

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 31.7.2012

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Petition No.19943 of 2012

1 MRS.R.CHANDRA

2 MR.C.DURGA PRASAD

3 MR.K.UMA MAHESHWARAN

4 MR.K.A.BALSSUBRAMANIAN

5 MRS.THANGAM RAMACHANDRAN

6 MR.A.K.RAMESH

7 MR.A.K.SURESH

8 MR.AMANJARI KARAMBIL MAHESH

9 MRS.YASMEEN LLOYD

10 MRS.G.BABY

11 MRS.S.GNANAMBAL

12 MR.P.C.KRISHNAN KUTTY

13 MR.V.G.RAMACHANDRAN

14 MRS.K.SAKUNTHALA

15 MRS.M.MEENAKSHI

16 MR.T.J.VIJAYVIKRAM

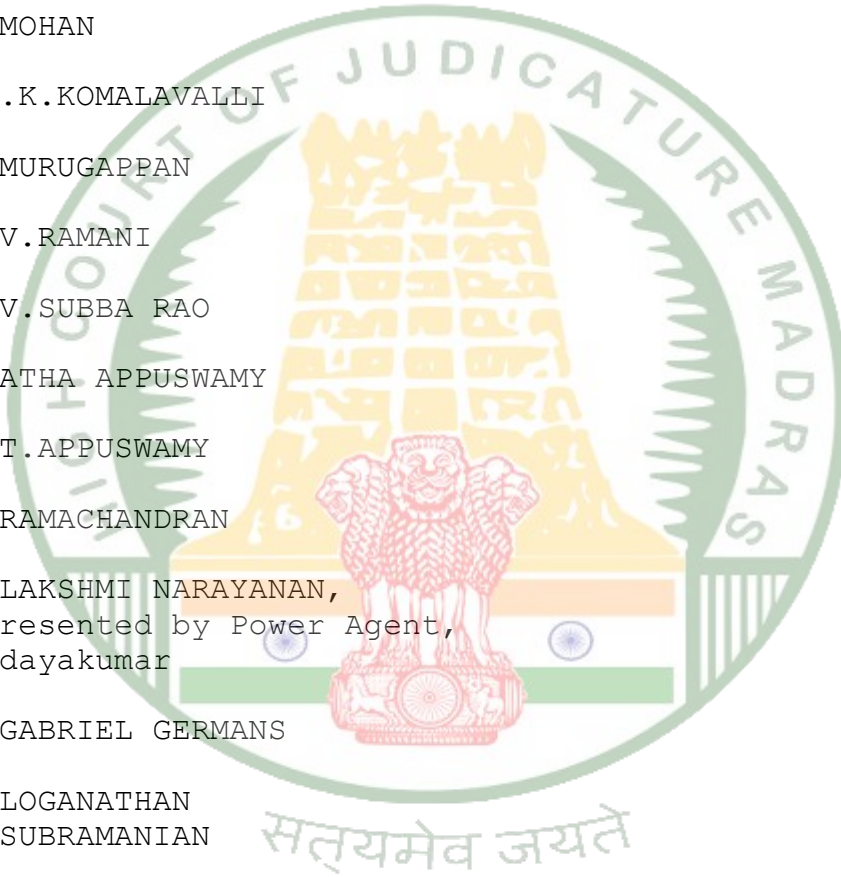
17 MR.G.S.NAGARAJAN

18 MR.C.MOHAN KUMAR

19 MR.K.M.SINDAH GANI

20 MR.V.KRISHNAN

21 MR.G.V.NARAYANAN
22 MR.G.MURUGESAN
23 MR.YESODA VENKATA RANGA RAO
24 MRS.B.V.NARASIMHAN
25 MRS.THILAKAVATHI SUBRAMANIAM
26 MR.D.M.SUBRAMANIAM
27 MR.R.MOHAN
28 MRS.V.K.KOMALAVALLI
29 MR.M.MURUGAPPAN
30 MR.K.V.RAMANI
31 MR.A.V.SUBBA RAO
32 MRS.RATHA APPUSWAMY
33 MR.V.T.APPUSWAMY
34 MR.C.RAMACHANDRAN
35 MR.R.LAKSHMI NARAYANAN,
represented by Power Agent,
T.Udayakumar
36 MR.R.GABRIEL GERMANS
37 MR.S.LOGANATHAN
38 MR.T.SUBRAMANIAN
39 MR.K.SIVAKUMAR
40 MRS.S.POORNIMA
41 MR.T.K.SUBRAMANIAN
42 DR.ESTHER REVATHY
43 DR.S.VENKATARAMAN
44 MR.S.LALITHANAND MOSES



WEB COPY

45 MRS.J.SHANTHAKUMARI
46 MRS.S.PAVITHRA @ PAVITHRA JEBARAJ,
Represented by Power Agent T.Udayakumar.
47 MRS.RUKMA KUDVA
48 MR.K.Y.SRINIVASAN
49 MR.V.SESHASAYEE
50 MR.S.KARTHIKEYAN,
represented by Power Agent,
T.Udayakumar
51 MR.D.SUNDARESAN
52 MR.V.RAMASWAMY
53 MRS.J.KAMALA
54 MRS.GIRIJA MYTRAN
55 MR.T.S.VISWANATHAN
56 MR.L.K.NATARAJ
57 MRS.MERLIN PREMKUMAR
58 MRS.A.R.SATYANANDAMANI,
represented by power agent
T.Udayakumar
59 MRS.MUTHAMMAL MANICKAVASAGAM
60 MR.K.A.JOSEPH
61 MR.NARAYANAN KARTHA
62 MRS.M.KASTHURI THILAKAM
63 MR.V.CHAKRAPANI
64 MR.P.DAVID
65 MR.L.SUBRAMANIA RAO
66 MRS.K.J.ARUMAINAYAGAM
67 MR.K.RAMASUBRAMANIYAM

68 MR.G.PADMANABHAN

69 Mrs.S.Sasirekha

70 Mrs.S.Sathyapriya

71 Mr.S.Narendra Kumar

(Petitioners 69 to 71 are represented
by Power Agent T.Udayakumar)

72 Mr.R.Saravana Bava

73 Mr.M.D.Suresh Kumar

74 MR.K.SUBRAMANIAN

75 DR.R.INDHU PRIYADHARSHINI

76 MR.P.SHAMARAYACHAR

77 MR.V.VIJAYA BABU

78 MRS.K.K.KOMALA

79 Mr.R.Laxmi Narayanan,
represented by Power Agent,
T.Udayakuimar.

All the petitioners are represented by
their duly constituted power Agents

1.T.Udaykumar,
No.27, Saravana Street,
T.Nagar, Chennai-17.

2.Khimraj Sakariya,
No.104, Barnaby Road,
Kilpauk, Chennai-600 010.

... Petitioners

WEB COPY vs.

1.The Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road,
Egmore, Chennai 600 008.

2.The Corporation of Chennai,
represented by its Commissioner,
Ripon Building, Chennai-600 003.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to entertain, consider and grant approval to the demolition plan and planning permission, planning permit and building permit for construction of Flats in Block Nos.138 to 148 Geethanjali colony, 7th Avenue, Anna Nagar West, Chennai-40 comprised in S.Nos.185 (part), 186 (Part) and 187 (part) in Padi Village, S.Nos.221(Part) in Koyambedu Revenue Village (Koyambedu Revenue Village now comes under Thirumangalam Revenue Village), S.Nos.141 (part), 142(part), 152 (part) and 154 (part) in Villivakkam Village, admeasuring 70618 sq. ft. jointly owned by the petitioners based on the orientation sketch issued by the Tamilnadu Housing Board without insisting patta from revenue authorities.

For petitioners : Mr.S. Ramesh

For respondents : Mr.P.Tamilmani,
for R1

: Mr.V.C.Selvasekaran,
for R2

O R D E R

This Writ Petition is filed praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to entertain, consider and grant approval to the demolition plan and planning permission, planning permit and building permit for construction of Flats in Block Nos.138 to 148 Geethanjali colony, 7th Avenue, Anna Nagar West, Chennai-40 comprised in S.Nos.185 (part), 186 (Part) and 187 (part) in Padi Village, S.Nos.221(Part) in Koyambedu Revenue Village (Koyambedu Revenue Village now comes under Thirumangalam Revenue Village), S.Nos.141 (part), 142(part), 152 (part) and 154 (part) in Villivakkam Village, admeasuring 70618 sq. ft. jointly owned by the petitioners based on the orientation sketch issued by the Tamilnadu Housing Board without insisting patta from revenue authorities.

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

3. Petitioners are the joint owners of the flats with proportionate undivided shares in the land, which was promoted by the Tamil Nadu Housing Board and sold to the individuals. The present owners are either original allottees or subsequent purchasers. The petitioners intended to demolish the superstructure as the building is in a dilapidated condition and further intended to develop the property jointly. The flats already in existence is an ordinary building and the petitioners now want to develop it by putting up construction by utilizing the maximum floor space index for the extent of land available as mandated under the Development Control Rules for residential purpose. After obtaining the orientation sketch, the petitioners prepared the demolition and reconstruction plan and approached the respondents in the month of November 2011. The first respondent declined to even entertain any plea for planning permission on the ground that patta in respect of the property has not been enclosed. Aggrieved by the same, the petitioners have come forward with the present writ petition.

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 and W.P.No.19942 of 2012 dated 30.07.2012, where the Chennai Metropolitan Development Authorities were directed to accept the application without insisting on no objection certificate. The learned counsel for the petitioner relied on the Office Order No.5/2002 dated 1.3.2002 issued by the Member Secretary, which is self explanatory. It is relevant to extract the same:-

" E.15 Sub: CMDA - Area Plans Unit - Processing of Planning Permission cases - Tamil Nadu Housing Board allotted/Sold sites - sold sites -Patta with FMB/PLR extract not to be insisted - Orders - Issued.

Ref: 1. Office Order No.15/97 dt. 28.07.1997
2. Office Order No.18/99 dt. 05.07.1999.

In the reference cited, it was noted that when extents given in documents and patta and found at site differ, for allowing Floor Space Index, minimum of the above three extents is taken as the basis. Regarding dimensions, it was ordered that the plans with site dimensions showing as per PLR extract/FMB sketch be accepted even, when the site conditions differ, subsequently, in the reference second cited it was ordered that both the dimensions as per PLR extract/FMB sketch and also as per site conditions have to be shown.

2. The above procedure was reviewed in cases of Tamil Nadu Housing Board allotted sites. It was observed that TNHB is a Government agency, and they issued FMB sketch duly authenticated showing the plot dimensions/extent sold by them. Hence, it could be taken as an evidence for working out Floor Space Index and Permanent Land Record extract/patta issued by the Revenue authorities need not be insisted.

3. In partial modifications of the Office Orders cited, it is ordered that in cases of Tamil Nadu Housing Board allotted/sold plots, for examining Planning Permission applications relating to Special Buildings/Group developments/Multi-storied Buildings/Sub-divisions regarding allowability of Floor Space Index based on least extent and accepting site dimensions, patta with FMB sketch/PLR extract issued by the Revenue authorities need not be insisted and such Planning Permission Applications processed accepting the sale deed and FMB sketch issued by the TNHB as an evidence in lieu of patta/PLR extract."

6. Since the Chennai Metropolitan Development Authority itself has taken a decision not to insist on patta with FMB sketch/PLR namely the patta issued by the Revenue Authorities, the mandamus sought for by the petitioner has to be necessarily granted. The Respondents 1 and 2 are directed to consider and grant approval to the demolition plan and planning permission, planning permit and building permit for construction of Flats based on the orientation sketch issued by the Tamilnadu Housing Board without insisting patta from revenue authorities, 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.

7. The Writ Petition is ordered as above. No costs.

Sd/
Deputy Registrar(AS)

/true copy/

Sub Asst.Registrar

gr.

To

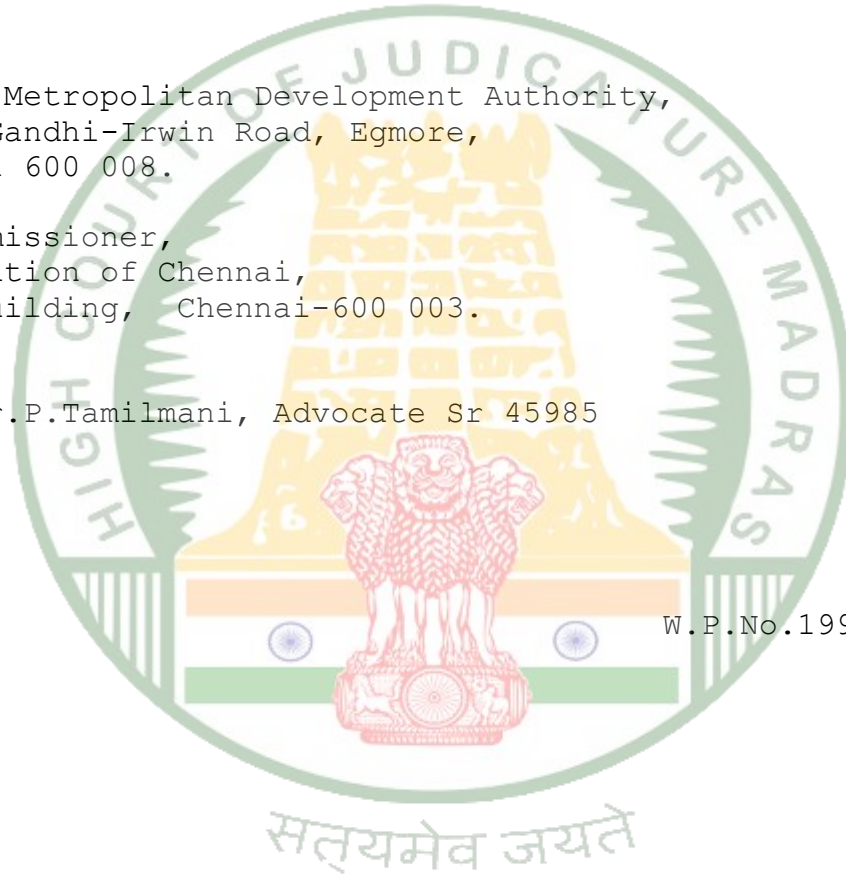
1.Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road, Egmore,
Chennai 600 008.

2.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai-600 003.

+lcc to Mr.P.Tamilmani, Advocate Sr 45985

PA(CO)
km/21.8.

W.P.No.19943 of 2012



WEB COPY