

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2012

CORAM:-

The Hon'ble Mr. Justice R. SUDHAKAR

W.P.No. 20562 of 2012

.....

1.Mrs. Bharathi Mahalingam
2.Dr. Sudhamathi
3.Mrs. Phyllis Shackleton
4.K.Ramalingam
5.R.Balakrishnan
6.M.Srinivasan
7.Mrs.Mary Josphine Forrest

.. Petitioners

Vs.

1.Corporation of Chennai,
rep. By its Commissioner,
Ripon Buildings, Park Town,
Chennai.3.
2.Chennai Metropolitan Development
Authority, rep. By its
Member-Secretary,
No.1 Gandhi Irwyn Road,
Egmore, Chennai.8.
3. The Tamilnadu Housing Board,
rep. By its Chairman/Managing Director,
No.493, Anna Salai, Chennai.35.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first and second respondents to receive, process, consider and accord sanction for demolition and reconstruction at Block No.67 in Survey No.100 Part, T.S.No. 321, Block No.2 of Mullam Village, measuring an extent of 5574 sq.ft. Of land bearing "z" Block vth Avenue, Anna Nagar, Chennai 40 in accordance with law and more particularly without insisting on production of 'No Objection Certificate' from the third respondent expeditiously.

For Petitioner : Mr. A. Suresh

For Respondents : Mr. V.C. Selvasekaran -R1
Mr.P. Tamilmani - R2
Mr. S. Jayaseelan - R3

ORDER

This writ petition is filed to issue a Writ of Mandamus directing the first and second respondents to receive, process, consider and accord sanction for demolition and reconstruction at Block No.67 in Survey No.100 Part, T.S.No. 321, Block No.2 of Mullam Village, measuring an extent of 5574 sq.ft. Of land bearing "z" Block vth Avenue, Anna Nagar, Chennai 40 in accordance with law and more particularly without insisting on production of 'No Objection Certificate' from the third respondent expeditiously.

2. Mr.V.C. Selvasekaran, learned counsel takes notice on behalf of the first respondent; Mr P. Tamilmani, learned counsel takes notice on behalf of the second respondent and Mr S. Jayaseelan, learned counsel takes notice on behalf of the third respondent. By consent, the writ petition is taken up for final disposal.

3. Petitioners are owners of the property which was originally developed by Tamil Nadu Housing Board and sold to the individuals. The present owners are either original allottees or subsequent purchasers. The undisputed fact is that the Tamil Nadu Housing Board has no lien over the property. For the purpose of developing the property, the first respondent orally insisted the petitioners that no objection certificate issued by the Tamil Nadu Housing Board should be submitted along with the application for the purpose of demolition, planning permission and for issuance of planning and building permit to put up new construction.

4. Similar issue with regard to the insistence of no objection certificate from Tamil Nadu Housing Board was considered by a Division Bench of this Court in W.A.No.1052 of 2007 (The Managing Director - vs. - Lancor G:Crop Properties Limited & another) where it has been clearly held that the Housing Board has no right over property developed and sold to the individual allottees. The petitioners have enclosed sale deeds to show absolute ownership. The only restriction appears to be that the property developed for residential purpose should not be commercial use. The petitioners' plea is only for demolition and reconstruction as residential property.

5. Petitioners' counsel states that the development of the property is for residential use only and petitioners are willing to file an affidavit to that effect. Following the Division Bench Judgment as above, several orders have been passed by this Court, viz., W.P.No.15170 of 2010 dated 20.7.2010, W.P.No.14784 of 2008 dated 6.8.2008 where the Chennai Metropolitan Development Authorities were directed to accept the application without insisting on no objection certificate.

6. Since the property in question undisputedly has been sold to the individual allottees by way of proper sale deeds, the Tamil Nadu Housing Board can have no right over the property and therefore, the question of issuing no objection certificate does not arise.

7. In view of the above, the first respondent is directed to proceed with the application submitted by the petitioners without insisting on objecting certificate from the third respondent Tamil Nadu Housing Board subject to condition that the property will be developed only for residential purpose. The petitioners, however, are directed to submit the individual sale deeds of all the land owners to the competent authority to get planning permission. The Writ Petition is ordered as above. No costs.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

ra

To

- 1.The Commissioner
Corporation of Chennai,
Ripon Buildings, Park Town,
Chennai.3.
- 2.The Member Secretary
Chennai Metropolitan Development
Authority,
No.1 Gandhi Irwin Road,
Egmore, Chennai.8.

3. The Chairman/Managing Director,
The Tamilnadu Housing Board,
No.493, Anna Salai, Chennai.35.

1 cc to Mr.P. Tamilmani, Advocate, Sr. 45986
1 cc to Mr.R. Jayaseelan, Advocate, Sr. 45751
1 cc to Mr.A. Suresh, Advocate, sr. 45521

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