



WP.No.17043/2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.17043/2023 & WMP.No.16229/2023

1.Dr.M.Meera @ Devasena
2.Mr.V.Kannan
3.Mr.M.Vythianathan
4.G.Subramanian

... Petitioners

Vs.

1.The Commissioner
Greater Chennai Corporation
Ripon Building
Park Town, Chennai 600 003.

2.Executive Engineer
Zone 11, Greater Chennai Corporation
Chennai 600 087.

3.Assistant Executive Engineer
Unit 34, Zone 11, Greater Chennai Corporation
Chennai 600 087.



WP.No.17043/2023

WEB COPY

4. Assistant Engineer
Division 153, Greater Chennai Corporation
Chennai 600 087.

5.P.Venkatesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records of Letter No.11/00136/2023 "Lock & Seal and Demolition Notice" dated 06.05.2023 on the file of the 2nd respondent herein and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.T.M.Mano

For RR 1 to 4 : Mr.D.B.R.Prabhu, Standing counsel

For R5 : Mr.G.Appavu

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1) The present writ petition has been filed by the petitioners challenging the proceedings of the 2nd respondent dated 06.05.2023 purported to have been issued under Section 57 read with Section 85 of the Town and Country Planning Act, 1971 [hereinafter referred to as 'the Act, 1971'].



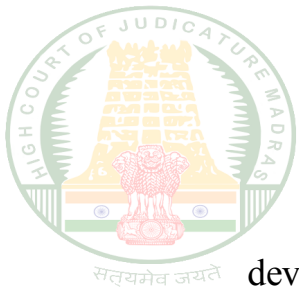
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(2) By the impugned order, the petitioners were called upon to restore the building in compliance with the approved plan within thirty days from the date of receipt of the notice. They were also informed that action will be taken under section 57[4] of the Act, 1971, if the petitioners fail to stop further construction or fail to demolish the building as per the approved building plan.

(3) The impugned order does not even refer to any show cause notice or an enquiry before passing the said order.

(4) Brief facts narrated by the petitioners in the affidavit filed in support of the writ petition are as follows:

(5) The petitioners are the owners of the Apartments/Flats by virtue of different Sale Deeds stated to have been executed during the years 2010 and 2011. They have purchased the property from one Ratnam, brother of the 5th respondent herein. It is admitted that the brother of the 5th respondent purchased the property originally from the original owner. It appears that the brother of the 5th respondent sold the entire extent of 2400 sq.ft., through his Power of Attorney Agent in favour of one D.Ramamoorthy on 06.11.2010. It appears that the said Ramamoorthy

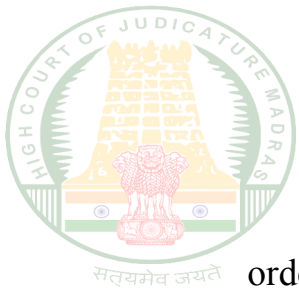


WP.No.17043/2023

WEB COPY

developed the property as Apartments pursuant to an Agreement he had entered into with the developer. After completion of the construction, the petitioners have purchased the Apartments from the owner. It is stated by the petitioners that the entire construction was done pursuant to proper approval and that the Building Plan Approval is also annexed in the writ petition. It further appears that the 5th respondent has filed a suit in OS.No.5317/2011 on the file of the learned VII Assistant Judge, City Civil Court, Chennai, claiming title to the property by contending that the Sale Deed was obtained by him in the name of his brother and that, he is the real owner. Despite the claim was after the Benami Transaction Act, the suit was entertained. Subsequently, the suit was dismissed on 17.10.2019. However, the appeal filed by the 5th respondent herein before the Appellate Tribunal, in AS.No.15/2020 was allowed on 25.02.2021.

(6) It is not in dispute that the petitioners who have purchased the property during the years 2010 and 2011, were not parties to the proceedings. Therefore, the petitioners appeared to have filed CRP.No.1684/2023 challenging the decree of the Appellate Court and obtained an interim



WP.No.17043/2023

WEB COPY

order. In the meanwhile, the 2nd respondent herein, without even issuing any show cause notice to the petitioners, has passed the impugned order dated 06.05.2023 calling upon them to stop further construction and to demolish the building as per the approved plan. The contents of the impugned order indicates total non application of mind. This Court also finds that the impugned order is issued without even affording an opportunity of personal hearing to the petitioners. There is no reference to the alleged violations in the proceedings. It is in these circumstances, this Court is of the view that the impugned order is bereft of particulars and in violation of principles of natural justice.

(7) The direction to demolish the building and to stop further construction indicates that the 2nd respondent has not even ascertained the position by inspecting the building. It is in the said circumstances, this Court is unable to sustain the impugned order.

(8) It is to be seen that the 2nd respondent has been forced to take action by virtue of direction issued by this Court in WP.No.8797/2023, wherein the petitioners are not parties. The impugned order, as pointed out earlier, is not only in violation of principles of natural justice but also appears to



WP.No.17043/2023

WEB COPY

have been passed without application of mind or after inspection.

Assuming that the building is not in conformity with the Building Rules or the Building Plan approval, the respondents cannot issue notice for demolition without even indicating the nature of violation, as contemplated under the provisions of the Act, 1971. When the petitioners are not parties to the earlier writ petition, this Court is unable to sustain the impugned order even if it is in pursuant to the order passed by this Court in WP.No.8797/2023.

(9)For the above reasons, this Court is inclined to set aside the impugned order of the 2nd respondent dated 06.05.2023.

(10)Accordingly, the writ petition stands **allowed** and the impugned order dated 06.05.2023 passed by the 2nd respondent is **set aside**. However, it is open to the 2nd respondent to take any action, not at the instance of the 5th respondent, but on their own if it is found that the building is in contravention of the approved plan. When the respondents initiates such action, they shall issue a show cause notice to the petitioners specifically referring to the nature of violations and after giving adequate opportunity of personal hearing to the petitioners to put forth their case and thereafter,



WP.No.17043/2023

WEB COPY

pass appropriate orders either to initiate action or to drop the proceedings against the petitioners. No costs. Consequently, connected miscellaneous petition is closed.

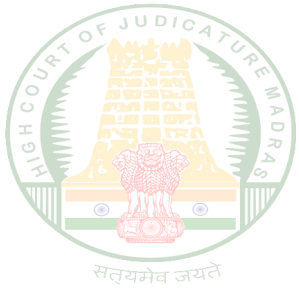
[S.S.S.R., J.] [N.S., J.]
04.01.2024
[2/2]

AP

Internet : Yes

To

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WP.No.17043/2023

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WP.No.17043/2023
[2/2]

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