB COPY

that the suit is not maintainable for not impleading the CMDA and the Monitoring Committee appointed by the First Bench of this Court also will not hold good. The Plaintiffs 1 to 7 had instituted the suit only to enforce the conditions imposed in the judgment of the First Bench of this Court for violations of building plan. Also they sought for mandatory injunction to demolish the illegal construction put up in the fourth floor by the Defendants without approval and contrary to the recitals contained in the sale deed wherein the purchasers/Plaintiffs were guaranteed undivided share in the free space that is the open terrace which was subsequently violated by the Defendants with an intention to sell it. Therefore, the suit for mandatory injunction filed by the Plaintiffs is found proper.

13. The action of the Defendants is nothing but violation of building plan and against the recitals of the sale deeds granting undivided share to each of the Plaintiffs who are the purchasers of the properties under Ex.A-1 to Ex.A-4, Ex.A-6 and A-7. The pleadings and evidence let in by the Defendants are contrary to the agreement of construction marked as Ex.A-9. The claim of the Defendants that the suit itself is barred, as per the judgment of the First Bench of this Court reported in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others***, will not hold good in the facts and circumstances of this case. The said Judgment bars the Civil



WEB COPY

Courts from granting any relief against CMDA or the Greater Chennai Corporation or statutory bodies from implementing the building plan. Here, the Plaintiffs are the purchasers who approached the Court for mandatory injunction to demolish the structures put up on the fourth floor violating the building agreement and the plan approved by the authorities concerned which attracts the judgment reported in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others***. The said judgement had mentioned the cut off date as 28.02.1999.

14. The learned Counsel for the Plaintiffs relied on the reported ruling in **2008 (3) CTC 405** in the case of ***Tamil Nadu Electricity Board and others vs. Madasamy Konar*** in which the Plaintiff therein sought for removal of the transformer in front of the house of the Plaintiff where the properties are identified. Here the Plaintiffs clearly stated in the plaint that the construction put up on the 4th floor is unapproved construction, therefore, sought mandatory injunction. The learned XIX Additional District Judge, however, dismissed the suit on the ground that the Plaintiffs had not described the property properly. Also the Plaintiffs stated that the construction was completed in October, 2003 whereas the suit was instituted in the year 2009 as Civil Suit on the original side of the High Court. Therefore, the learned Judge had held that the suit is barred by limitation. As per the judgment in **2006 (4) CTC 483** in the case of



Appeal Suit No.946 of 2014

Consumer Action Group and others Vs. The State of Tamil Nadu and others,

WEB.COM

all the applications claiming exemption under the amended provisions of Section 113-A of the Act in respect of constructions which had been put up by violating the approved building plan after 28.02.1999 shall stand dismissed and the cut off date was fixed as 28.02.1999. Whereas the construction in this case is completed during October 2003. Therefore, the submission of the learned Counsel for the Defendants that the proceedings are pending before the Monitoring Committee cannot at all be accepted. The Monitoring Committee was directed to consider the applications for exemption pertaining to constructions prior to the cut-off date, i.e. 28.2.1999 and dispose of all the applications within a period of three months. As per the rulings of the First Bench of this Court in **2006 (1) LW 202** in the case of ***The Chairman, MMDA vs. S.Radhakrishnan***, it is stated that contravention of Planning permission to be treated as continuing offence. The First Bench of this Court had held that in matters of this nature, the offence committed is to be treated as continuing one till the offending structure is either demolished or altered. Even after expiry of three years, the authorities concerned shall take appropriate steps for demolition of the development by the developer if it is without obtaining permission from the appropriate planning authority.

15. The submission of the learned Counsel for the Plaintiffs that the



WEB COPY

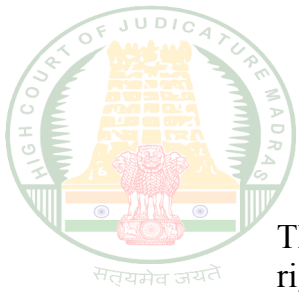
learned trial Judge failed to consider that the injury caused to the Plaintiffs was a continuous injury and it is not barred by limitation, is having adequate force.

Therefore, the judgment of the learned Trial Judge, dismissing the suit by the Plaintiffs is found to be perverse in the light of the judgment of the First Bench of this Court in **2006 (1) LW 202** in the case of ***The Chairman, MMDA vs. S.Radhakrishnan.***

16. The learned Counsel for the Plaintiffs relied on the judgment reported in **2022 (4) SCC 103** in ***Samruddhi Co-operative Housing Society Limited Vs. Mumbai Mahalaxmi Construction Private Limited*** wherein it was observed thus:-

“17. In ***M. Siddiq v. Suresh Das***, a Constitution Bench of this Court (of which one of us (Justice DY Chandrachud) was a part) examined the precedents with regards to a continuing wrong. The Court observed that :

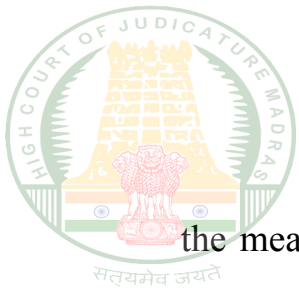
“343. The submission of *Nirmohi Akhara* is based on the principle of continuing wrong as a defence to a plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, (2020) 1 SCC 1 PART C agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, whether positive or negative, to act or desist from acting in a particular manner.



WEB COPY

The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. [...] Hence, in evaluating whether there is a continuing wrong within the meaning of [Section 23](#), the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.” (emphasis supplied)

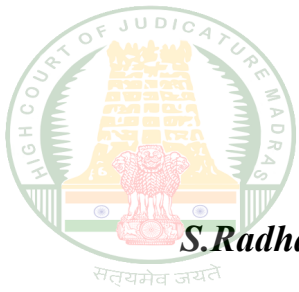
17. Therefore, the submission of the learned Counsel for the Plaintiffs that the Plaintiffs suffered continuous injury as the Defendants had put up construction violating the approved building plan in the fourth floor is acceptable. Considering that the injury suffered by the Plaintiffs is a continuous injury, it is not barred by limitation in the light of the ruling reported in *2022 (4) SCC 103* in the case of *Samruddhi Co-operative Housing Society Limited vs. Mumbai Mahalaxmi Construction Private Limited*. Also reliance was placed by the learned Counsel for the Plaintiffs in the reported ruling in *2008 (3) CTC 405* in the case of *Tamil Nadu Electricity Board and others vs. Madasamy Konar* regarding identification of the property and grant of mandatory injunction to remove the objectionable construction is found acceptable in the light of the reported ruling. The learned trial Judge, however, refused to grant the relief of mandatory injunction on the ground that the relief sought by the Plaintiffs is barred by limitation and also



the measurement of the property has not been described. On the other hand, the property is clearly identified in this case. It is clearly described as open terrace where the offending construction has been put up by the Defendants. Therefore, as per the reported ruling in **2008 (3) CTC 405** in the case of ***Tamil Nadu Electricity Board and others vs. Madasamy Konar*** the judgment of the learned XIX Additional District Judge, City Civil Court, Chennai, is perverse.

18. The learned Judge ought to have directed the Plaintiffs to rectify the defects by furnishing the description of the property, if need be. Instead the learned Judge dismissed the suit even though the Plaintiffs had through oral and documentary evidence made out the case that the Defendants had put up construction violating the approved building plan by putting up construction in the fourth floor. The fourth floor was a open terrace which was sold to the Plaintiffs 1 to 7 with undivided share in the open terrace. After sale, the same had been violated by the Defendants 1 and 2 by putting up construction thereby denying what was guaranteed in the sale deed by recitals.

19. In the light of the reported rulings in (i) **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others***; (ii) **2006 (1) L.W. 202** in the case of ***The Chairman, MMDA vs.***



Appeal Suit No.946 of 2014

WEB.COM

S.Radhakrishnan; (iii) (2003) 2 SCC 330 in the case of **Pratibha Sing and another vs. Shanti Devi Prasad and another;** (iv) 2008 (3) CTC 405 in the case of **Tamil Nadu Electricity Board and others vs. Madasamy Konar** and (v) 2022 (4) SCC 103 in **Samruddhi Co-operative Housing Society Limited Vs. Mumbai Mahalaxmi Construction Private Limited**, the judgment of the XIX Additional District Judge, City Civil Court, Chennai, dismissing the suit by observing that (i) the properties had not been properly described, (ii) the Plaintiffs had not filed the suit within three years period, are found to be perverse since the learned Judge failed to consider that the property described by the Plaintiffs was the free space in the open terrace which was guaranteed by the Defendants 1 and 2, as sellers to the Plaintiffs, who are the purchasers of the flats. Further, the building plan was violated by the Defendants thereby denying the right guaranteed to the Plaintiffs. The conduct of the Defendants 1 and 2 attracts the principles of promissory estoppel. They are prevented from denying the rights of the Plaintiffs after having executed the sale deed guaranteeing the undivided share in the open terrace. Therefore, the judgment of the learned XIX Additional District Judge, City Civil Court, Chennai, dismissing the suit is found perverse.

20. The contention of the learned Counsel for the Defendants 1 and 2 that they had paid Rs.22,00,000/- and awaiting approval by the Monitoring



Committee appointed by the First Bench of this Court is also found unacceptable in the light of the reported ruling in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others*** where cut off date is mentioned as 28.02.1999.

21. In **(2019) 7 SCC 248** in the case of ***Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality and others*** the construction put up by private parties for which permission granted by local body violating Environment (Protection) Act, 1986 was directed to be demolished by the Hon'ble Supreme Court.

22. In the light of such ruling, the claim of the Appellants that the Respondents had in violation of Building plan approved by the CMDA put up construction in the fourth floor which was open terrace as per building plan is found objectionable thereby the suit for mandatory injunction had to be decreed. Instead the learned trial Judge dismissed the suit thereby encouraging violation of building plan which is a continuous violation.

23. In the light of the above discussion, the point for determination is answered in favour of the Plaintiffs and against the Defendants. The Judgment and Decree dated 17.06.2014 passed in O.S. No. 11802 of 2010 by the learned XIX Additional District Judge, City Civil Court, Chennai, is to be set aside as



Appeal Suit No.946 of 2014

perverse.

WEB COPY

In the result, **this Appeal Suit is allowed with cost throughout.** The Judgment and Decree dated 17.06.2014 passed in O.S. No. 11802 of 2010 by the learned XIX Additional District Judge, City Civil Court, Chennai, is set aside. The Plaintiffs are entitled to mandatory injunction in the light of the reported ruling in **2006 (4) CTC 483** in the case of ***Consumer Action Group and others Vs. The State of Tamil Nadu and others*** and **2006 (1) L.W. 202** in the case of ***The Chairman, MMDA vs. S.Radhakrishnan***. In effect, the suit is decreed. Consequently, connected civil miscellaneous petitions are closed.

26.03.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking Order
dh/srm

To

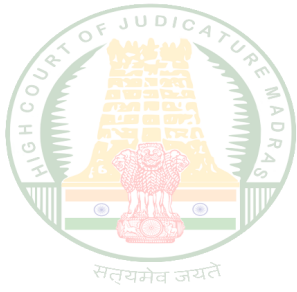
1. The XIX Additional District Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



Appeal Suit No.946 of 2014



WEB COPY



Appeal Suit No.946 of 2014

SATHI KUMAR SUKUMARA KURUP, J

dh/srm

Judgment made in
A.S.No.946 of 2014

26.03.2025