



WP (MD) No. 23772 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order reserved on : 02.12.2022

Order pronounced on : 11.01.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

and

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 23772 of 2022

and

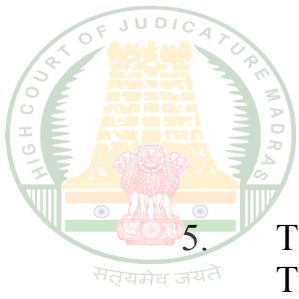
W.M.P. (MD) Nos. 17836, 17837, 17838, 18822,
19723, 20974 and 20144 of 2022

G. Shanmugasundar

.. Petitioner

Versus

1. The Principal Secretary to Government
Housing and Urban Development Department
Secretariat, Chennai - 600 009
2. Tamil Nadu Real Estate Regulatory Authority
No.1-A, 1st Floor, CMDA Tower-II
Gandhi Irwin Road, Egmore
Chennai - 600 008
3. The Director
Directorate of Town and Country Planning
Chengalvarayan Building, 4th Floor
807, Anna Salai, Chennai - 600 002
4. The Deputy Director
Town and Country Planning - Trichy Region
Kajamalai Main Road
Kajamalai, Trichy - 620 023



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5. The Superintending Engineer
Trichy Electricity Distribution Circle/Metro
TANGEDCO, Mannarpuram, Trichy

6. The Commissioner of Police
Tiruchirapalli City
Trichy

7. The Commissioner
Tiruchirapalli Corporation
Trichy

8. The Executive Engineer (Planning)
Tiruchirapalli Corporation
Trichy

9. The Assistant Commissioner
Ko.Abhishekapuram Zone
Tiruchirapalli Corporation
Trichy

10. The Inspector General of Registration
Registration Department
Santhome, Chennai

11. The Sub-Registrar
Sub-Registrar Office - Woraiyur
Woraiyur, Trichy

12. Mr. T.D. Raja
Managing Director
M/s. Chendur Homes Private Limited
No.52, Kannammal Street
Saligramam, Chennai - 600 093

13. Mr. G. Balasubramaniyan

14. Mr. A. Asraf Ali

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1, 3, 4, 7 to 9 to initiate

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appropriate action to demolish the unauthorised construction of apartments in the 51.08 cents situated in Old Survey No.151/2 & New Town Survey No. 98/1, 2 of Ward No.J, Block No.14 of Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirapalli District and restore the building to the original approved plan and also initiate necessary disciplinary action against the officials those who have not taken any action against the unauthorised construction within a stipulated time frame as prescribed by this Court.

For Petitioner(s) : Mr. M. Aarumugam
Mr. Selvin Rajesh in
WMP Nos. 20144 & 20974 of 2022
Mr.P.Ganapathi Subramanian
WMP Nos.18822 and 19723 of 2022
(impleading petitions)

For Respondents : Mr. S.P. Maharajan
Special Government Pleader for RR1, 3, 4, 10 & 11

Mr. R. Satheesh for R2

Mr. Veera Kathiravan
Additional Advocate General
assisted by Mr. S. Deenadhayalan
Standing Counsel for R5

Mr. S. Ravi
Additional Public Prosecutor for R6

Mr.R.Baskaran, Standing Counsel for R7 to R9

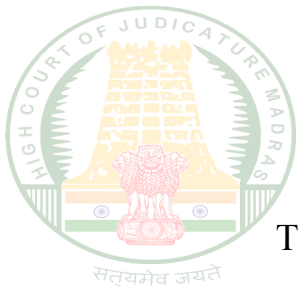
Mr. S. Haja Mohideen Gisthi for R12

Mr. P. Ganapathi Subramanian for R13

Mr. B. Saravanan
for Mr. B. Jameelarasu for R14

ORDER

R. MAHADEVAN, J.



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The petitioner seeks to issue a Writ of Mandamus directing the respondents 1, 3, 4 and 7 to 9 to initiate action to demolish the unauthorised construction of apartments in the land measuring to an extent of 51.08 cents comprised in Old Survey No.151/2 & New Town Survey No.98/1, 2 of Ward No.J, Block No.14 of Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirapalli District, restore the building as per the original approved plan and also initiate necessary disciplinary proceedings against the officials who have failed to take any action against the unauthorised construction, within a time to be stipulated by this court.

2. The case projected in the writ petition is as follows:

2.1. The petitioner, his brother Balasubramanian/13th respondent and one Kannan, cultivating tenant, are the joint owners of the land measuring to an extent of 94 cents in S.No.98 of Uyyakondan Thirumalai near Rettai Vaikkal, Tiruchirapalli District and they partitioned the same among themselves. As per the partition, the petitioner got 35.12 cents of land in S.No. 98/3, his brother Balasubramanian, 13th respondent herein, became entitled to 51.08 cents of land in S.No.98/2 and the cultivating tenant Kannan obtained an extent of 7.80 cents of land in S.No.98/1. The petitioner and his brother intended to promote / develop their extent of land totalling 86.20 cents. For the said purpose, a joint venture agreement was entered into with the 12th



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respondent on 05.07.2012. According to the petitioner, he had an intention to construct "Thai Moogambigai Temple" for which he formed a Trust in the name of Sri Mookambikai Temple Trust, Uyyakondanthirumalai, Trichy. Therefore, at the time of entering into the agreement with the 12th respondent, the petitioner made it clear that the terms and conditions of the agreement have to be strictly adhered to and the construction had to be made only as per the original approved plan. Further, a registered partition deed dated 18.10.2012 bearing Document No. 7158 of 2012 was entered into between the petitioner and his brother/13th respondent. As per the construction agreement, the entire construction has to be made in a land measuring 5584.35 square meter. Since the petitioner had relinquished about 8 cents of land and got only 35.12 cents in the property, his brother had agreed to allot 5 houses in the constructed building to him. Pursuant to the said construction agreement, the promoter got approval for construction of 92 residential apartments in a four storey building in Survey Nos. 98/1 and 98/2 alone *vide* C.No. 963/2013 TLPA-2 dated 12.11.2013.

2.2. The petitioner further averred that after commencement of the construction, taking advantage of the absence of the petitioner, who, at that time, was residing in Chennai, his brother /13th respondent and the 12th respondent/promoter with an intention to get more amount, modified the



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original plan and deviated the construction. Though the petitioner had clearly expressed his inclination to keep the land in Survey No. 98/3 as vacant for construction of a temple later, the respondents 12 and 13, on the basis of modified plan encroached upon the said vacant land measuring 1200 square feet and put up an unauthorised construction. Above all, the promoter had unauthorisedly shifted the Electricity Board Transformer from the land in Survey No.98/1 (as mentioned in the approved plan) to the land in Survey No. 98/3 thereby preventing the petitioner to put up any construction for temple. Feeling aggrieved, the petitioner had sent several representations to all the official respondents, but no action was taken thereof.

2.3. In such circumstances, the petitioner preferred WP (MD) No. 1266 of 2018 praying to issue a writ of Mandamus directing the 4th and 6th respondents therein to take appropriate action against the promoter and to demolish the unauthorised construction made in contravention and conditions imposed in the approval *vide* Ka.A. No.537/2013 dated 25.11.2013, by stating that the promoter started construction in deviation by converting the car parking area and common area to commercial building, such as, shops and sold the same to third parties. By order dated 02.03.2018, the said writ petition was disposed of, directing the respondent Corporation to demolish and remove all the unauthorized construction in the stilt floor area and restore the building in terms of the approved plan, within a period of two weeks. It was further stated



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that the ninth respondent therein was given opportunity to pursue the matter before the authority before whom the revised planning permission is pending.

2.4. It is also stated by the petitioner that inspite of specific directions issued vide order dated 02.03.2018 in WP (MD) No. 1266 of 2018, the official respondents therein and the promoter failed to comply with the same. Therefore, the petitioner initiated contempt proceedings by filing Contempt Petition (MD) No. 314 of 2019 in WP (MD) No. 1266 of 2018. In the mean while, the promoter without obtaining planning permission afresh, made further construction, which compelled the petitioner to file WP (MD) No. 1422 of 2020 praying to issue a Writ of Mandamus directing the respondents 7 and 8 therein to take steps to stop the illegal construction of building by the 9th respondent without obtaining approval afresh from the third respondent therein for construction of apartments in the 51.08 cents situated in Old Survey No. 151/2 and new Town Survey No. 98/1,2 of Ward No.J, Block No.14 of Uyyakondan Thirumalai Village, Srirangam Taluk, Trichy District. The petitioner also submitted a complaint on 04.08.2020 to the Tamil Nadu Real Estate Regulatory Authority at Chennai.

2.5. While so, by order dated 10.12.2020 in Cont.P.(MD)No.314 of 2019 in WP (MD) No. 1266 of 2018, this court directed the Commissioner of Tiruchirapalli Municipal Corporation, to inspect the building and find out any encroachment / unauthorised construction and file action taken report. Finding



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no action, the petitioner made a complaint before the Commissioner of Police, Tiruchirapalli regarding the construction put up by the promoter by encroaching the land in Survey No.98/3. Pursuant to the same, the Assistant Commissioner of Police sought for a report from the Revenue Department to ascertain the actual area of encroachment made by the promoter. Accordingly, a report was sent by the Revenue Department stating that nearly 100 square meter i.e., 1076 square feet of land which actually belongs to the petitioner, has been encroached. In the mean time, the Commissioner of Trichy Corporation filed a report on 16.12.2020 in the contempt petition stating that the encroachment in stilt floor has been removed. Recording the same, the contempt petition came to be closed on 20.01.2021.

2.6. Thereafter, by order dated 04.03.2021, WP (MD) No. 1422 of 2020 filed by the petitioner, came to be disposed of, by directing the official respondents to ensure that the proceedings under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 are disposed of, as expeditiously as possible. The order further proceeds to state that if any unauthorised construction is discovered in the construction as completed till now, the respondent corporation should take steps for further demolition thereof; that, if there are further grievances of the petitioner, they may be carried by way of a civil suit before the appropriate forum, particularly, against the respondents 9 and 10 therein; that, the Corporation will only be duty bound to ensure that



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any major deviation from the approved plan is not allowed to stand; and that, the application for regularisation of the construction made should be carefully scrutinised by the appropriate officials.

2.7. It is also stated by the petitioner that pursuant to the aforesaid order dated 04.03.2021 in WP (MD) No. 1422 of 2020, he preferred a Suit in O.S. No. 618 of 2021 on the file of the I Additional District Munsif Court, Trichy. However, by suppressing the said proceedings, the 12th respondent/Promoter has invoked Arbitration Proceedings against the petitioner and his brother Balasubramaniam and obtained an interim order in their favour. It is in the above circumstances, the petitioner has come up with this writ petition for the relief as stated supra.

3.1. The main contention of the learned counsel for the petitioner is that despite various orders passed by this Court in the writ petitions and the contempt proceedings as well as by the competent authorities, none of them was complied with by the respondents 12 to 14 and no further action was taken by the respondent authorities. According to the learned counsel, the plan approval was granted only for 59,708 square feet, but the construction was made to an extent of 98,572 square feet, which fact was also admitted by the official respondents. However, no effective steps have been taken either to stop the further construction or to demolish the unauthorised construction made by the promoter.



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3.2. The learned counsel for the petitioner brought to the notice of this Court the Joint Venture agreement dated 05.07.2012 entered into between the petitioner and his brother / 13th respondent on one hand and the 12th respondent/promoter on other hand. Under Clause 13 of the agreement, it was clearly mentioned that OSR land will be retained by the petitioner for the purpose of construction of a temple. Thus, the intention of the petitioner is to keep the land on the eastern side (S.No.98/3) as vacant for temple purpose. Adding further, the learned counsel submitted that after the partition of the land on 18.10.2012, the petitioner is in no way connected with the construction of apartments by the 12th respondent. On 04.03.2013, there is a separate joint venture agreement exclusively between the 13th respondent, Kannan and T.D.Raja and the promoter/ 12th respondent and it is based on the said joint venture agreement, the planning permission was obtained on 12.11.2013 and the promoter constructed the four storey building in S.nos.98/1 and 98/2. It is also submitted by the learned counsel that the promoter had not only encroached the private land of the petitioner, but also the Highways Road i.e., Trichy - Vayalur Main Road. Though such glaring violation committed by the promoter, was brought to the notice of the official respondents by the petitioner, no steps have been taken to restore the building according to the

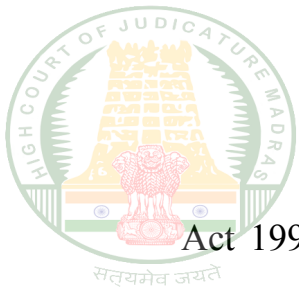


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original approved plan, but they are helping the promoter to legalise or regularise the deviations. The learned counsel further submitted that the building permit expired in the year 2016, which was not renewed subsequently and therefore, the promoter is not entitled to proceed with the construction or sell the properties without licence/permit. Therefore, the learned counsel prayed for appropriate directions to the official respondents to remove the unauthorised construction and restore the building to the original approved plan.

4.1. The learned Special Government Pleader appearing for the respondents 1, 3, 4, 10 & 11 submitted that the promoter had applied for approval of the proposed residential apartment consisting of stilt plus 4 floors (92 flats) in the land area measuring 2360 square meter. The Director of Town and Country Planning had given technical clearance on 03.09.2013 and in continuation of the same, Tiruchirapalli Local Planning Authority had issued planning permission on 12.11.2013 and that, building plan approval was issued by the Corporation of Tiruchirapalli on 25.11.2013. Thereafter, the Promoter had commenced construction and completed Stilt plus four floors with deviations. Therefore, notice dated 21.07.2014 under sections 56 & 57 of the Tamil Nadu Town and country Planning Act, 1971 and thereafter, notice dated 22.01.2018 under section 282 (1&2) of the Tiruchirapalli Corporation



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Act 1994, came to be issued against the deviations in the construction. The

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learned counsel also submitted that the Government *vide* G.O. (Ms) No.53, Housing and Urban Development Department dated 16.04.2018, had introduced a provision for issuance of construction continuance certificate and completion certificate to all categories of buildings except individual building and residential building upto 3 dwellings and the said G.O. is prospective in nature, whereas, in the instant case, no such certificate was given by the Tiruchirapalli Local Planning Authority.

4.2. The learned Special Government Pleader appearing for the respondent authorities further submitted that in compliance with the order dated 02.03.2018 passed in WP(MD) No.1266 of 2018 filed by the petitioner, the Corporation officials removed the deviated portions in the stilt floor and also removed the EB transformer and relocated the same as per the approved plan on 27.04.2019.

4.3. It is also submitted by the learned Special Government Pleader appearing for the respondent authorities that the Promoter/12th respondent has preferred an appeal on 09.01.2019 to the Government requesting to relax the setback violation and to regularise the building under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, to which, the petitioner submitted his objections on 23.03.2021. The appeal was heard on 22.07.2021

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and report the same before the appeal committee, within a period of five weeks. Subsequently, on 25.08.2021 as well as on 31.08.2021, the site was inspected and it was found that in the building, no rectification work has been done by the developer to set right the violations, but further construction was carried on. Hence, on 19.11.2021, to give quietus to the issue and in the interest of all the parties, the appeal committee again granted three months time to the promoter to purchase the adjacent land and to satisfy the required setback for the building as per the Tamil Nadu Combined Development and Building Rules, 2019 and to apply for necessary planning permission from the office of the Director of Town and Country Planning. Even thereafter, the site inspection revealed that no rectification work was done and hence, a reminder letter was issued to the developer on 08.07.2022. Following the same, notice dated 19.10.2022 under sections 56 & 57 of the Town and Country Planning Act, 1971, came to be issued for demolition of unauthorised construction. Therefore, it is submitted by the learned Special Government Pleader that based on the reply to the notice dated 19.10.2022, further action will be initiated against the deviations / violations of the building approval plan, in accordance with law.

5. Mr. Satheesh, learned Standing Counsel appearing for the second respondent / Tamil Nadu Real Estate Regulatory Authority (TNRERA) has



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submitted that the Real Estate (Regulation and Development) Act, 2016

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(hereinafter shortly called as “the Act”) was enacted by the Parliament and it has come into force on 01.05.2017. Pursuant to the same, the Government of Tamil Nadu has notified the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 on 22.06.2017. As per Section 31 of the Act, any aggrieved person may file a complaint to the authority for any violation or contravention of the provisions of this Act or the Rules made thereunder against any promoter, allottee or real estate agent, as the case may be. In this case, the petitioner submitted a representation dated 04.08.2020 to the second respondent. As the grievance projected in the representation pertains to initiation of action against unauthorised construction, the same was forwarded to the Commissioner of Tiruchirapalli Corporation on 09.11.2020 with a request to take appropriate action thereof. Notwithstanding the same, the second respondent issued a notice to the Promoter on 09.11.2020 directing him not to register the Real Estate project with the Authority. Further, the writ petitioner has also been informed by way of a communication dated 09.11.2020 that he can file a complaint with the authority for any contravention of the Act and Rules by filing Form-M or form-N accompanied by requisite fee to the authority. Yet, the petitioner has not filed any such form, but filed WP (MD) No. 8026 of 2021. This Court, by order dated 19.04.2021, has directed the Chairman, TNRERA to act upon the representations dated

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04.08.2020 and 15.09.2020 of the petitioner in accordance with law.

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Accordingly, hearings were conducted, in which, the petitioner and the 12th respondent participated and a final order came to be passed by the Authority on 20.10.2021, directing the promoter/12th respondent to file an application for registration of the project as required under Section 2(zk) of the Act. Stating that the petitioner is also one of the promoters, the Authority directed the promoter/12th respondent as well as the writ petitioner, having power to execute the undivided share to the apartment buyers and the persons who sell these apartments to file an application for registration of the project with the Authority before 31.12.2021. However, no such application for registration of the real estate project has been received from the promoter/12th respondent as well as the writ petitioner. Therefore, according to the learned counsel, the writ petition will have to be dismissed as devoid of merits.

6. Mr. Veera Kathiravan, learned Additional Advocate General appearing for the fifth respondent/TANGEDCO submitted that pursuant to the order passed in the writ petition as well as the contempt proceedings, the 13th respondent has submitted an online application on 23.04.2021 requesting the Electricity Board authorities to shift the transformer as per the building plan approval. Accordingly, a field inspection was conducted and the Deposit



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Contribution Work (DCW) Estimate was assessed at Rs.2,82,560/-. On the basis of such assessment, the Executive Engineer, O & M, Urban/Trichy vide Memo No.EE/O&M/U/Try/TA/F.DCW/Pro.No.30/2021-22 dated 19.06.2021 sanctioned the proposal to shift the transformer. Accordingly, upon payment, the EB transformer was relocated to Survey No. 98/1, as per the original plan approval. Thereafter, upon inspection, the Village Administrative Officer, Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirapalli District, issued a certificate dated 21.10.2022, to that effect. However, the learned Additional Advocate General, on instructions, submitted that the promoter violated the building plan approval and involved in unauthorized construction and hence, the authorities are taking necessary action in this regard.

7. Mr. R.Baskaran, learned standing counsel appearing for the respondents 7 to 9 would submit that as directed by this court in WP (MD) No. 1266 of 2018 and the Contempt Petition (MD) No. 314 of 2019, the unauthorised construction put up in the stilt area has been removed on 27.04.2019, after adopting all precautionary and safety measures. Thereafter, on 24.12.2020, a stop work notice was issued to the promoter to ensure that no further construction is made, but the promoter made further construction. Hence, action is being taken for demolishing the unauthorised construction in accordance with the provisions of the Tiruchirapalli City Municipal



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Corporation Act. The learned counsel further submitted that pursuant to the order of this court dated 26.10.2022, the sixth respondent has issued show cause notices dated 21.11.2022 to the concerned officials of the Corporation, calling upon them to explain as to why appropriate disciplinary proceedings should not be initiated for their dereliction in discharge of duties, by permitting the promoter to proceed with the unauthorised construction. Thus, according to the learned counsel, the order of this court has been duly complied with.

8. Mr.Haja Mohideen Gisti, learned counsel appearing for the 12th respondent submitted that the 12th respondent is the Managing Director of M/s.Chendur Homes Private Limited and engaged in construction of residential and commercial building. In the year 2012, the petitioner and his brother / 13th respondent approached the 12th respondent and represented that they own about one acre of land in Uyyankondan Thirumalai Village, Trichy. Further, they induced the 12th respondent to invest money and to construct flats. They also assured that the business profits can be shared in the ratio of 64% to the promoter and 36% to the land owners on a joint venture basis. Accordingly, a joint venture agreement was executed on 5th July 2012 at Chennai for construction of flats, for which the 12th respondent invested his money and paid a whopping sum of Rs.1,00,09,008/- for developing the land.



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According to the learned counsel, after execution of the agreement, the 12th

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respondent came to know that there was a proposed road on the property and the same was wilfully suppressed by the petitioner and his brother. After the joint venture agreement was entered into and upon receiving the money, the petitioner executed a settlement deed dated 22.11.2013 in favour of his wife Mrs. B.K. Shakila settling land to an extent of 6265 square feet and thereby cumulatively acted against the interest of the 12th respondent. The 12th respondent was also made to part with huge sum amounting to Rs.1 crore rupees, for the purpose of construction of 92 flats which include Electricity Charges, Car Parking, approval charges payable to the Government and other institutions. It is in those circumstances, due to the act of the petitioner and his brother, the 12th respondent had no other option, except to seek for modification of the building planning permission. It is further submitted by the learned counsel that at each and every stage, the petitioner and his brother refused to extend their cooperation and they gave unceremonious complaints against the 12th respondent. That apart, the petitioner in collusion with his brother, sold some flats and executed sale deeds and also appointed one Bahrudeen /brother of the 14th respondent, to promote the sale of the remaining 30 flats. In the course of such business, a misunderstanding arose between the petitioner and his brother /13th respondent, as a result of which,



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the 13th respondent even cancelled the power of attorney deed executed in favour of the petitioner and executed a fresh power of attorney in favour of the said Bahrudeen, to sell the remaining flats. Thus, it is submitted that the petitioner, his brother and the 14th respondent colluded together, entered into a criminal conspiracy and caused enormous loss to the 12th respondent. Therefore, the 12th respondent has given a complaint to the Central Crime Branch-I, Chennai based on which a case in Crime No. 104 of 2021 was registered on 20.04.2021 against the petitioner, his brother/13th respondent, wife of the 13th respondent and others for the offences punishable under Sections 120-B, 420, 408, 465, 467, 477A and 506(ii) IPC and the same is pending. It is also submitted by the learned counsel that the interim order dated 07.08.2021 passed by the arbitrator in the arbitration proceedings initiated by the 12th respondent, will bind on the petitioner as well as the 13th respondent herein, but the petitioner has filed the present writ petition to pressurise the 12th respondent to withdraw the arbitration proceedings. Therefore, the learned counsel submitted that the present writ petition is an abuse of process of law and the same is liable to be dismissed as not maintainable.

9. During the pendency of this writ petition, some of the purchasers

of the flats and the President of Chendur Ganesh Flat Owners Association



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have preferred miscellaneous petitions to implead themselves as parties to the writ petition. According to the learned counsel for the impleading Petitioners, the petitioners herein / members of the association are the innocent purchasers and they purchased the flats, after scrutinising the title deeds and also physical inspection of the subject building. The banks sanctioned loan and directly transferred the amount to the 14th respondent, power of attorney of 13th respondent. The impleading petitioners under the *bona fide* impression that the property is free from all encumbrances, purchased the same out of their hard earned money. Even in the pamphlets issued by the 14th respondent, it was asserted that the project in question was approved by all major banks. Therefore, necessary action has to be taken against the respondents and the bank officials and government officials involved in the conspiracy at the behest of the respondents 12 to 14. Stating so, the learned counsel submitted that any adjudication in the present writ petition will have an adverse impact on the right of the impleading petitioners, who have innocently purchased the apartments in question and hence, the same has to be considered, while passing any order herein.

10.1. In reply, the learned counsel for the petitioner has seriously refuted the contention of the respondents that the petitioner is also a part and parcel of the construction of apartments and after a dispute had emanated with his brother, he has initiated several proceedings. According to the learned



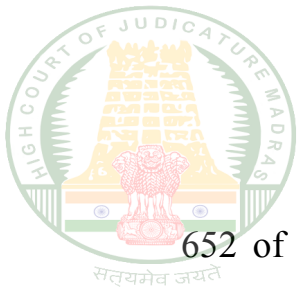
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counsel, the petitioner always insisted the builder to put up the construction in accordance with the approved plan. It is further submitted by the learned counsel that as early as in December 2020, the Corporation as well as Revenue Authorities have visited the site and marked the encroached portion of the building including that of the land belonging to the Highways department for demolition, and hence, it cannot be accepted that many of the purchasers feign ignorance and they were not aware of the legal battle going on between the petitioner and the respondents 12 to 14.

10.2. Continuing further, the learned counsel submitted that after the order dated 02.03.2018 passed in WP(MD) No.1266 of 2018 and during the contempt proceedings in Cont.P(MD)No.314 of 2019, the 14th respondent's brother Bahrudeen entered into agreement with the respondents 12 and 13 and he along with 14th respondent, sold more than 60 flats between 2020 and 2022 and many of the flats were sold at throw away prices of Rs.12 lakhs to Rs.15 lakhs i.e., below the market value. Thus, the learned counsel submitted that the promoter/12th respondent has constructed the flats with deviations and hence, the unauthorised portion has to be demolished and the building has to be restored to the original approved plan.

10.3. It is also submitted by the learned counsel for the petitioner that the 12th respondent / promoter initiated arbitration proceedings in O.A. No.

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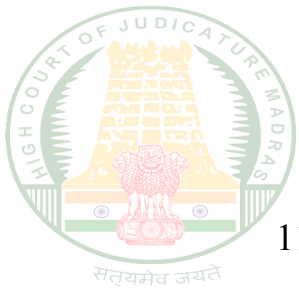
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652 of 2020 against the petitioner as well as the 13th respondent herein by

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misrepresenting the facts. In the Arbitration Proceedings, the promoter/12th respondent clearly admitted that the petitioner is in no way connected with the construction of apartments in the land in Survey Nos. 98/1 and 2; and that, he was given lesser share than his brother/13th respondent and therefore, the 13th respondent agreed to give 5 flats to the petitioner in lieu of it. Even though five flats were allotted to the petitioner, yet, the 13th respondent subsequently cancelled the power of attorney unilaterally and executed a power of attorney in favour of the 14th respondent during June 2021. While so, the averment that the petitioner is also jointly liable for the unauthorised construction put up by the promoter/12th respondent, cannot be legally sustained. The learned counsel for the petitioner also disputed the contention raised on the side of the second respondent / TNRERA that the petitioner is one of the stakeholders as per section 2(zk) etc. by stating that the construction was made only in S.Nos.98/1 and 98/2 and admittedly, the same do not belong to him, as his land is in S.No. 98/3. On the other hand, it is submitted that the TNRERA is the empowered body for the action against the real estate promoters, but till date, no action has been taken as contemplated under section 59 of the RERA Act. Therefore, the learned counsel prayed for appropriate directions to the authorities concerned against the unauthorised construction made by the promoter / 12th respondent.

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11. This court considered the extensive submissions made by the learned counsel appearing for all the parties and also perused the materials available on record.

12. The relief sought in this public interest litigation is to direct the official respondents to initiate action for demolition of unauthorized construction of apartments in old Survey No.151/2 and new Town Survey No. 98/1, 2 of Ward No.J, Block No.14 of Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirappalli District, and to restore the building according to the original approved plan, besides initiating disciplinary proceedings against the officials who have not taken any action against the unauthorized construction.

13.1. The facts remain undisputed are that earlier, the petitioner approached this court by filing WP(MD)No.1266 of 2018 to direct the respondent authorities to demolish the construction in S.No.98/1, 2 of Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirapallai District which was unauthorisedly made in contravention of the conditions stipulated in the building permission granted on 25.11.2013. The said writ petition was disposed of, by order dated 02.03.2018, the relevant passage of which is



quoted below for ready reference:

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"3. The learned counsel for the petitioner reiterated the contention put forth in the affidavit filed in support of this writ petition and submitted that no commercial activity should be permitted in a residential complex and the unauthorized conversion of stilt should be removed and whenever there is a violation of building plan, the same has to be rectified. The learned counsel for the petitioner pointed out that the following 5 facilities were required to be provided as per approval plan but not provided, namely;

- “1.The Southern side of the building facing Vayalur Road, there are four entrances (two for entry and two for exist)
- 2.Both eastern and western side of the building passage is provided for exit entry
- 3.Southern side of the building which faces the Vayalur road, there is a common utility area approximately 4,000 sq. ft.
- 4.Southern side of the building facing Vayalur road, there is a separate space for EB Transformer.
- 5.There is a separate room for watchman on the western side of the building facing Vayalur Road.”

4. Further, it is submitted that common area have been converted and the ninth respondent has sold it to the eleventh respondent and the entire unauthorized construction should be demolished.

5. The learned standing counsel for the respondent/ Corporation submitted that as per sale deed executed in favour of the eleventh respondent, it is seen that the eleventh respondent has not purchased any area in the car parking, but has purchased a flat in the second floor. Be that as it may, we are required to see as to whether the ninth respondent has deviated from the approved building plan. The respondent Municipal has issued notice on 21.07.2014 under Section 282(1 & 2) of Trichy Municipal Corporation Act, 1994 pointing out the following defects:

"(1)அங்கீகரிக்கப்பட்ட வரைபடத்தில் சிலிட் தளத்தில் 32.61m x 36.00m என்ற அளவிற்கு பதிலாக 42.06m x 42.06m என்ற அளவில் மாறுதலாகவும் கூடுதலாகவும் கட்டிடம் கட்டி வருகின்றனர்.

(2)அங்கீகரிக்கப்பட்ட வரைபடத்தில் முதல் தளத்தில் 32.61m x 36.00m என்ற அளவிற்கு பதிலாக 43.28m x 43.28m என்ற அளவில் மாறுதலாகவும் கூடுதலாகவும் கட்டிடம் கட்டி வருகின்றனர்.

(3) அங்கீகரிக்கப்பட்ட வரைபடத்தில் வடக்கு பக்க திரவிடம் 5.00 க்கு பதிலாக 3.05 என்ற அளவு உள்ளது."

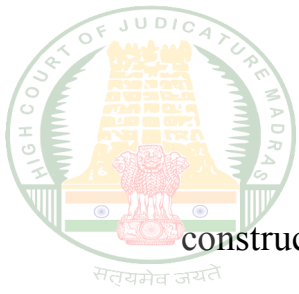


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6. Though the above notice was issued, pointing out the above defects, it is not known as to why the Corporation did not take action in the matter. The second respondent pointed out some defects and mentioned some details on 22.01.2018 under Section 282(3) and 447 of the Act. On receipt of notice, the ninth respondent has submitted a revised plan. Thus, it is clear that if a revised plan has been submitted, it amounts to that the ninth respondent had admitted deviations. Therefore, it is clear that the action initiated by the respondent Corporation is justified and proper. The only thing which disturbs us is that for nearly 4 years, no action has been taken by the Corporation and the Commissioner should look into the matter as to why there is stalemate of the issue. Be that as it may, since the revised plan is pending before the local planning authority, we are constrained to issue direction in the writ petition. So far as the stilt area is concerned, the approval plan indicates it is ear marked for vehicle parking, generator room, lumber room, office, vehicle room, driver rest room, electric room and store. Apart from these features, there can be no other construction in the stilt area. Therefore, local planning authority cannot regularise this deviation as any conversion of the stilt area for a different user would be a totally unauthorised one.

7. Therefore, we direct the respondent Corporation to demolish and remove all the unauthorized constructions in the stilt floor area and restore the place in terms of the approved plan. The above direction should be completed by the respondent Corporation within a period of two weeks from the date of receipt of copy of this order. With regard to other deviations pointed out by the respondent Corporation in the notice dated 22.01.2018, the ninth respondent is given opportunity to pursue the matter before the authority before whom the revised planning permission is pending. No Costs.
...”

13.2. Since the aforesaid order has not been complied with by the respondent authorities, the petitioner initiated the contempt proceedings viz., Cont.P.(MD)No.314 of 2019. During the pendency of the same, the 12th respondent / promoter continued further construction without obtaining planning permission afresh. Therefore, the petitioner preferred another writ petition in WP(MD) No.1422 of 2020, to stop such illegal unauthorized



construction and this court has passed an interim order on 21.08.2020, after having observed thus:

“8. *A perusal and consideration of the materials would prima facie disclose that deviated construction has been made and if at all, the respondents 3, 7 and 8 would have been vigilant, they would have stopped the said construction when it took place and unfortunately, they chose to turn a blind eye to the said alleged violation.*

9. *Call on 27.08.2020. Counter affidavits of the respondents with supporting documents and photographs by then. The counter affidavits of respondents 7 and 8 shall also contain the answers to the following queries:*

"(a) How many unauthorised/deviated superstructure utilised for commercial purposes, have been put up within the limit of jurisdiction of Tiruchirapalli City Municipal Corporation?

(b) Action taken against the said violators as well as the time line/ gap in which, the action has been taken; and

(c) Mechanism which is put in place to monitor the ongoing constructions for the purpose of finding out as to whether the said constructions were authorised / unauthorised / deviated."

13.3. While so, on 10.12.2020, when the aforesaid contempt petition was taken up for consideration, this court passed the following order:

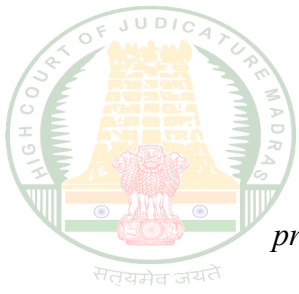
“....

3. *However, the learned Additional Advocate General, by producing certain photographs, would submit that as early as in the year 2018, the order has been implemented and therefore, there cannot be any grievance for the petitioner.*

4. *At this juncture, the learned counsel for the petitioner intervened and submitted that the stilt area has not been totally removed as per the order of this Court. That apart, the deviations as stated in paragraph No.7 of the order have not been removed. Further, it is submitted that the private respondents have encroached upon the public road to an extent of six feet.*

5. *Though it is denied by the learned Additional Advocate General, this Court would like to know certain particulars from the first respondent/Commissioner.*

6. *The first respondent/Commissioner is directed to visit the*



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property and find out as to,

- (i) Whether the earlier order of this Court, has been fully complied with by demolishing and removing the unauthorised constructions in the stilt floor
- (ii) Whether the area has been restored in terms of the approved plan?
- (iii) Whether the deviations in other portions of the properties have been removed or any revised plan permission has been granted?

7. After inspection, the first respondent/Commissioner shall file a report positively by 17.12.2020, which shall also include the measurements of the Vayalur Main Road, as per the records; the actual width of the road, as on date; and the width of the Road encroached by the private respondents, if any.

8. It is represented that an appeal is pending before the Government from the year 2019 onwards with regard to the revised planning permission. If the appeal has not been disposed of, there shall be a direction to the Government to dispose of the same, as expeditiously as possible and the present status of the appeal shall also be filed before the next date of hearing.

9. The first respondent/Commissioner shall give advance notice of inspection to the petitioner, private respondents and other concerned parties, so that they shall also be present at the time of inspection by the commissioner.

.... ”

13.4. Pursuant to the aforesaid order, the Commissioner of Tiruchirapalli Corporation filed a report on 16.12.2020 in the contempt petition, wherein it was *inter alia* stated as follows:

"4. It is stated that the Surveyor had brought the survey records and survey sketch to measure the road encroachment. But the Survey sketch did not show the width of the Vayalur Main Road situated in T.S. No.1, Block No.17, Ward J, K. Abishekapuram Zone, Tiruchirapalli City Corporation. Therefore, he was directed to measure the patta lands at the disputed place i.e., the lands in T.S. Nos. 98/1 and 98/2, 98/3, Ward J, Block No.14, lands on the northern side of the Vayalur Main Road and lands on the southern side of the Vayalur Main Road in order to find out the road encroachment. The Surveyor had measured the lands and it was found that owners of the disputed building Chendur Residency had encroached the road property to an extent of 32 Square meters equivalent to 344.4 square feet by



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constructing compound wall, further extent of the road property to an extent of 50 square meter equivalents to 538 square feet is encroached by Shanmugasundar by having iron fence and by putting up police check post. These three encroachments are shown in yellow, green and pink colour wash respectively in the survey sketch by the surveyor. The Highways Authority was present at the time of inspection and the road boundary was marked in yellow colour in the land. The survey sketch and the report given by the Town Surveyor are enclosed herewith.

5. *It is submitted that the Vayalur Main Road is the Highway Road. This is the reason why the Highway was given notice for the inspection. The Highway will have to remove the road encroachment. I have taken steps to remove the road encroachment by issuing a letter to Highways Department.*

6. *The photos taken at the time of inspection are filed herewith.*

7. *It is also found out that the EB Transformer is erected in different place other than the space ear-marked in the Approved Plan. It was informed to the concerned EB office to shift the transformer as per the approved plan and the copy of the letter sent to the EB office is filed herewith.*

8. *It is submitted that on 27.04.2019, the deviations in the stilt floor constructions had already been removed. The other deviations of EB transformer in the stilt floor has to be removed and relocated as in the approved plan by the Electricity Board and the petitioner, his brother and promoter.*

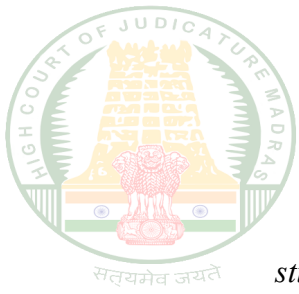
9. *It is submitted that the deviation in area is committed in all the floors i.e., stilt floor and 1st to 4th floors.*

10. *It is submitted that the building owner had informed us that he had filed an appeal under Section 113 to the Government for the building in TS Nos. 98/1 and 98/2, Block No.14, Ward J, Uyyakondan Thirumalai Village, K-Abishekapuram Zone."*

Based on the above said report, the contempt petition was closed on 20.01.2021.

13.5. Thereafter, by order dated 04.03.2021, the writ petition viz.,

WP(MD)No.1422 of 2022 came to be disposed of, in the following terms:



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"6. The order dated March 2, 2018 was on the basis that only the stilt floor had been illegally constructed. If there is any further deviation from the approved plan in course of the construction, regularisation thereof should not be routinely permitted, as the spirit of the order dated March 2, 2018 was that the relevant building should adhere to the approved plan.

7. Accordingly, WP (MD) No. 1422 of 2020 is disposed of by directing the respondents, particularly the official respondents, to ensure that the proceedings under Section 113 of the Act of 1971 are disposed of as expeditiously as possible and in the light of the observations made herein. If any unauthorised construction is discovered, in the construction as completed till now, the respondent corporation should take steps for further demolition thereof. If there are further grievances of the petitioner, they may be carried by way of a civil suit before the appropriate forum, particularly, against the respondents 9 and 10. The Corporation will only be duty bound to ensure that any major deviation from the approved plan is not allowed to stand. The application for regularisation of the construction made should be carefully scrutinised by the appropriate officials."

13.6. That apart, the petitioner said to have filed objections to the appeal filed by the 12th respondent / promoter to the Government under section 113 of the Tamil Nadu Town and Country Planning Act, 1971, seeking permission to rectify the deviations in the building, besides making representation to the second respondent /TNRERA, who is the competent authority to take action against the real estate promoters, under section 59 of the RERA Act.

13.7. Thus, it could be seen from the aforesaid proceedings initiated by the petitioner that the 12th respondent / promoter has constructed the 4 storey building consisting of 92 flats in S.Nos.98/1 and 98/2 of Uyyakondan Thirumalai Village, Srirangam Taluk, Tiruchirapalli, in deviation of the approved plan. The car parking area and common area were converted into



WP (MD) No. 23772 of 2022

commercial areas. The EB transformer was situated in S.No.98/3 contrary to

the original planning permission. The promoter has also encroached the

Highways Road. Though this court directed the officials concerned to remove

the unauthorised construction and restore the building as per the original

planning permission, as early as on 02.03.2018, the respondent authorities

removed the deviated portions in the stilt floor and relocated the EB

transformer only on 27.04.2019, that too, after filing of the contempt petition

by the petitioner. It could be further seen that despite the orders of this court,

the 12th respondent / promoter failed to obtain the revised planning permission

and continued further unauthorised construction and sold the apartments to

third parties; and that, they shifted the EB transformer to public road. Though

appeal under section 113 of the Tamil Nadu Town and Country Planning Act,

was filed by the 12th respondent, and the same was also disposed of granting

time on two occasions i.e., on 22.07.2021 and 19.11.2021, for rectifying the

deviations in the subject building, nothing progressed at the end of the

promoter. It is also seen that the subject building was not registered with the

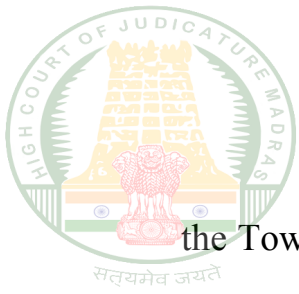
second respondent and the land owner / power of attorney holders have also

not registered the project as per G.O.Ms.No.166, Housing and Urban

Development [UD4(3)] Department, dated 29.11.2018, within the time

provided by the second respondent. However, the officials concerned did not

act swiftly and they sent notice dated 19.10.2022 under sections 58 and 59 of



the Town and Country Planning Act, 1971 and that, further action for removal of unauthorised construction, is pending, without any progress.

14. Taking note of the aforesaid factual position, this court by order 26.10.2022, directed the Government to take departmental proceedings against the Government officials concerned, who have failed to take timely action against such unauthorised construction, and file action taken report. On 17.11.2022, when the matter was taken up for consideration, this court, considering the submissions and the documents produced by all the parties, has passed the following order:

“

3. *Today, when the matter was taken up for hearing, the learned counsel for the petitioner submitted that despite of the abovesaid order of this Court, the plots in the subject apartment are being sold out even today and the registering authorities/respondents 10 and 11 are also registering the documents. Thus, according to the learned counsel for the petitioner, innocent purchasers / general public are ultimately made as sufferers and therefore, necessary directions be issued in this regard.*

4. *The learned Standing Counsel for the respondents 7 to 9 has produced the additional typed set of papers before this Court, wherein, copies of the demolition notices issued to every individual plot owners have been enclosed.*

5. *The learned Additional Advocate General for the respondents 1, 3, 4, 10 and 11 has assured that the registering authorities / respondents 10 and 11 would be directed not to register any documents connected to the subject apartment until further orders. He has also assured that departmental proceedings would be initiated against the erring officers concerned and action taken report would also be filed before this Court on the next hearing date.*

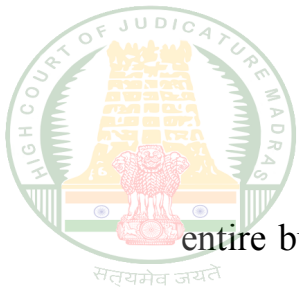
6. *Post the matter on 28.11.2022 for filing action taken report and for passing further orders."*



WP (MD) No. 23772 of 2022

Accordingly, on 28.11.2022, it was represented on the side of the respondent authorities that departmental action has been initiated against the erring officials. In support of the same, the learned counsel for the respondents 7 to 9 filed an additional typed set of papers.

15.1. This court has time and again held that unauthorised construction(s) put up with deviation or without any building planning approval, should not be encouraged and that, the construction of the building must be made by scrupulously following the Rules. In the event of any violation brought to the notice of this Court, the same has to be curtailed with iron hands. A Division Bench of this Court, in similar circumstances, passed an order dated 09.01.2018 in ***Kiran bai v. District Collector, Coimbatore and others in WP No. 14250 of 2017***, wherein, a residential house was constructed in violation of the planning permission and the portion of the offending superstructure was directed to be demolished. In yet another case in ***P. Selvarajan v. The Commissioner of Municipal Administration, Chennai - 600 005 and others***, a Division Bench of this Court had an occasion to consider an identical case and passed an order dated 13.02.2018 in WP No. 21639 of 2017. In that case, a five-floor commercial complex was constructed in Attur Town, Salem Taluk and District though the building planning permission was obtained to construct ground and first floors only. As the



WP (MD) No. 23772 of 2022

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entire building was constructed in violation of the building plan, a notice was issued for removal of unauthorised construction within seven days. The petitioner therein did not challenge the notice, but submitted a representation to the authorities to re-consider their decision. The Division Bench of this Court, after appreciating the facts in detail, ordered that the portion of the construction made in violation of the building plan has to be erased to ground.

15.2. Again, in the order dated 13.03.2018 passed in WP (MD) No. 21406 of 2017 in ***S.Nagajothi v. Commissioner of Madurai City Municipal Corporation and others***, it was noticed by a Division Bench of this Court that on the basis of a complaint given by the neighbour, the proceedings under the Tamil Nadu Town and Country Planning Act, 1971 were initiated against the petitioner therein. It was also found that the petitioner therein had constructed the building without leaving sufficient side set backs, besides she had put up a construction on the compound wall, contrary to the building planning permission. Therefore, it was directed that the offending construction has to be removed within a period of forty days by the petitioner herself failing which the Corporation was directed to do so without affecting the stability of the main building and to recover the cost thereof from the petitioner.

15.3. In ***Consumer Action Group v. The State of Tamil Nadu and others [(2006) 4 CTC 483 = (2006) 4 LW 41]***, wherein, the plea of the Consumer Action Group with respect to the violations of the Building norms



in the construction of shopping complexes at T. Nagar and at N.S.C. Bose

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Road, Chennai without allotting Car and Two Wheeler parking spaces in such

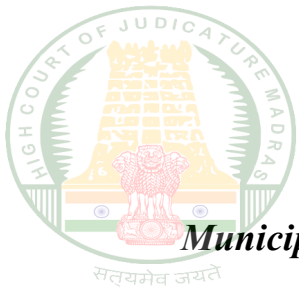
multi-storied buildings, was considered and after elaborate discussion with all

the relevant decisions holding the field, it was held by this court at paragraph

37 as follows:

“37. Mere reading of this reveals administrative failure, regulatory inefficiency and laxity on the part of the authorities concerned being conceded which has led to the result, that half of the city buildings are unauthorised, violating the town planning legislation and with staring eyes the Government feels helpless to let it pass; as the period of limitation has gone, so no action could be taken. This mess is the creation out of the inefficiency, callousness and the failure of the statutory functionaries to perform their obligation under the Act. Because of the largeness of the illegalities it has placed the Government in a situation of helplessness as knowing the illegalities, which are writ large, no administrative action of demolition of such a large number of cases is feasible. The seriousness of the situation does not stay here when it further records, this is the pattern in other metropolitan cities of India. What is the reason? Does the Act and Rules not clearly lay down, what constructions are legal, what not? Are the consequences of such illegal constructions not laid down? Does the statute not provide for controlled development of cities and rural lands in the interest of the welfare of the people to cater to public convenience, safety, health etc.? Why this inaction? The Government may have a gainful eye in this process of regularisation to gain affluence by enriching coffers of the State resources but this gain is insignificant compared to the loss to the public, which is State concern also as it waters down all preceding developments. Before such pattern becomes cancerous and spreads to all parts of this country, it is high time that remedial measure was taken by the State to check this pattern. Unless the administration is toned up, the persons entrusted to implement the scheme of the Act are made answerable to the laches on their failure to perform their statutory obligations, it would continue to result with wrongful gains to the violators of the law at the cost of the public, and instead of development bring back cities into the hazards of pollution, disorderly traffic, security risks, etc. Such a pattern retards development, jeopardises all purposeful plans of any city, and liquidates the expenditure incurred in such development process.”

15.4. In *Esha Ekta Apartments Coop Housing Society Limited v.*



Municipal Corporation of Mumbai [(2013) 5 Supreme Court Cases = (2013)

3 Supreme Court Cases (Civil) 89], it was observed by the Hon'ble Supreme

Court that the courts are expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions and the relevant passage of the said decision is extracted below:

"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal construction by way of compounding and otherwise."

"8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their own hands and get away with it."

"56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

15.5. The aforesaid view was reiterated by the Hon'ble Supreme Court in the decision in ***Supertech Limited v. Emerald Court Owner Resident***

Welfare Association and others [(2021) 10 Supreme Court Cases 1] by



holding that illegal constructions have to be dealt with strictly to ensure

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compliance with rule of law. Paragraphs 159, 160 and 161 of the same read as

under:

"159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from the different departments (fire, garden, sewage etc.) and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations - the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach of the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate



concerns."

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15.6. In *Kerala State Coastal Zone Management Authority vs.*

Maradu Municipality [(2021) 16 Supreme Court Cases 822], the Hon'ble

Supreme Court has once again reiterated that illegal and unauthorised constructions put up with brazen immunity, cannot be permitted to remain.

The relevant passage of the said decision is quoted below:

"107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations is not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument. We find that the view taken by the Kerala High Court in aforesaid decision is appropriate. Permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

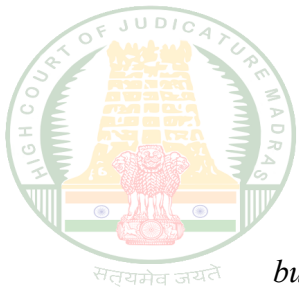
Thus, it is manifest that if it is shown that an unauthorised construction has been put up, it should be ordered to be demolished, thereby sending a strong warning signal to the perpetrators of such offences.



WEB COPY16. In ***M.Rahamathunisha and others v. Commissioner, Greater Chennai Corporation, Chennai and another [2022 (6) CTC 145]***, one of us (RMDJ) was a party, after considering the above judgments certain directions were issued to the authorities. The relevant portion of the said order is extracted below, for ready reference:

"19. Applying the parameters laid down by this Court as well as the Hon'ble Supreme Court in the decisions mentioned supra to the present case, wherein, the petitioners sought an interim order forbearing the respondent authorities from taking coercive steps, so as to enable them to rectify and restore the subject building in consonance with the permissible planning rules and regulations, within a period of six months, this court is of the opinion that the practice of putting up an illegal construction and subsequently seek for regularisation or rectification should not be encouraged as it would give a wrong impression that a building can be unauthorisedly constructed and later, defects could be rectified. In such cases, the plea for regularisation or rectification should not be entertained either as a matter of course or routine and it should be considered sparingly and reasonably. If it is shown that an unauthorised construction has been put up, it should be ordered to be demolished, thereby indicating a strong warning signal to the perpetrators of such offences. It is trite law that the respondent authorities should take action for the services rendered to the public, whereas in the instant case, after so many litigations, at the instance of the complainant, who is the neighbour of the subject building, the officials have taken action in accordance with law. In many cases, they failed to do so promptly and appropriately; and the completion certificate issued by the authorities is, without proper verification of the actual status of the building, whether there is deviation / unauthorised construction. Further, as evident from the memo filed on the side of the respondent authorities, 847 appeal petitions in Chennai south region and 1581 appeal petitions in respect of Chennai north and Central Region, are pending consideration before the Government, without any progress. Such being the present scenario, this court, in order to sort out the same, issues the following directions to the respondent authorities:

(i) Before issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion certificate from the authorities concerned.



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(ii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iii) All the necessary connections, such as, Electricity power connection, water supply sewerage connection, etc. shall be given by the service provider / Board to the buildings only after the production of the completion certificate.

(iv) After issuance of completion certificate, if there is any deviation / violation contrary to the planning permission given, immediate steps be taken by the authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of completion certificate shall be proceeded with departmentally forthwith.

(v) In the event of any statutory appeal or revision filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the appellate or revisional authority shall dispose the same, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(vi) Necessary instruction be issued by the Government in the form of Circular to all concerned to the effect that any undue delay on the part of the authorities concerned, in issuing the completion certificate or on the part of the appellate authority in disposal of the statutory appeal, will be viewed seriously and departmental action shall be initiated against the erring officials as per law. It goes without saying that the banks / financial institutions shall sanction loan to the building(s) only after production of the completion certificate by the parties concerned.

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21. Apart from the aforesaid directions, this writ petition is disposed of, in the following terms, taking note of the undertaking given by the learned counsel for the third respondent / builder that they would provide alternative accommodation expeditiously, to the petitioners:

(i) The third respondent/builder shall provide alternative accommodation to the petitioners so as to enable them, to vacate and handover the vacant premises of the subject building to the respondent authorities within a period of six weeks from the date of receipt of a copy of this order.

(ii) On such surrender, the respondent authorities shall take steps to demolish the unauthorised portion of the subject building, within a period of two weeks therefrom."



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17. Admittedly, in the present case, the entire building was constructed in deviation of the approved planning permission and the same calls for immediate demolition and restoration of the same, according to the original planning approval, but the officials concerned have not taken steps to that effect despite several directions issued by this court and that, they have indirectly encouraged the promoter to continue the act of unauthorised construction and sell the flats to the innocent buyers, without valid permission and approval. Such callous attitude on the part of the officials concerned cannot be countenanced by this court.

18. At this juncture, it is pertinent to allude to the observations of this court in *M.Rahamathunish and others* (supra), wherein the significance of the construction of buildings according to the building norms and prohibiting illegal encroachment of land was highlighted. Several enactments are set in stone to achieve “Planned Development” in the city. However, the same will remain a pipe dream, due to unauthorized construction by builders and failure of the government officials to take subsequent action. Without strict enforcement of building norms, even the courts will be unable to issue directives to help the beneficiaries or owners of the building, who have purchased the property for a valuable consideration, ignorance of the



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deviations in construction.

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19. Therefore, considering the facts and circumstances of the case and keeping in mind the aforesaid legal proposition, this court, to meet the ends of justice, issues the following directions to the respondent authorities:

(i) to demolish the unauthorised construction, if not demolished earlier and restore the subject building including EB transformer, according to the plan approval granted by the competent authority, forthwith, without causing further delay.

(ii) to take departmental action against the officials, if not taken earlier, who have failed to take steps against the unauthorised construction made by the promoter or anyone claiming under him. Such action shall be completed within a period of six months.

(iii) The 12th respondent or the promoter is directed to pay necessary compensation / alternative accommodation to the buyers of the flats, within a period of six weeks.

20. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Post the matter for reporting compliance after six weeks.



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(R.M.D., J.) (J.S.N.P., J.)

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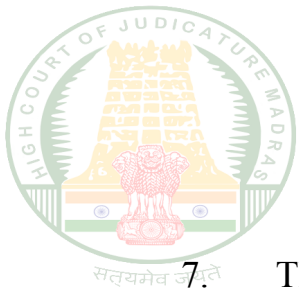
Index : Yes / No

Internet : Yes / No

To

1. The Principal Secretary to Government
Housing and Urban Development Department
Secretariat, Chennai - 600 009
2. Tamil Nadu Real Estate Regulatory Authority
No.1-A, 1st Floor, CMDA Tower-II
Gandhi Irwin Road, Egmore
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3. The Director
Directorate of Town and Country Planning
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4. The Deputy Director
Town and Country Planning - Trichy Region
Kajamalai Main Road
Kajamalai, Trichy - 620 023
5. The Superintending Engineer
Trichy Electricity Distribution Circle/Metro
TANGEDCO, Mannarpuram, Trichy
6. The Commissioner of Police
Tiruchirapalli City
Trichy

<https://www.mhc.tn.gov.in/judis>



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7. The Commissioner
Tiruchirapalli Corporation
Trichy
8. The Executive Engineer (Planning)
Tiruchirapalli Corporation
Trichy
9. The Assistant Commissioner
Ko.Abhishekapuram Zone
Tiruchirapalli Corporation
Trichy
10. The Inspector General of Registration
Registration Department
Santhome, Chennai
11. The Sub-Registrar
Sub-Registrar Office - Woraiyur
Woraiyur, Trichy



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and
J. SATHYA NARAYANA PRASAD, J.

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