



W.P.No.29859 of 2022 and W.P.No.12525 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.12.2024

PRONOUNCED ON : 28.01.2025

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.29859 of 2022

and

Writ Petition No.12525 of 2023

and

Writ Miscellaneous Petition Nos.12353, 12359 & 12360 of 2023

W.P.No.29859/2022:

Squadron Leader C.B. Menon (Retd.,)

163, Defence Officers Colony,

Ekattuthangal, Chennai – 600 032.

... Petitioner

Vs.

1. Principal Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3. Commissioner,



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Greater Chennai Corporation,
Ripon Building, Chennai – 600 003.

4. Mr. K. Hariharan
5. Mrs. H. Shanti
6. Mr. N. S. Nirmal
7. Mr. N. S. Vijay Kumar
8. M/s. Kshema Power Infrastructure Company Private Ltd.,
N. No.94, Old No.108, 13th Cross Street,
Defence Officers Colony, Ekkatuthangal,
Chennai – 600 032.
9. Mr.Sundar Garg
10. Mrs. Rama Garg
11. TN Area Defence Officers Co-operative Housing Society Ltd.,
Rep., by its Authorized Representative
(Society Registration No.JJ 337), Defence Officers Colony,
Ekkatuthangal, Chennai – 600 032.
[R11 impleadead vide order dated 27.03.2023
made in WMP No.32103/2022]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus direct the 2nd and 3rd respondents to execute / implement the said order of the 1st respondent passed in its Letter No.2149/UD-VI(2)/2019-2 dated 26.05.2021 that only a detached residential house for the bonafide use of the owner be permitted, under supervision of this Hon'ble Court within a fixed time frame.

W.P.No.12525/2023:

N. S. Nirmal

... Petitioner



W.P.No.29859 of 2022 and W.P.No.12525 of 2023

Vs.

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1. The Government of Tamil Nadu
Rep by The Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai – 600 009.
 2. Executive Engineer – I,
Zone-12, Alandur,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai – 600 016.
 3. Assistant Executive Engineer,
Unit – 35, Greater Chennai Corporation,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai – 600 016.
 4. Assistant Engineer,
Division – 158, Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai – 600 016.
 5. C. B. Menon,
163, Defence Officers Colony,
Ekattuthangal, Chennai 600 032.
- [R5 impleaded vide order dated 10.07.2023
made in WMP No.13677/2023]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the 1st respondent dated 26.05.2021 in Letter No.2149/UD-VI(2)/2019-2 and quash the same.

Party-in-Person in
WP.No.29859/2022 and
For R5 in WP. No.12525/2023 : Mr. C. B. Menon



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W.P.No.29859 of 2022 and W.P.No.12525 of 2023

For Petitioner in
WP.No.12525/2023 and
For R6 & R7 in
WP.No.29859/2022 : Mr. P. Solomon Francis

For R1 in both WPs : Mr. V. Ravi,
Special Government Pleader

For R2 in WP.No.29859/2022 : Mr. P. Kumerasan, AAG
Assisted by
Ms. P. Veena Suresh,
Standing Counsel

For R3 in WP.No.29859/2022
and For R2 to R4 in
WP.No.12525/2023 : Mr. D. B. R. Prabhu,
Standing Counsel

For R4 & R5 in
WP.No.29859/2022 : Mr. S. Mothilal

For R8 in WP. No.29859/2022 : Mr. Jaishankar

For R9 & R10 in
WP No.29859/2022 : Mr. S. Rajeni Ramadass

For R11 in WP.No.29859/2022: No appearance

COMMON ORDER

K. RAJASEKAR., J.



W.P.No.29859 of 2022 and W.P.No.12525 of 2023

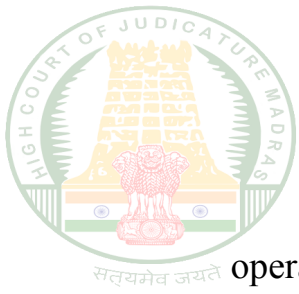
Subject matter of both the writ petitions concerns with the Order

dated 26.05.2021 (Order dated 26.05.2021 hereafter for the sake of brevity), passed by the Secretary to Government of Tamil Nadu, Housing and Urban Development Department, an appeal filed under Section 80-A of Tamil Nadu Town and Country Planning Act, 1971 (Act 1971, hereafter).

2. The writ petitioner in W.P.No.29859 of 2022 seeks Writ of Mandamus to implement the Order dated 26.05.2021 and Respondent No.6 in the very same writ petition seeks quashing of the very same order by filing Writ Petition in W.P.No.12525 of 2023.

3. The brief facts leading to filing of both the writ petitions are as follows:

The writ petitioner in W.P.No.29859 of 2022 is a retired Defence Officer and one of the residents of Defence Officers Colony, Ekattuthangal, Chennai. According to him, this Defence Officers Colony was developed for benefiting the retired officers of the Armed Forces, based on the approval granted by the Director of Town Planning, Madras in LPH/DTP-122/66 dated 18.11.1966. The affairs of the Defence Officers Colony was vested with a Society called TN Area Defence Officers Co-

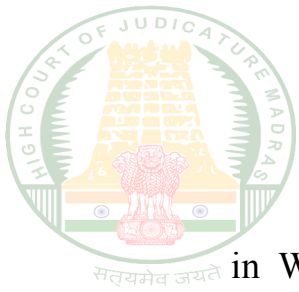


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operative Housing Society Limited (Officers Society, hereafter). Though layout plan and bye-laws of the Officers Society prescribes various conditions for developing and construction of housing plots allotted to the officers, there were gross violations committed by the various allottees. Though these violations were brought to the knowledge of the officials for taking appropriate action, no proper actions were taken by the officers. Hence, he had come forward with the filing of Writ Petition in W.P.No.3230 of 2018 seeking direction to take action on the unauthorized constructions and also to take action under Sections 56 and 57 of the Act, 1971, subsequently, it was withdrawn by the then President of the Society, after some time. The petitioner had again come forward with another Writ Petition in W.P.No.35375 of 2019 for the very same relief. During the enquiry, it was revealed to this Court that there are building violations and unauthorized constructions noted by the authorities and the private respondents herein who are alleged to be violators, filed appeals challenging the enforcement action taken by the Competent Authorities.

4. The Division Bench of this Court by Order dated 04.03.2021 in W.P.No.35375 of 2019, directed the first respondent to dispose of the appeals of the violators who have been arrayed as respondents 4 to 7, 9 & 10



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in W.P.No.29859/2022 within a period of eight weeks from the date of receipt of a copy of this order. Consequently, after hearing the parties, the impugned order came to be passed by the first respondent on 26.05.2021.

5. The relevant portions of the impugned order, dated 26.05.2021 in Paragraph Nos.20 & 21 are reads as follows:

“20. Hence, 3 Months time is given to the appellants 1. Thiru.K.L.Hariharan & Tmt.H.Shanthi for Plot No.176-A; 2. Tmt.N.S.Nirmal & Thiru.N.S.Vijayakumar for Plot No.113; 3. M/s.Kshema Power Infrastructure Company Private Limited for Plot No.108 & 4. Sundar Garg & Rama Garg for Plot No.1 to rectify the defects and to obtain revised Planning Permission as per Tamil Nadu Combined Development Building Rules, 2019 with the following conditions:-

1) Appellant must obtain demolition approved plan from Local Body/Greater Chennai Corporation for showing the rectification proposed to make the construction comply with earlier approved plan or current rules in force.

2) The Local Body/Greater Chennai Corporation to approve the demolition plan within 10 days from the date of application.

3) The appellant must carry out the rectification, as per approved demolition plan and to submit Planning Permission Application as per site condition.

4) After demolition, fresh approval must be obtained, if the building remains different from earlier approval.

5) The enforcement notice is stayed for a period of three months given for rectifications and to obtain revised Planning



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Permission. If rectification is done and once the revised Planning Permission is obtained, the notice will become infructuous.

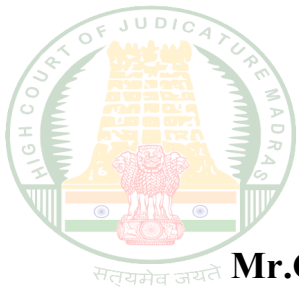
6)Any violation in the conditions will result in re-sealing, without any further notice.

21. The Objector Squadron Leader Thiru.C.B.Menon (Retd.) in general has also pointed out at deviations/violations in other properties in the society and Greater Chennai Corporation is directed to pursue necessary enforcement action in accordance with the rules in force.”

6. As no action has been taken pursuant to the impugned order, after a lapse of 15 months from the date of passing of the impugned order, the writ petitioner in W.P.No.29859 of 2022 has approached this Court for implementation of the above order, specifically, Paragraph No.21 of the order stated above. Aggrieved over the very same order, Respondent No.6 in W.P.No.29859/2022 filed W.P.No.12525 of 2023 to set aside the impugned order.

7. Since both the writ petitions are arising out of the very same proceedings of the first respondent herein, arguments were heard together and a common order is hereby passed.

8. The writ petitioner in WP.No.29859/2022 namely Squadron Leader



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Mr.C.B. Menon (Retd.), 163, Defence Officers Colony, Ekattuthangal,

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Chennai has appeared in person and submitted his contentions.

9. Mr.V.Ravi, learned Special Government Pleader has appeared for R1 in both writ petitions and **Mr.P.Kumerasan, learned Additional Advocate General assisted by Ms.P.Veena Suresh, learned Standing Counsel** has appeared for R2 in WP.No.29859/2022 and **Mr.D.B.R.Prabhu, learned Standing Counsel** has appeared for R3 in WP. No.29859/2022 and R2 to R4 in WP.No.12525/2023 and **Mr.S.Mothilal** learned counsel has appeared for R4 & R5 in WP.No.29859/2022 and **Mr.P.Solomon Francis,** learned counsel has appeared for R6 & R7 in WP.No.29859/2022 and the petitioner in WP.No.12525/2022 and **Mr.Jaishankar,** learned counsel appeared for R8 in WP.No.29859/2022 and **Ms.S.Rajeni Ramadass,** learned counsel appeared for R9 & R10 in WP.No.29859/2022 and there is no appearance on behalf of R11 in WP.No.29859/2022.

10. The party-in-person appeared in WP.No.29859/2022 has submitted that the *locus standi* of the petitioner was accepted in the earlier order passed in W.P.No.35375 of 2019 and after accepting *locus standi*, the Division Bench has further held that the unauthorized constructions put up by some of the private respondents requires necessary actions from the official



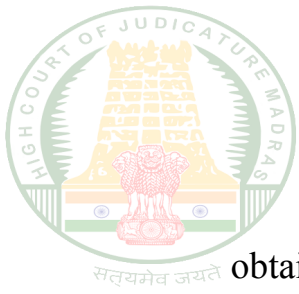
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respondents. Further, the Division Bench has fixed time limit for early disposal of the appeals filed by the private respondents. Accordingly, the appeals were heard, after affording opportunities to all the parties and after recording deviations and violations made by the private respondents, Orders were passed by the first respondent directing the deviators/violators to obtain the Demolition Approval Plan and carry out rectification and thereafter, Planning Permission application shall be filed by them.

11. As there is no compliance of the above order, even after lapse of 15 months, he has come forward with this Writ Petition. He further submitted that as per the Bye-Laws of the Society, within the Defence Officers Colony only a detached residential dwelling houses to be constructed in the plots allotted to the members, whereas, huge commercial buildings have been constructed, that too, by violating building rules.

12. Mr.P.Solomon Francis, learned counsel appearing on behalf of the Writ petitioner in W.P.No.12525 of 2023 (Respondent No.6 in WP.No.29859 of 2022) submits that this petitioner along with his brother, N.S.Vijay Kumar had purchased Plot No.113 of Officers Colony as per Sale deed, registered as Document No. 1436/2016 dated 23.03.2016. After



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obtaining Building Plan Approval dated 08.11.2017 he had constructed five residential apartments and subsequently sold the same to various persons. Earlier, he received notice under Section 57 of the Tamil Nadu Town and Country Planning Act, 1971 alleging that he had involved in floor violations hence he had filed appeal under Section 80A of the Act 1971. As per rules of the year 2017, he constructed buildings, whereas the building violations were noted based on the Building Rules of the year 2019, which is not applicable to the petitioner's building. He further submitted that violations noted in the petitioner's property is construction of cantilever balconies, which is permissible as per the rules in existence, at the time of construction. As on today, they have no right or title over the apartments constructed by them. However, they are having moral responsibility to challenge the impugned order, and prays to set aside the same.

13. Mr.V.Ravi, learned Special Government Pleader appearing for the Government submitted arguments supporting the actions taken by the official respondents. He submitted that spot inspections were conducted and violations were also noted and accordingly, notices were issued to all the parties regarding violations. Aggrieved over the same, they have filed appeals challenging the notices issued under Section 57 of the Act, 1971 and



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after considering the cases of each parties, the impugned order has been passed and there is no violation of principles of natural justice and the order is also passed based on the admitted position of unauthorized constructions/violations and hence, prays to dismiss the Writ Petition No.12525 of 2023.

14. Respondent Nos.9 and 10 submitted that they have complied with the directions issued in the Order dated 26.05.2021 and the same was also confirmed by the official respondents but it is subjected to disputation by party-in-person.

15. The respondent Nos.4, 5 and 8 submitted that they have filed separate petition to the Government by invoking Section 113-C of the Act, 1971 for regularization of the violations made by them.

16. We have considered the submissions made on both sides and also perused the records.

17. In W.P.No.35375 of 2019, another Division Bench of this Court heard the parties at length and accepted the contentions of the party-in-



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person that there are certain building violations in the Officers Colony.

However, the Division Bench has given opportunity to the private respondents to avail statutory remedies in the form of special revisions/appeals before the Government. The relevant portions of the order in Paragraph No.26 reads as follows:

“26. Insofar as the alleged unauthorized deviated construction put up by the private respondents, they have availed statutory remedies in the form of Special Revisions/Appeals before the 3rd respondent, which are pending for nearly one year and odd. Therefore, this Court directs the 3rd respondent to accord priority and give a disposal to the Special Revisions/Appeals filed by the private respondents, viz., respondents 9, 10, 12, 13, 17 and 18 along with the petitions for interim relief, if the papers are otherwise in order, if not already entertained and take up the petitions for interim relief at the first instance and give a disposal in accordance with law within a period of eight weeks from the date of receipt of a copy of this order/uploading of the order in the website and communicate the decision taken to the respondents 9, 10, 12, 13, 17 & 18 as well as to the petitioner/party-in-person and till such time, respondents 1, 2 and 3 shall defer further decision as to the demolition of the alleged offending construction. It is made clear that respondents 9, 10, 12, 13, 17 and 18, till the disposal of the special revisions/appeals by the authority concerned, shall not create any third party right in respect of the land and superstructures in question. In the light of the alternate remedy, Clause 49 of the Bye-laws of the 8th respondent Society coupled with Section 90 of the Cooperative Societies Act, 1983 and subject to issue relating to limitation of delay and Laches, the petitioner is at liberty to workout his further remedies in accordance with law, before the competent Forum, if he is so advised. It is also made clear that the respective private respondents had



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availed remedy before the 3rd respondent, by way of Special Revision/Appeals, shall not create any third party rights in respect of the superstructures in question and shall not alter the physical features also.”

18. Based on the above direction, Order dated 26.05.2021 came to be passed by the Respondent No.1. This order shows that the party-in-person has raised various objections to the contentions of the private respondents in their appeal before the Respondent No.1 and same is also incorporated. The first respondent herein after considering the objections and also after hearing the parties in detail has recorded that there are deviations/violations in the building, put up in (1) Plot No.176 A, (2) Plot No.1, (3) Plot No.108 and (4) Plot No.113 of the Defence Officers Colony, Nandambakkam.

19. The Greater Chennai Corporation has furnished the details of the deviation/violation for the above buildings as part of its counter affidavit submitted before the Court in W.P.No.35375 of 2019 and the same are detailed below:

(a) The deviation/violation statement for Plot No.176A, Defence Officers Colony, 13th Cross Street, Nandambakkam, Chennai – 600 032 (Thiru.K.L.Hariharan & Tmt.H.Shanthi) (Respondent Nos.4 & 5 in



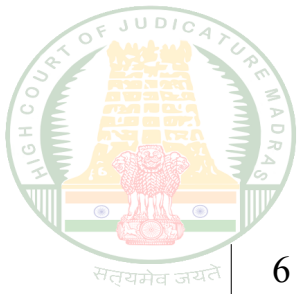
WP.No.29859 of 2022) are as follows:

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S. No	Description	As per approved plan (m)	As on site (m)	Deviation
1	Front setback	1.52	1.14	0.38
2	Rear setback	1.60	1.45	0.15
3	Side setback (South)	1.52	1.21	0.31
4	Side setback (North)	2.36	2.99	-
5	Total area of the building	261.69 sq.m	269.45	7.76
6	Height	-	-	-
7	Area at Ground Floor	28.17 sq.m	20.45	-
8	Area at 1 st Floor	116.76 sq.m	124.5	7.74
9	Area at 2 nd Floor	116.76 sq.m	124.5	7.74
10	FSI	1.09	1.12	0.03
11	Usage	Residential	Commercial	Commercial
12	No. of floors	3	3	-

(b) The deviation/violation statement for Plot No.1, Defence Officers Colony, Nandambakkam, Chennai – 600 032 (Thiru.Sundar Garg & Tmt.Rama Garg) (Respondent Nos.9 & 10 in WP.No.29859 of 2022) are as follows:

S. No	Description	As per approved plan (m)	As on site (m)	Deviation
1	Front setback	5.00	3.59	1.41
2	Rear setback	3.05	4.58	-
3	Side setback (South)	2.44	2.74	-
4	Side set back (North)	2.74	2.82	-
5	Total area of the building	557.60 sq.m	586.00	28.40



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6	Height	-	-	-
7	Area at Ground Floor	286.98 sq.m	301.00	14.02
8	Area at 1 st Floor	286.98 sq.m	285.00	-
9	Area at 2 nd Floor	0	0	-
10	FSI	1.03	1.03	-
11	Usage	Residential	Commercial	Commercial
12	No. of floors	2	2	-

(c) The deviation / violation statement for Plot No.108, Defence Officers Colony, 13th Street Nandambakkam, Chennai – 600 032 (M/s.Kshema Power Infrastructure Company Private Limited) (Respondent No.8 in WP.No.29859 of 2022) are as follows:-

S. No	Description	As per approved plan (m)	As on site (m)	Deviation
1	Front setback	4.52	4.52	-
2	Rear setback	3.00	3.00	-
3	Side setback (South)	1.50	1.60	-
4	Side set back (North)	3.025	3.025	-
5	Total area of the building	791.65 sq.m	939.87	148.22
6	Height	-	-	-
7	Area at Ground Floor	313.29 sq.m	313.29	-
8	Area at 1 st Floor	313.29 sq.m	313.29	-
9	Area at 2 nd Floor	165.07	313.29	148.22
10	FSI	1.50	-	-
11	Usage	Residential	Commercial	Commercial
12	No. of floors	3	3	-

(d) The deviation/violation statement for Plot No.113, Defence



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Officers Colony, 2nd Avenue, Nandambakkam, Chennai – 600 032

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(Thiru.N.S.Nirmal & Thiru.N.S.Vijayakumar) (Respondent Nos.6 & 7 in WP.No.29859 of 2022) are as follows:

S. No	Description	As per approved plan (m)	As on site (m)	Deviation
1	Front setback	2.00	1.30	0.70
2	Rear setback	1.86	1.86	-
3	Side setback (South)	1.75	0.85	0.90
4	Side set back (North)	1.75	1.75	-
5	Total area of the building	1170.35 sq.m	1243.95	73.60
6	Height	8.96	-	-
7	Area at Ground Floor	389.39 sq.m	389.39	-
8	Area at 1 st Floor	390.48 sq.m	427.28	36.80
9	Area at 2 nd Floor	390.48 sq.m	427.28	36.80
10	FSI	1.50	-	-
11	Usage	Residential	Residential	Residential
12	No. of floors	3	3	-

20. The Respondent Nos.4 and 5 who are the owners of Plot No.176/A have admitted in their counter that there are deviations as stated above. According to them, they have filed a petition for regularization of the violations and paid requisite charges as per application receipt No.CMDA/REG-113C/2323/2021, dated 16.08.2021. The above admission in paragraph No.13 of counter is extracted hereunder:

“13. I state and submit that whilst this is so, I had in compliance with the Impugned Order, made an application for regularisation before the CMDA vide Receipt



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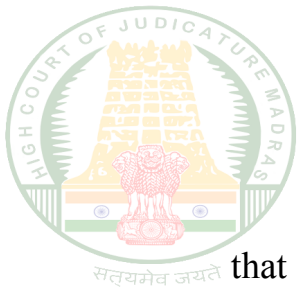
No.CMDA/Reg-113C/2323/2021 and received the Acknowledgment dated 16.08.2021 by paying the requisite charges well within the requisite time.”

21. Respondent No.8 who has constructed the building in Plot No.108

has also accepted that there are deviations and violations in the building constructed by them. According to them, this superstructure was constructed in the year 2006 and his predecessor-in-title has constructed the premises based on the planning permission and building permission. According to them, these violations are eligible for regularisation as per Section 113-C of Act 1971 and Building Regularisation Scheme 2017 and accordingly, they filed a petition for regularisation in Receipt No.CMDA13/2320/2021 dated 11.08.2021. The relevant portion of their affidavit in paragraph No.10 is as follows:

*“10. I further submit that the Government of Tamil Nadu initially granted six month time from the date of notification to apply under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 and subsequently, the time period was periodically extended from time to time up to September 21, 2022. I further submit that the 8th Respondent has submitted their online Application under the Building Regularisation Scheme 2017, a fresh amnesty scheme announced by the Government of Tamil Nadu under **Section 113-C of the Town and Country Planning Act, 1971** and Receipt bearing No.CMDA/Reg-113C/2320/2021 dated 11.08.2021 was also issued to the 8th Respondent and the said Application is pending before CMDA.”*

22. Respondent Nos.9 and 10 have filed typed set of papers to show



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that after passing of the impugned order they have obtained Demolition Approval Plan in compliance with order dated 26.05.2021 and carried out demolitions. Subsequently, Fresh Approval Plan was submitted and Revised Planning Permission was also obtained. As far as this respondents are concerned, they had complied with the impugned order but it is disputed by party-in-person.

23. Now the question arises for consideration of this Court is that:

“(1) Whether this Court can grant time to the respondents 4, 5 and 8 for regularisation of deviations and variations in the building approval plan in terms of Section 113-C of the Act, 1971?”

“(2) Whether the impugned order is valid as against the respondent Nos.6 and 7 and the same is liable to be set aside?”

“(3) Whether the writ of Mandamus is to be issued for the relief claimed by the party-in-person?”

24. Section 113-C of the Act, 1971 reads as follows:

“Section 113-C. Exemption in respect of development of certain buildings._ Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, taking into consideration the ecology and environment of the area and having regard to public interest and in order to improve the infrastructure, reduce public inconvenience and ensure public safety in the area, by order, exempt any building or class of buildings developed on or



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before the 1st day of July 2007, from all or any of the provisions of this Act or any rule or regulation made thereunder, subject to the guidelines made in this behalf, by collecting such amount, not exceeding three times of the guideline value of the land, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the planning area.”

25. For the purpose of considering the applications filed under Section 113-C of the Act, 1971, the Government has framed guidelines and rules in G.O.Ms.Nos.110 and 111 dated 2nd June 2017.

26. Another Division Bench of this Court in ***C.Prabhakaran vs. Dharmendra Pratap Yadav and 3 others*** in ***Contempt Petition No.1087 of 2017, dated 06.02.2019*** has held the rules framed under Section 113-C are invalid and cannot stand in the eye of law and stopped the Government from regularising any of the buildings constructed in violation of any rule or regularisation. The relevant paragraphs of the order are extracted hereunder:

“10. It is pertinent to mention here that in order to maintain a legal construction, allowing an encroacher to file an application under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971 is highly deprecated and on the basis of the afore-stated Section, the Government has passed G.O.(MS).Nos.110 & 111 dated 22.06.2017, giving exemption in respect of development of certain buildings. A close scrutiny of the Government Orders would reveal that the conditions laid down thereunder to regularize illegal construction for the



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benefit of the exchequer and for their vested interest, will not sub-serve its purpose, as the intention to set back a building must be to ensure that in case of fire or nay emergency, the Ambulance or any other rescue vehicle should easily pass through the passage so as to safeguard the affected persons and such stipulation is absent in the Government Orders. It was also brought to our knowledge that both the G.O.Ms.No.110 and 111 are under challenge before this Court in W.P.No.23889 of 2017.

11. When the Government issued 62 Go.Nos. based on the insertion of Section 113-A of the Act, during the period 01.07.1987 till 29.01.1988, exempting large number of buildings in total disregard and in contravention of the provisions of the Act, all the 62 Orders were quashed by the Hon'ble Supreme Court (through "one time measure" was held to be valid) in the case of Consumer Action Group vs. The State of Tamil Nadu and others, reported in (2000) 7 SCC 425 and thereafter, Section 113-C was introduced regarding exemption applicable throughout the State of Tamil Nadu, authorizing the encroachers to maintain the illegal construction by means of the above Government Orders without any set back.

12. The insertion of Section 113-C of the Act and the subsequent Government Orders appear to be a helping hand only to encroachers, who, at a later point of time, would daringly say that though they have encroached the land, park, Odai, OSR, etc., they are entitled to regularisation in terms of the above Section and the subsequent Gos. The Government, while issuing such guidelines, should ensure that the land, park, Odai, OSR, etc., are protected with utmost care and the Government should also take strict measures to curtail the encroachers with iron hand.

13. Looking at any angle, it can be said that the insertion of Section 113-C is violative of the decision of



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the Hon'ble Apex Court in the case reported in (2000) 7 SCC 425 (referred to supra) and on that score, G.O.Ms.No.110 and 111 have to be struck down/scrapped, in view of the fact that those Government Orders are completely in violation of the decision of the Apex Court, which had considered the grant of regularisation as an one time measure only. The Government also seems to be encouraging illegal encroachments and unauthorized construction, as a close reading of the Report No.8 of 2017 of the Comptroller and Auditor General of India would reveal that the Corporation is solely responsible for such encroachments in all places and in the report, it was stated as under:

“Rampant encroachment of road margins in Chennai, with an average of 3.4 incidences of encroachments per kilometre of road length, went largely unchecked due to inaction on the part of Greater Chennai Corporation.

Encroachments on water bodies accounted for 49 per cent of the total objectionable encroachments. Jurisdictional issues and lack of coordination between Revenue and Water Resources Departments contributed to the rise in encroachments on water bodies.”

Therefore, we are of the view that G.O.Ms.No.110 & 111 dated 22.06.2017 are not valid and cannot stand in the eye of law.”

27. The above order of Division Bench, is challenged before the Hon'ble Supreme Court of India vide Special Leave Petition being SLP(C)Nos.025175 – 025176 of 2019, leave has since been granted, SLP have become CA Nos.006847 – 006848 of 2022 and the same is under active



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consideration of Hon'ble Supreme Court. Hence this Court cannot accept the contention of these respondents that they are eligible for regularisation under Section 113-C of Act 1971.

28. Be that as it may, the impugned order dated 26.05.2021 passed against the respondent Nos. 4, 5 and 8 is for violation of the Building Plan Permission i.e., they had not constructed the buildings in accordance with the plan approved by the competent authorities and they have not come forward to challenge the impugned order, dated 26.05.2021 which has been issued with certain directions to these respondents i.e., directing them to rectify the deviations, and in default, the official respondents shall take enforcement measures against them. Having suffered the order of the Competent Authority, without challenging the same, they cannot contend that they have invoked regularisation process thereby, they need not comply with the orders of the Competent Authority. We are of the view that once the Competent Authority has passed an order which has not been challenged by the violators, then, there is no impediment to implement the order against them. Accordingly, question No.1 is answered.

29. As far as the case of the respondent Nos.6 and 7 are concerned,



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they claimed that they developed the properties i.e., Plot No.113 and sold to five other persons but during the enquiry before the first respondent, they have never stated that they have already sold the properties. Even in the earlier proceedings in W.P.No.35375 of 2019 they have contested the writ petition and suffered an order of the Division Bench directing the Government to consider the appeals submitted by them (They were arrayed as respondent Nos.12 & 13 respectively in WP.No.35375/2019). In the very same order, there is a specific direction that they shall not create any third party right in respect of the land and superstructure in question.

30. Admittedly, these respondents have obtained the Building Plan Approval for construction of the building on 08.11.2017. According to them, they have constructed the Cantilever balconies based on the prevailing development regulations of second master plan for Chennai Metropolitan Area, 2026, issued in the year 2008. It is true that the Development Control Rules, 2019 came into existence only in the year 2019 and The Development Regulations issued in the month of September 2008 was applicable to the buildings constructed prior to the issuance of Building Rules, 2019, whereas, on careful perusal of the impugned order, dated 26.05.2021 shows that the Government has considered all the objections raised by the private



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respondents herein and it has been specifically observed that the Greater Chennai Corporation has furnished the details of the approvals of the buildings to be constructed and also the extent of deviation / violation of each buildings.

31. The deviation / violation statement has categorically stated as to what was approved for construction by the private respondents and on the site, what has been constructed. The deviation has been noted by comparing approved plan and what was available in the site. Therefore, the arguments of the learned counsel for the respondent Nos.6 and 7 have no merits and the same is liable to be rejected.

32. We have also gone through the entire proceedings of the first respondent, in the appeals filed by the private respondents herein. It reveals that all the parties had submitted their contentions before the first respondent and the same were considered by the first respondent and also after appreciating all the points raised by the parties, this impugned order has been passed against the private respondents including the respondent Nos.6 and 7 and hence, we are of the view that the same does not suffer from any infirmity. Accordingly, question No.2 is answered.



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33. As far as the relief claimed in WP.No.29859 of 2022 by the party-in-person is concerned, he has not only sought to implement the impugned order, he has also sought for directing the respondents to ensure that only detached residential houses for the bonafide use alone shall be permitted in the Defence Officers Colony. As far as the first prayer for implementing the impugned order is concerned, as discussed in the earlier paragraphs, we are of the view that the order dated 26.05.2021 is liable to be implemented against the respondent Nos.4 to 8 in W.P.No.29859 of 2022. It has to be implemented against the respondent Nos.9 & 10 if not already complied with as contended.

34. As far as the second part of the prayer in WP.No.29859 of 2022 is concerned, in the earlier writ petition in W.P.No.35375 of 2019, the Division Bench of this Court has considered this point also and has already rejected the same. Similarly, in paragraph No.18 of the impugned order, dated 26.05.2021, the first respondent has observed that the issues relating to compliance of the bye-laws could not be considered in the impugned proceedings. As against this observation, the party-in-person has not raised any grievance. We are of the view that the prayer for directing the first and second respondents to direct the private respondents to have only detached residential houses for the bonafide use of the owners is outside the instant



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legal drill. Accordingly, question No.3 is answered.

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35. In the result,

(1) W.P.No.29859 of 2022 is partly allowed and the official respondents are directed to implement the impugned order, dated 26.05.2021 within a period of eight weeks from today as against the respondent Nos.4 to 10.

(2) W.P.No.12525 of 2023 is dismissed.

(3) There shall be no order as to costs.

(4) Consequently, the connected Miscellaneous Petitions are closed.

(M.S., J.) (K.R.S., J.)
28.01.2025

ssi
Index: Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

To

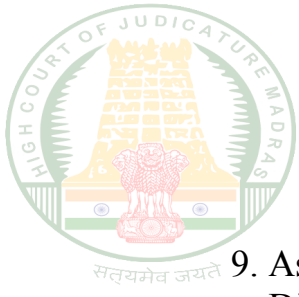
1. Principal Secretary,
Housing & Urban Development Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.



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2. Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
3. Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai – 600 003.
4. M/s. Kshema Power Infrastructure Company Private Ltd.,
N. No.94, Old No.108, 13th Cross Street,
Defence Officers Colony,
Ekkatuthangal,
Chennai – 600 032.
5. TN Area Defence Officers Co-operative Housing Society Ltd.,
Rep., by its Authorized Representative
(Society Registration No.JJ 337),
Defence Officers Colony,
Ekkatuthangal, Chennai – 600 032.
6. The Government of Tamil Nadu
Rep by The Secretary to Government,
Housing & Urban Development Department,
Secretariat,
Chennai – 600 009.
7. Executive Engineer – I,
Zone-12, Alandur, Greater Chennai Corporation,
No.1, New Street,
Alandur, Chennai – 600 016.
8. Assistant Executive Engineer,
Unit – 35, Greater Chennai Corporation,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai – 600 016.



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9. Assistant Engineer,
Division – 158, Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai – 600 016.



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M.SUNDAR, J.

AND

K. RAJASEKAR, J.

ssi

Pre-delivery Order made in
W.P.No.29859 of 2022 and
W.P.No.12525 of 2023 and
W.M.P.Nos.12353, 12359 & 12360 of 2023

28.01.2025