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WP No. 15363 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

WP No. 15363 of 2025

and

W.M.P.No.17366 of 2025

S.Sudharani

Petitioner(s)

Vs

1. The State of Tamil Nadu
Rep. by its Principal Secretary,
Housing and Urban Development Department,
Fort St. George Chennai 600 001.

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

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned E-mail dated 25.01.2025 bearing Reference No.CMDA/ PP/ HRB/ N/ 0177/ 2023 (SUB-1) by the 2nd respondent and quash the same insofar as it pertains to the impugned query and further direct the 2nd respondent herein to scrutinize/consider the Application for Planning Permission bearing No.CMDA/ PP/ HRB/ N/ 0177/ 2023 dated 08.03.2023 and grant appropriate Planning Permission thereof in accordance with true intent and spirit of the Government Order bearing G.O. (3D) No.66 dated 12.09.2022 and also in accordance with the Tamil Nadu Combined Development and Building Rules, 2019 as expeditiously as possible and within the time frame to be fixed by this Court.



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For Petitioner : Mr.R.Venkatraman
for Tatva Legal Chennai

For Respondent(s): Mr.P.Kumaresan
Additional Advocate General
assisted by
Mr.R.Thamarai Selvan
Standing Counsel For R2

ORDER

The petitioner challenges the proceedings of the 2nd respondent, calling upon the petitioner to give certain clarifications, in particular Item Nos. 49 and 51, by its e-mail dated 25.01.2025.

2. The petitioner states that she and 23 other individuals are the owners of the properties situated in Town Survey Numbers in T.S.Nos.13/9, 13/3, 18/14, 17/1 & 17/5, 13/1, 13/2 & 13/6 and S.No.138 of Athipattu Village, Ambattur Taluk, Tiruvallur District. The petitioner and the 23 other individuals had entered into a Development Agreement with one M/s.Alacrity Housing Limited. The said builder had applied for and obtained planning permit from the 2nd respondent to put up 448 residential houses in 6 phases.

3. It is not in dispute that before the completion of the project, M/s.Alacrity Housing Limited ran into certain problems. It had developed only 224 units out of the total 448 units. In addition, in Phase III, though it had



proposed to develop 80 units and odd, only 16 were so developed and the remaining 64 were developed partially. Out of the 64 incomplete units, M/s.Alacrity Housing Limited has allotted 8 residential units for certain individuals. Even amongst 224 units, sale deeds were executed only in favour of 111 allottees. Even as on today, 112 residents are without a sale deed. The land on which the 224 units have been put up belonged to 20 individuals including the petitioner. The entire 8.14 acres had belonged to these individuals. It is through them that the residents of 224 units can claim title.

4. Since Phases IV to VI were not completed, the petitioner and the 23 other persons decided to develop the same. By the time, they conceived the idea of developing the remaining area, the planning permit issued to M/s.Alacrity Housing Limited had expired on 15.10.2003. Hence, the petitioner filed an application before the Chennai Metropolitan Development Authority (“CMDA”) with a proposal for construction of High Rise Group Development Residential cum Commercial Project over the aforesaid survey numbers.

5. The CMDA/2nd respondent did not agree to the proposal made by the writ petitioner and 23 others, and rejected the same. Aggrieved by the said order, an appeal was preferred by them before the 1st respondent, invoking



Section 79 of the Tamil Nadu Town and Country Planning Act, 1971. The Government, following the procedures, placed the matter before the Appeal Committee. The Appeal Committee held on 07.07.2022 had passed the following order:

“The Appeal committee deliberated the above issue in detail. It was also recorded by the committee that the new “Apartment Ownership Bill-2022 ” passed by the Legislative Assembly of Tamil Nadu is awaiting for the assent of the President of India and it also has a similar provision of 2/3rd consent for re-development. The committee suggested Chennai Metropolitan Development Authority to re-examine the planning permission application as per Tamil Nadu Combined Development and Building Rules, 2019 after obtaining undertaking for construction shall be commenced only after production of consent from the existing flat owners.

The Committee directed the appellant’s that the undivided share of land of existing flat owners as per their agreement shall be maintained. Before commencement of construction in the proposed development, opportunity shall be given to the balance owners and their views and suggestions should be addressed. Objections raised by any of the flat owner having undivided share in the property and such objections shall be settled by the appellants. The committee directed the appellants to adhere the above conditions strictly”.

6. Accepting the proposal of the Appeal Committee, the Government allowed the appeal and gave the following direction to the CMDA:

“As a matter of Policy, the Government accepts such proposal of the recommendation of the Appeal Committee subject to the following condition and its strict adherence by the developer/promoter:-

- I. The undivided share of land of existing flat owners as per their agreement shall be maintained.



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II. Before commencement of construction in the proposed development, opportunity shall be given to the balance owners and their views and suggestions should be addressed.

III. Objections raised by any of the flat owner having undivided share in the property and such objections shall be settled.

Further, the Government direct the Chennai Metropolitan Development Authority to re-examine the planning permission application as per Tamil Nadu Combined Development and Building Rules, 2019. Chennai Metropolitan Development Authority is authority to issue planning permission only. While any issue related to consent of owners and any deviation Real Estate Regulatory Authority (RERA) is already there to adjudicate the matter. Government also directs the Member Secretary, Chennai Metropolitan Development Authority and the Director of Town and Country Planning are direct to follow this Principle for similarly placed cases.”

7. On the strength of this order, the petitioner filed application for planning permission on 08.03.2023. It was to this application, the aforesaid e-mail dated 07.01.2025 and the subsequent e-mail dated 25.01.2025 were issued, demanding particulars as a reason for withholding the permits.

8. This Court is not concerned with the several clarifications sought by the CMDA. The petitioner seems to be aggrieved by the following clauses:

(i) PPA to be applied in favour of present owners or GPA to be executed by all the owners in favour of Sudharani.

(ii) Consent letters and other forms as per Tamil Nadu Apartment Ownership Act, 2022 and Tamil Nadu Apartments Ownership Rules, 2024, to be furnished.



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CMDA.

9. This Court entertained the writ petition and ordered notice to the

10. The CMDA, in response, has also filed a status report/counter affidavit. It is the stand of the CMDA that they are bound by Rule 3 of the Tamil Nadu Combined Development and Building Rules, 2019 (hereinafter referred to as TNCDBR), which holds that the said Rules apply to all developments, redevelopments, erection or re-erection, design, construction or reconstruction and additions and alterations to any building.

11. In furtherance, it is urged that Rule 6 of TNCDBR points out that for the purpose of obtaining planning permission or building permit, all owners of the land or leaseholder or power of attorney, who has been authorized to develop the land, have to submit an application. Hence, the CMDA has taken a stand that filing of an application by 2/3rd of the owners is not acceptable and hence, put forth the aforesaid queries.

12. Mr. Venkatraman, learned counsel appearing for M/s.Tatva Legal



Chennai, submitted that in terms of Section 14(2)(ii) of Real Estate (Regulation and Development) Act (RERA), 2016, it is sufficient if 2/3rd of the allottees, other than the promoter, seek for any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings, or the common areas within the project. He states that since the RERA permits 2/3rd of the allottees to file an application, the demand of the CMDA that all the owners/lessee/power of attorneys should file an application for obtaining the Planning Permission (PPA), in terms of Rule 6 of TNCDBR, is an unreasonable demand. In addition, he placed reliance upon the Tamil Nadu Apartments Ownership Act, 2022, and the Rules made thereunder, to state that if 2/3rd of the allottees had filed their application, it would be sufficient.

13. Rejecting these arguments, Mr.Kumaresan, learned Additional Advocate General appearing for Mr.Thamarai Selvan, states that the 2nd respondent is bound by the TNCBDR, and unless and until the application is in compliance with the said Rules, the CMDA has no other option than to insist on the application of Rule 3(1) read with Rule 6 of the aforesaid Rules.

14. I have carefully considered the submissions of both sides and also gone through the available records.



15. I am splitting this judgment into two portions, one relating to the applications of the RERA Act and the second one is with respect to the interplay between TNCDBR and Tamil Nadu Apartments and Ownership Act, 2022, and the Rules made thereunder.

16. Mr.R.Venkatraman urges, that Section 14 of the RERA is to be made applicable to the case on hand. He makes this plea on the ground that the original developer, M/s.Alacrity Housing Limited, has abandoned the projects and the present residents are desirous of completing the same. He points out the factual problem, namely, out of the original 20 owners of the aforesaid survey numbers, 12 alone are available and the address of the remaining 8 is unknown to the apartment owners or the allottees. He also relies upon Section 89 of the RERA Act to plead that the Act has an overriding effect, and would be binding on the respondents 1 and 2, notwithstanding anything contained in the Tamil Nadu Town and Country Planning Act, 1971 and the Rules made thereunder, which includes the TNCDBR, 2019.

17. Though the submission sounds extremely attractive on the face of it, I am unable to accede to the said submission for the simple reason, that it does



not pass the constitutional muster. The Real Estate (Regulation and Development) Act, 2016 was enacted by the Parliament with an idea to ensure that the sale of plot, apartment or building, as the case may be, or sale of real estate project, is to be carried out in an efficient and transparent manner. It was also enacted to protect the interest of consumers in the real estate sector, and also to establish an adjudicating mechanism for speedy disposal of the issues faced by the apartment owners or purchasers/allottees of such purchasers. RERA has been enacted by the Parliament drawing its power from Entries 6, 7 and 46 of list III of the Seventh schedule of the Constitution.

18. The Constitution of India has vested the power to legislate on land, including any rights in and over the land, land tenures including the relationship of landlord and tenant, the collection of rents, transfer and alienation of agricultural land, **land improvement**, agricultural loans, and colonization in the hands of the federal unit, namely, the State. When the power to legislate upon land improvement has been vested in Federal unit, in our case, the State of Tamil Nadu, any reliance placed upon the RERA Act, for the purpose of overriding the Tamil Nadu Town and Country Planning Act, and the Rules made thereunder, would fall foul of Article 246 of the Constitution of India.



19. In terms of Article 246(1) of the Constitution of India, the Parliament has been given the exclusive power to make laws with respect to any of the matters enumerated in List I, and under Article 246(2) of the Constitution of India, the Parliament, and, subject to clause (1) above, the Legislature of any State also has the power to make laws with respect to any of the matters enumerated in List III. Insofar as entries in List II are concerned, the Legislature of a State has the exclusive power to make laws for such State or any part thereof. In order to make a legislation with respect to any matters enumerated in List II, the Constitution gives a way out under Article 249 of the Constitution of India, wherein the Parliament is entitled to legislate on any matters in List II, if and only if 2/3rd of the members of the Rajya Sabha vote in favour of the same, and that too, when it is necessary or expedient in national interest.

20. It is not the case of Mr. Venkatraman that the RERA comes within the purview of Article 249 of the Constitution of India. The other circumstance in which the Parliament can legislate on a State subject is when there is a proclamation of emergency in the Country under Article 250 of the Constitution of India. Article 251 speaks about the repugnancy between legislation made by the State and the legislation made by the Parliament. When such legislation has



been passed under Article 249 or 250, the Parliament can also legislate on a State subject when it falls under Article 252 of the Constitution of India. The survey of Chapter I of Part XI of the Constitution of India makes it clear that it is only under exceptional circumstances that the Parliament can legislate on matters covered under the State List or List II of the Seventh Schedule to the Constitution of India.

21. As the RERA was not passed with reference to any of the aforesaid Articles, and since “land” continues to be governed under Entry 18, List II of the Seventh Schedule, the legislative competence in respect thereof continues to remain exclusively with the State. Hence, the arguments of Mr.Venkatraman, that RERA will take precedence over the Tamil Nadu Town and Country Planning Act and the Rules made thereunder, has to be rejected and, it is, accordingly, rejected.

22. At this stage, I should point out that, in exercise of its powers under Entry 18, List II, the State of Tamil Nadu has enacted the Tamil Nadu Town and Country Planning Act, 1971. Soon after enacting this legislation, insofar as the City of Chennai is concerned, the Act was amended to create the Metropolitan Development Authority for the Chennai Metropolitan Planning Area alone.



This was through Chapter II-A. From time to time, the CMDA has been bringing out the development control rules. The last of the Rules came into force in the year 2008. Subsequently, in exercise of their Rule making power under the Town and Country Planning Act, and several allied legislations relating to Commissionerates, Municipalities and Panchayats, the State of Tamil Nadu has enacted the Tamil Nadu Combined Development and Building Rules, 2019 (TNCDBR, 2019).

23. Therefore, I am not in a position to accept the submission of Mr.Venkatraman, that the area, which is occupied by State legislative and the Rules made thereunder, should be interpreted with reference to a Parliamentary legislation. Any interpretation, as submitted by Mr.Venkatraman, if adopted, would do violence to the constitutional framework in general and the concept of federalism in particular.

24. Now, coming to the interplay between the TNCDBR and Tamil Nadu Apartment Ownership Act, I have already pointed out that TNCDBR has been enacted under the Tamil Nadu Town and Country Planning Act, 1971 and allied legislation. Mr.Kumaresan, is right that Rule 3 and Rule 6 of the TNCDBR calls upon the CMDA and other Planning Authorities covered by the said Rules, to



strictly act in conformity therewith. Yet, it cannot be stretched so far as to the planning authorities ignoring the Tamil Nadu Apartment Ownership Act, and the Rules made thereunder.

25. Between the year 2019 till 2024, the State of Tamil Nadu had not promulgated the Tamil Nadu Apartment Ownership Rules. It was done and brought into effect from 24.09.2024. The parent legislation, namely, The Tamil Nadu Apartment Ownership Act, 2022 (Act 44 of 2022), was brought into force with effect from 06.03.2024. By virtue of the very definition under Section 2(n) of Act 44 of 22, the term 'development', includes re-development also. Under Section 13 of the Tamil Nadu Act 44 of 22, redevelopment of a project is contemplated. Section 13, which starts with a non-obstante clause, re-development of a project can be achieved on the happening of two events:- (i) when 2/3rd of the Apartment owners of the project concerned have passed a resolution for re-development, or (ii) when the appropriate authority has certified that the building or the buildings in the project is in such a ruinous condition, or in such a state which may endanger the occupants, and the appropriate authority has certified to go for re-development.

26. We are not dealing with a situation under Section 13(b). We are



dealing with a situation contemplated under Section 13(a). The corresponding Rule for Section 13(a) is Rule 9. In terms of Rule 9, a Special General Body meeting of the apartment owners is to be called by the Board of Managers for the purpose of considering the request for re-development. The minimum quorum required for convening such Special General Meeting is $2/3^{\text{rd}}$ of the apartment owners. In the Special General Meeting, the resolution for re-development would have to be put for vote, and for such a resolution to be passed, $2/3^{\text{rd}}$ of the apartment owners of the projects would have to approve the same. Once such a resolution is passed, the Board of Managers are entitled to intimate the Chief Planner, Area Plan Unit of CMDA in Form I. This intimation is the in-principle decision taken by the Association for re-development.

27. Thereafter, the Association will have to send a written intimation to all the apartment owners, within a period of 10 days from the date of submission, of the in-principle decision taken and intimated under Form I to the Chief Planner. In case, any apartment owner is aggrieved by such an intimation given by the Board of Managers, he or she is entitled to object to the same before the appropriate authority. The said Authority would have to consider the objection, hear the concerned parties, and pass an order, either accepting the objection or rejecting the same.



28. The Plea of Mr.Venkatraman is that, as M/s.Alacrity Housing Limited has executed sale deeds, only with respect to 112 owners, and not with respect to the remaining, it might lead to a situation where the other apartment owners, who do not have the sale deeds, will be excluded from the process of Special General Meeting. Mr.Venkatraman has not taken note of Section 2(c) of the Act.

29. The Act defines the 'apartment owner' not only the person owing an apartment, but the expression is inclusive of a person being in possession of the apartment as a lessee too, for a period not less than 30 years. It is admitted that M/s.Alacrity Housing Limited had developed the project sometime in the year 1997 and put persons in possession of the property around 30 years ago. They have been in peaceful possession and enjoyment from the time they took possession till date. More than nearly 30 years have gone by, hence, they cannot be excluded. The enactment of TN Act 44 of 2022, is with the purpose of regulating and facilitating development projects. The statute, therefore, requires a constructive interpretation, which would safeguard the rights of all persons residing in the apartments either in the capacity of an owner or in the capacity of an allottee from the builder. Therefore, the exclusion of the allottees M/s.Alacrity Housing Limited would not be fair to them. This is for the



simple reason that, when the allottees took possession of the property, it was not within their contemplation that the developer, i.e., M/s.Alacrity Housing Limited, would wind up its operations without executing sale deeds in their favor and thereby, put them into deep state of distress. As it stands, they have not, even been benefited with the sale deeds; to exclude them from the re-development project, would only add insult to the injury already suffered.

30. I have pointed out while the CMDA has taken into consideration the Tamil Nadu Town and Country Planning Act, and TNCDBR, it has failed to take note of the Tamil Nadu Apartments Ownership Act, 2022 and the Rules made thereunder, in the counter affidavit filed before this Court.

31. In addition to the above, admittedly, there were 20 original owners over whose land, the housing project had been partly developed. They would also come within the scope of Rule 3 and Rule 6 of TNCDBR. Hence, consent from these original land owners would also be equally essential. In all, there are 252 persons who would be the persons interested in the proposal for re-development of the property. The break up is as follows:



“224 persons in the possession of the apartment; 8 allottees in Phase III and 20 land owners”.

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It is upto the petitioner to convince the Board of Managers/Governing Body of the Apartment Owners, Tharangini Apartments, to call for a meeting in terms of Section 13(a) of Tamil Nadu Apartment Ownership Act, 2022 read with Rule 9 made thereunder. In the event of a resolution being passed in favour of re-development, they shall intimate the same to the CMDA in accordance with the procedure made out under the said Rule.

32. This would be in compliance with the query raised by CMDA. It is made clear that this Court has only dealt with query Nos.49 and 51, and it has not given, nor it can give any findings with respect to the other queries. It is for the petitioner to comply with the same to the satisfaction of the CMDA.

33. In the light of the above discussion, this writ petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

23-01-2026

Jd

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The State of Tamil Nadu
Rep. by its Principal Secretary,
Housing and Urban Development Department,
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